



A Professional Perspective

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Updates to Pay-to-Play Regulations by David A. Weinstein, Esq., AHPNJ General Counsel

In April of this year, the New Jersey Election Law Enforcement Commission ("ELEC") adopted several modifications to the pay-to-play regulations applicable in the State of New Jersey. P.L. 2005, Ch. 271 ("Chapter 271") was signed into law by Acting Governor Codey on January 5, 2006. Chapter 271 is part of a greater scheme of legislation enacted by the State of New Jersey over the past several years to combat the practice of "pay-to-play" in State and local politics and was enacted to create "transparency" in the public contracting process.

Essentially Chapter 271 requires that a business entity, no less than ten (10) days prior to entering into any contract having an anticipated value greater than \$17,500 with a State agency, county, municipality, independent authority, board of education, or fire district, except for those contracts that are required by law to be publicly advertised for bid, to submit, along with its bid price or quote, a list of political contributions that were made by the business entity during the preceding 12 month period, along with the date, amount and recipient of each reportable contribution.

A business entity is a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of the State of New Jersey or any other state or foreign jurisdiction. Pursuant to P.L. 2007, Ch. 304, it was made clear by the legislature that a non-profit corporation is excluded from the definition of "business entity", and in April of this year ELEC changed its regulations to comport with the statutory change.

Moreover, Chapter 271 requires that any business entity making a contribution of money or any other thing of value, including in kind contributions, to a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year \$50,000 or more in the aggregate in contracts with a public entity shall file an annual disclosure form with ELEC, which shall set forth all such reportable contributions made by the

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Appellate Division Decision *US Bank, N.A. v Hough-Foreclosure of Refinanced Affordable Units* By Kenneth W. Biedzynski, Esq., Goldzweig, Green, Eiger & Biedzynski, LLC

Despite the recent and overshadowing release of the Appellate Division's opinion invalidating—again—COAH's third round rules, our appellate court has also issued another important decision affecting affordable housing. In *US Bank, N.A. v. Hough* the court clarified and codified the rule followed in previously unpublished decisions which held that mortgage liens in excess of the maximum allowable resale price of an affordable unit are void under the UHAC. *Hough* was a mortgage foreclosure action where the homeowner bought the home for \$68,142.86 in 2004. An initial mortgage was taken out in the amount of \$61,329 in order to buy the home. Subsequently, in 2005 the owner refinanced the unit through a loan in the amount of \$108,000. The refinance required the owner to sign a promissory note and to give the lending bank a mortgage on the unit. At the time of the refinance the maximum allowable resale price under the UHAC was \$68,735.41. In 2007 the owner defaulted on the \$108,000 mortgage and a foreclosure action followed.

The owner subsequently moved to dismiss the foreclosure action arguing that the 2005 mortgage violated the UHAC. The trial court denied the motion and the owner appealed. On appeal the court agreed with an opinion rendered by the Attorney General's office which opined that only the mortgage which secured the 2005 debt violated the UHAC and not the underlying debt itself. In other words, the bank could not foreclose on the mortgage; however, since the underlying debt was not extinguished the bank could sue the owner for money damages to recover the loan debt. The ruling stands for the proposition that an offending lender is only barred from foreclosing a mortgage but not from seeking to collect on an underlying obligation which could be accomplished through a breach of contract action on the promissory note.

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Upcoming Events:

- *AHPNJ Annual Meeting*
October 27th
- *South Jersey Informal Networking Meeting* November 9th
- *NJ State League of Municipalities Conference in Atlantic City*
November 16th-19th.

AHPNJ is an independent organization whose mission is to promote and enhance professionalism and knowledge in the field by supporting affordable housing through dialogue, ethical standards, education, advocacy and policy guidance.

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COAH QUICK TIP

Exempt Transfers - Exempt transfers of deed-restricted affordable units are allowed to Class A beneficiaries, according to the Uniform Housing Affordability Controls. An exempt transfer is one where title to the unit passes to another owner without having to go through the affirmative marketing and random selection process. This will often occur as a result of the death of the owner of record. Class A beneficiaries are allowed to inherit and live in the unit regardless of whether they qualify for affordable housing. Class A beneficiaries are spouses, civil union partners, domestic partners, parents, grandparents, and descendants (including those legally adopted). These new owners must sign and record all deed restriction documents so that the unit stays affordable.



Continued From Page 1—Foreclosure of Refinanced Affordable Units

Hough answers some important questions regarding the foreclosure of affordable units. First, the underlying debt will not be wiped out because this would lead to a windfall for the owner. Second, although the more favorable remedy of foreclosure is taken away, lenders may still sue defaulting owners on the note. Finally, since the **Hough** court based its decision on the public policy of maintaining affordability in place the case stands for the proposition that in such situations the affordable deed restrictions will not be affected

AHPNJ Central Region Initiates Informal Breakfast Networking Meetings

More than 20 Affordable Housing Professionals have been meeting on a monthly basis in Bridgewater, NJ to discuss the most current housing topics and issues in our industry. "Each time we get together it is an opportunity for our members to discuss areas of concern. I always leave these meetings having met a new and interesting person while at the same time improving my knowledge of a certain topic or housing problem," stated Sharon Clark, VP of the Central Region.

The initial meeting held August 5, 2010 from 9:30 am – 11:30 am was such a success that the members asked to start meeting once a month but they changed the time slightly. The group met again on September 14, 2010 from 9:00 am until 11:00 am and then on October 13, 2010 from 9:00 am to Noon. The October 13, 2010 meeting was held in South Brunswick and featured two Equal Opportunity Specialists from HUD discussing the Federal Civil Rights Law.



AHPNJ Thanks All the Volunteers Making our Booth at the 2010 Governor's Housing Conference Successful:

Heather Mahaley, Program Chair, who coordinated everything, Mary Caffrey, Harold Colton-Max, Christy Peacock, Frank Piazza, Gail Pfister, Susan Ucci, Barbara Walsh, Sonja Walter and Steve Weinberg.



August 5, 2010



Continued From Page 1—Updates to Pay-To-Play Regulations

business entity during the 12 months prior to the reporting deadline. As of April of this year, ELEC determined that the period of record retention for a business entity required to file an annual disclosure statement is for a period of not less than four years after the date the annual report was filed, or a period of not less than four years after the due date for the annual report, whichever is longer.

Effective April 2010 ELEC, to comport with legislative changes which were recently made, modified its regulations regarding the prohibition of contributions from State contractors and legislative, county and municipal contractors as well as contribution disclosure requirements for for-profit and non-profit entities, to mandate that all cash contributions are reportable contributions. As a result, all cash currency contributions made will automatically trigger the pay-to-play restrictions as well as immediately require contribution disclosures to be provided.

In the ever changing seas of pay-to-play, one rule stands clear, if you are going to make a political contribution, make sure you confirm that in doing so, you will not violate the New Jersey pay-to-play laws, as one wrong step can not only cost you significant sums in penalties, but may also prevent you for doing business with the State of New Jersey for years to come. For additional information please contact David A. Weinstein, Esquire at Archer & Greiner, P.C.

dweinstein@archerlaw.com.



However, **Hough** may not be over with and affordable housing professionals may need to wait for a later round of appeals to get finality since both the home owner and the bank have filed for certification to the New Jersey Supreme Court. Specifically, the owner seeks to overturn that portion of the Appellate Division's holding which refused to wipe out the underlying debt and the bank seeks to have the decision modified such that instead of voiding the mortgage in its entirety the mortgage is "reformed" to the maximum allowable amount under the UHAC. If the Supreme Court takes the case it seems unlikely that it will side with offending owners and reward violators by wiping out their debts. However, the bank's reformation argument is more compelling and we'll have to wait to see if **Hough** is modified. For the time being both lenders and owners are on notice that loans exceeding and offending the UHAC will not come without consequences.

