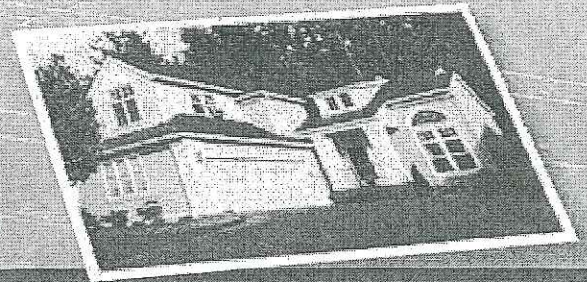


June 2008

# DIMENSIONS

*Newsletter of the New Jersey Builders Association*



## Weathering the Current Real Estate Market: Developers in Existing Residential Communities

CHRISTINE F. LI, ESQ. Greenbaum, Rowe, Smith & Davis LLP

In today's market, efforts to predict the timing of full build-outs and the path of a developer to reach it have become difficult, if not impossible. Achieving the sell-out of a community, while discharging the developer's legal and financial commitments to the homeowners and to any community association, raises unique issues.

### TRANSITION OF CONTROL TO HOMEOWNERS

Under New Jersey law, a developer must gradually surrender control of the community association's governing board when threshold numbers of housing units have been conveyed. The association will then have the power to evaluate the condition of the development and the association operations, and release the developer from further liability. The delay in the turnover of control is a natural consequence of lagging sales.

Developers can act to protect themselves from allegations of construction defects and improper management and accounting practices. Since an otherwise properly constructed, managed and financially-operated community may become compromised due to the passage of time or subsequent improper management, a developer should consider retaining engineers to inspect completed improvements and accountants to audit the accounts of the association. Professional reports will

provide a permanent record of existing conditions and conduct.

### WHEN THE BEST LAID PLANS GO WRONG

Economic conditions may put the development scheme in the community's offering and governing documents in doubt. There may no longer be market demand for the proposed common amenities or dwellings, or completion deadlines may not be achievable. Amendments of the original documents, based upon a legal analysis of the documents, may mesh the original plans with current realities.

### TO LEASE OR NOT TO LEASE?

Developers wishing to "temporarily" lease unsold dwelling units should be wary of the legal protections granted to tenants under the statute governing the removal of tenants in New Jersey, commonly (and aptly) referred to as the "Anti-Eviction Statute." The statute affords certain tenants the right to remain in leased premises up to eight years before the developer may commence eviction actions, regardless of the term stated in the lease, unless developers take precautions in preparing and signing leases. Senior citizens, disabled persons,

and Hudson County tenants may enjoy even greater protections.

### DISTRESSED COMMUNITIES: PICKING UP THE PIECES

The downturn in the market brings with it opportunities for those who have the financial means and foresight (or fortitude) to acquire unsold interests in planned communities. An acquiring party may be required by the New Jersey Department of Community Affairs (DCA) to discharge responsibilities under the Planned Real Estate Development Full Disclosure Act (PREDFDA) that the original developer failed to perform. PREDFDA may impact the subsequent developer's completion and sale of the dwellings and the common facilities, construction deadlines, responsibility for PREDFDA warranties, and financial liability to the association.

### CONCLUSION

Responding to the condition of today's residential market and anticipating the problems that are likely to arise can provide some interim relief and allow the developer to move forward in the future.

*Greenbaum, Rowe, Smith & Davis LLP is a Master Sponsor of NJBA. You can visit them on the web at [www.greenbaumlaw.com](http://www.greenbaumlaw.com).*

Greenbaum Rowe  
Smith & Davis LLP

