



New York State Division of Housing and Community Renewal
Office of Rent Administration
25 Beaver Street
New York, NY 10004

Housing Management Bureau Memorandum # 2006-B-06

To: All Housing Companies
Owners, Managing Agents and Site Managers

From: Jane I. Berrie, Director
Housing Management Bureau

Date: May 18, 2006

Subject: Identity of Interest Regulations
Requirements for Disclosure of Interest in Contracts for Materials and Services

Housing companies and their managing agents must make every reasonable effort to avoid entering into contracts or other transactions for materials or services which may involve a possible conflict of interest, and, where such interest exists, they must comply with DHCR's identity of interest regulations codified at 9 NYCRR §1725-2.5 and §1729-1.4 (see attached). These regulations, which provide for the disclosure of specific interests, both direct and indirect, as and when they arise and annually thereafter, are deemed by DHCR to be a part of the terms and conditions of employment for employees of housing companies and managing agents.

Covered Individuals

The following are considered "covered individuals" under the Identity of Interest regulations:

1. housing company board members
2. other housing company principals, including general partners
3. managing agent principals and key management employees
4. principals and key management employees of affiliated companies of managing agents
5. for self-managed housing companies, key management employees
6. any shareholder, individual or entity with a 10% or greater interest in the housing company

The term "key management employees" is defined to include all employees who may be in a position to influence the selection of housing company contractors or vendors.

Prior Disclosure Requirement

“Covered individuals” must disclose any direct or indirect interest they may have in any contract for materials or services to be furnished to the housing company or in any business which proposes to participate at any stage of a transaction which may lead to the provision of goods or services to the housing company. The regulations also require that upon such disclosure the housing company establish a plan for fairly evaluating the proposal for the provision of goods and services and for adequately monitoring the performance of the contract if it is awarded.

Annual Disclosure Requirement

In addition to the requirement that “covered individuals” disclose direct or indirect interests with respect to **proposed** contracts, the regulations also require that they **annually** disclose direct or indirect interests they have in **existing** housing company contracts.

Disclosure Procedure

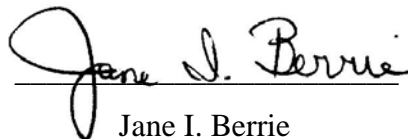
In compliance with these regulations, **the managing agent or manager of the housing company must distribute this memorandum to all “covered individuals”** with the direction that those with an interest in a housing company contract or proposed contract for materials or services complete the attached Disclosure of Interest form and return it to them by **June 30, 2006**.

After the disclosure forms have been collected, the managing agent or manager shall complete the attached Tabulation of Annual Disclosure of Interest form with the information received, if any; attach a list of all “covered individuals”; and sign the certification. If any disclosures involve proposed contracts, the requisite plan must be prepared for DHCR approval (see 9 NYCRR §1725-2.5[a,2], §1725-2.5[b,2], or §1729-1.4[b]). A copy of the tabulation form shall be maintained in the managing agent’s or manager’s files along with the disclosure forms received, and the original tabulation form along with any plans, if applicable, shall be submitted to the address below by August 1, 2006.

New York State Division of Housing and Community Renewal
Housing Management Bureau
25 Beaver Street – 6th Floor
New York, New York 10004
Attention: Margaret Feml

The Disclosure of Interest form should also be used as needed to meet the prior disclosure requirement between annual certifications. Upon receipt of a prior disclosure of interest, and before commencement of any work under the contract involved, the managing agent or manager must submit a copy of the Disclosure of Interest form along with the requisite plan for DHCR approval to the attention of Ms. Feml.

If you have any questions regarding this procedure, please contact Ms. Feml at (212) 480-7153.



Jane I. Berrie

Attachments: 9 NYCRR §1725-2.5 and 9 NYCRR §1729-1.4
Disclosure of Interest, form HM-260 (5/05)
Tabulation of Annual Disclosure of Interest, form HM-261 (5/05)

9 NYCRR § 1725-2.5. Interested board members and other principals.

(a) Board members. (1) Board members shall make every reasonable effort to avoid contracts or other transactions for materials or services, as set forth in Subpart 1728-4 of this Part, which may involve a possible conflict of interest. Housing companies and board members are subject to the provisions of the Business Corporation Law or the Not-for-Profit Corporation Law regarding voting and disclosure where a contract or a proposed contract involves a possible conflict of interest on the part of a board member. In addition to the disclosure requirements set forth therein, prior disclosure must be made to the division and to the board by any board member who has a direct or indirect interest in a business which proposes to participate at any stage of a transaction which may lead to the providing of materials or services to the housing company.

(2) Upon such disclosure by a board member the housing company, prior to the solicitation of bids, shall submit a plan to the division for approval which:

- (i) identifies the board member who has a direct or indirect interest, the name and address of the businesses involved and the nature of the board member's interest;
- (ii) provides an appropriate mechanism to assure that bids will be solicited and evaluated fairly; and
- (iii) is designed to enable the housing company, in the event of an award to such a business, to adequately monitor the performance of the contract or transaction.

Where the housing company cannot comply with the requirements set forth in subparagraph (ii) of this paragraph, it must establish, in addition to the requirements set forth in subparagraphs (i) and (iii) of this paragraph, that unique circumstances or emergency conditions render the use of a bidding procedure impracticable or inappropriate.

(3) In addition to the disclosure required by paragraph (1) of this subdivision, upon taking office and on an annual basis thereafter each board member shall duly certify and list, under penalties provided by law, and supply to the division on such form as may be prescribed by the division, any direct or indirect interest he or she may have in any contract for materials or services being furnished or to be furnished to the housing company.

(b) Other principals. (1) Housing companies and certain other principals of the housing company are subject to the provisions of the Business Corporation Law or the Not-for-Profit Corporation Law applicable to officers of the corporation regarding voting and disclosure where a contract or proposed contract involves a possible conflict of interest on the part of such principal. In addition to the disclosure requirements set forth therein, there must be full disclosure to the division, the managing general partner and the board by any managing general partner, officer of the housing company or any shareholder, individual or entity with a 10 percent interest or more in a housing company, who has a direct or indirect interest in a business which proposes to participate at any stage of a transaction which may lead to the providing of materials or services to the housing company.

(2) Upon such disclosure by an individual or entity listed in paragraph (1) of this subdivision the housing company, prior to the solicitation of bids, must submit a plan to the division which:

- (i) sets forth the individual or entity involved who has a direct or indirect interest and the nature of that interest;
- (ii) provides an appropriate mechanism to assure that all bids will be solicited and evaluated fairly; and
- (iii) is designed to enable the housing company, in the event of an award to such a business, to adequately monitor the performance of the contract or transaction.

Where the housing company cannot comply with the requirements set forth in subparagraph (ii) of this paragraph, it must establish, in addition to the requirements set forth in subparagraph (i) and (iii) of this paragraph, that unique circumstances or emergency conditions render the use of a bidding procedure impracticable or inappropriate.

(3) In addition to the disclosure required by paragraph (1) of this subdivision, upon assumption of the interest set forth in paragraph (1) of this subdivision, and on an annual basis thereafter, such individual or entity shall duly certify and list, under penalties provided by law, and supply to the division on such form as may be prescribed by the division, any direct or indirect interest he, she or it may have in any contract for materials or services being furnished or to be furnished to the housing company.

9 NYCRR § 1729-1.4. Identity of interest.

(a) Prior disclosure must be made to the board of directors or the managing general partner, as the case may be, and to the division by managing agents, their employees, affiliated companies of the managing agent and housing company management personnel of self-managed housing companies having a direct or indirect interest in any business which proposes to participate at any stage of a transaction which may lead to the providing of materials or services to the housing company.

(b) Upon such disclosure by an individual or entity listed in subdivision (a) of this section, the housing company, prior to the solicitation of bids, must submit a plan to the division for approval which:

- (1) identifies the individual or entity involved who has a direct or indirect interest, their business address and the nature of that interest;
- (2) provides an appropriate mechanism to assure that all bids will be solicited and evaluated fairly; and
- (3) is designed to enable the housing company, in the event of an award to such a business, to adequately monitor the performance of the contract or transaction.

Where the housing company cannot comply with the requirements set forth in paragraph (2) of this subdivision, it must establish, in addition to the requirements set forth in paragraphs (2) and (3) of this subdivision, that unique circumstances or emergency conditions render the use of a bidding procedure impracticable or inappropriate.

(c) In addition to the disclosure required by subdivision (a) of this section, a principal of the managing agent or, where the housing company is self-managed, housing company management personnel shall certify and list, under penalties of law, upon execution of the managing agent's agreement and on an annual basis thereafter on a form prescribed by the division, all direct or indirect interests which to their knowledge these individuals or entities may have in any contract or proposed contract for materials or services being furnished or to be furnished to the housing company.

(d) Failure to comply with these provisions may:

- (1) subject the individuals or entity to such penalties as are provided by law;
- (2) result in reduction of fees or termination of the managing agent's agreement or be grounds for nonrenewal of the managing agent's agreement as provided for in section 1729-1.2(k), (l), (m) and (n);
- (3) in the case of a self-managed housing company result in revocation of division approval of its self-management plan; and
- (4) shall be cause for the discharge of any agent or employee of the housing company, and specific provision to such effect shall be incorporated into all employment and agency agreements entered into by the housing company.

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Housing Management Bureau
25 Beaver Street, New York, New York 10004

DISCLOSURE OF INTEREST

(To be used for annual certifications and interim prior disclosures.)

Development Name _____ **DHCR #** _____

INSTRUCTIONS: *This form is to be completed and submitted to the Managing Agent/Manager by “covered individuals” with a direct or indirect interest in a proposed or actual housing company contract to provide materials or services as and when such interest arises and annually thereafter as directed. “Covered individuals” are: housing company board members; other housing company principals, including general partners; managing agent principals and their key management employees; principals and key management employees of affiliated companies of managing agents; for self-managed housing companies, key management employees; and any shareholder, individual or entity with a 10% or more interest in the housing company. “Key management employees” is defined to include all employees who may be in a position to influence the selection of housing company contractors or vendors. Please type or print. Use additional pages if necessary.*

1. Contractor's name: _____

Contractor's address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐

2. Contractor's name: _____

Contractor's address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐

3. Contractor's name: _____

Contractor's address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐

I hereby certify that I have a direct or indirect interest in the above contract(s) or proposed contract(s) for materials or services being furnished, or to be furnished, to the housing company.

SIGNATURE: _____ **DATE:** _____

NAME: _____ **TITLE:** _____

TABULATION OF ANNUAL DISCLOSURE OF INTEREST FORMS

Development Name _____ DHCR # _____

INSTRUCTIONS FOR MANAGING AGENT/MANAGER: *Please type or print the information contained on all annual Disclosure of Interest forms you received using additional pages if necessary, or, if none were submitted, check the “NO CONFLICT DISCLOSED” box; attach a list of all “covered individuals”; and complete the certification below. If any disclosure involves a proposed contract, the requisite plan must be included with your submission. Maintain a copy of this form with the supporting disclosure forms for your files and submit the original to the Housing Management Bureau at the above address.*

☐ NO CONFLICT DISCLOSED

1.

Name of “covered individual”: _____ Title: _____

Contractor’s name: _____

Contractor’s address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐
2.

Name of “covered individual”: _____ Title: _____

Contractor’s name: _____

Contractor’s address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐
3.

Name of “covered individual”: _____ Title: _____

Contractor’s name: _____

Contractor’s address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐
4.

Name of “covered individual”: _____ Title: _____

Contractor’s name: _____

Contractor’s address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐
5.

Name of “covered individual”: _____ Title: _____

Contractor’s name: _____

Contractor’s address: _____

Nature of the interest: _____

Indicate if contract is in force ☐ or proposed ☐

I hereby certify that I have distributed Management Bureau Memorandum # **2006-B-06** to all “**covered individuals**”, **a list of which is attached hereto**; have directed those with an interest in a housing company contract or proposed contract for materials or services to complete the Disclosure of Interest form and return it to me by **June 30, 2006**; and have accurately recorded their responses, if any, above.

SIGNATURE: _____ DATE: _____ PHONE: _____
NAME: _____ TITLE: _____