

HOME PROPERTIES INC

Form DEF 14A

March 30, 2010

March 31, 2010

Dear Stockholder:

The Annual Meeting of Stockholders of Home Properties, Inc. will be held on Tuesday, May 4, 2010, at 9:00 a.m. at Clinton Square, 14th Floor, Rochester, New York. We have decided to change the time, location and format of our Annual Meeting. There will be no formal presentation other than a brief report on the outcome of the stockholder vote.

A Notice of Annual Meeting and a Proxy Statement are attached. They describe the matters to be acted upon at the Annual Meeting.

Your vote on all the matters described in the Proxy Statement is very important. Please sign, date and return the enclosed proxy card in the envelope provided. Alternatively, you may choose to vote by telephone or internet. Voting by any of these methods before the meeting will insure that your shares are represented at the meeting.

Thank you for your continued confidence in Home Properties.

Sincerely,

HOME PROPERTIES, INC.

Edward J. Pettinella
President and Chief Executive Officer

HOME PROPERTIES, INC.
850 Clinton Square
Rochester, New York 14604

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 4, 2010

NOTICE IS HEREBY GIVEN that the 2010 Annual Meeting of Stockholders (the "Annual Meeting") of Home Properties, Inc. (the "Company") will be held on Tuesday, May 4, 2010 at 9:00 a.m. at Clinton Square, 14th Floor, Rochester, New York. Clinton Square is located at the northwest corner of Clinton Avenue and Broad Street in downtown, Rochester, New York. The purpose of the Annual Meeting is as follows:

1. To elect 11 Directors of the Company to serve until the 2011 Annual Meeting of Stockholders and until their respective successors are elected;
2. To approve an amendment to the Director Deferred Compensation Plan to increase the shares available for issuance under that plan by 50,000;
3. To ratify the appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for 2010; and
4. To consider and act upon any other matters that are properly brought before the Annual Meeting and at any adjournments or postponements thereof.

The Board of Directors of the Company (the "Board" or the "Board of Directors") set the close of business on March 9, 2010 as the record date for the Annual Meeting. Only stockholders whose names appear on the stock register of the Company at the close of business on the record date will be entitled to notice of and to vote at the Annual Meeting and at any adjournments or postponements. (If you hold your stock in the name of a brokerage firm, bank or other nominee, only that entity can vote your shares. Please give instructions as to how you wish your shares to be voted to the person responsible for your account.)

There are four ways to vote:

- by completing the enclosed proxy card and returning it in the enclosed postage prepaid envelope;
- by internet at <http://www.proxyvoting.com/hme>;
- by toll-free telephone at 1-866-540-5760; or
- by written ballot at the meeting.

If you vote by internet or telephone, your vote must be received before 11:59 p.m. Eastern Standard Time on May 3, 2010, the day before the Annual Meeting. You may change your vote or revoke your proxy at any time before the Annual Meeting:

- by returning a later dated proxy card;
- by sending written notice to Ann M. McCormick, Secretary of the Company at 850 Clinton Square, Rochester, New York 14604;
- by entering a new vote by internet or telephone; or
- by completing a written ballot at the Annual Meeting.

Rochester, New York
March 31, 2010

By Order of the Board of Directors

Ann M. McCormick
Secretary

EVEN IF YOU PLAN TO ATTEND THE MEETING, PLEASE VOTE BY ONE OF THE ABOVE METHODS. IF YOU ATTEND THE ANNUAL MEETING, YOU MAY VOTE IN PERSON IF YOU WISH, EVEN IF YOU HAVE PREVIOUSLY VOTED.

Important Notice Regarding the Availability of Proxy Materials
for the Annual Stockholders Meeting to be Held on May 4, 2010
This Proxy Statement and the 2009 Annual Report are available at
www.homeproperties.com/Investors

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HOME PROPERTIES, INC.
Suite 850
Clinton Square
Rochester, New York 14604

PROXY STATEMENT

FOR 2010 ANNUAL MEETING OF STOCKHOLDERS
to be Held on May 4, 2010

March 31, 2010

GENERAL INFORMATION

This Proxy Statement is delivered to you in connection with the solicitation of proxies by the Board of Directors of Home Properties, Inc. (the "Company") for use at the 2010 Annual Meeting of Stockholders of the Company (the "Annual Meeting"). The Annual Meeting will be held on Tuesday, May 4, 2010 at 9:00 a.m. at Clinton Square, 14th Floor, Rochester, New York. The approximate date on which the enclosed form of proxy and this Proxy Statement are first being sent to stockholders is March 31, 2010. The principal executive offices of the Company are located at 850 Clinton Square, Rochester, New York 14604.

Who May Vote?

Stockholders of the Company as of the Company's record date, March 9, 2010, may vote. On March 9, 2010, there were 35,157,035 shares of the Company's Common Stock outstanding. Each share of Common Stock has one vote.

How Do I Vote?

There are four ways to vote:

1. by completing the enclosed proxy card and returning it in the enclosed postage prepaid envelope;
2. by internet at <http://www.proxyvoting.com/hme>;
3. by toll-free telephone at (866) 540-5760; or
4. by written ballot at the Annual Meeting.

How Does a Proxy Work?

The Company's Board of Directors is asking for your proxy. By giving us your proxy, you authorize the proxy holders (Edward J. Pettinella, the Company's Chief Executive Officer, and David P. Gardner, the Company's Chief Financial Officer) to vote your shares at the Annual Meeting in the manner you direct.

If you vote by any of the above methods but do not specify how you wish to vote your shares, your shares will be voted "for" Proposals 1, 2 and 3 listed in the Notice of Meeting. The proxy holders will also vote shares according to their discretion on any other matter properly brought before the meeting.

What if a Broker Holds my Shares?

If you hold shares through someone else, such as a stockbroker, you will get proxy material from them and it is critical that you cast your vote if you want it to count in the election of Directors (Proposal 1) or with respect to the

amendment of the Director Deferred Compensation Plan (Proposal 2). Please Note: In the past, if a broker held your shares and you did not indicate how you wanted your shares voted in the election of Directors, your broker was allowed to vote those shares on your behalf in the election of Directors as they felt appropriate. Recent changes in regulations were made to take away the ability of your broker to vote your uninstructed shares in the election of Directors. Thus, if a broker holds your shares and you do not instruct your broker how to vote in the election of Directors, or with respect to the amendment of the Director Deferred Compensation Plan, no votes will be cast on your behalf. Your broker will, however, continue to have discretion to vote any uninstructed shares on the ratification of the appointment of the Company's independent registered public accounting firm (Proposal 3).

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What Constitutes a Quorum?

The presence, in person or by proxy, of holders of a majority of all of the shares of Common Stock entitled to vote is necessary to constitute a quorum for the transaction of business at the Annual Meeting. Votes withheld, abstentions and “broker non-votes” will be counted for purposes of determining whether a quorum is present. A “broker non-vote” refers to a share represented at the Annual Meeting which is held by a broker or other nominee who has not received instructions from the beneficial owner or person entitled to vote such share and with respect to which, on one or more but not all proposals, such broker or nominee does not have discretionary voting power to vote such share.

What Vote is Required to Approve Each Proposal?

Proposal 1: The affirmative vote of a plurality of the votes cast at the Annual Meeting is required for the election of a Director. For purposes of the election of Directors, abstentions and broker non-votes, if any, will not be counted as votes cast and will have no effect on the result of the vote.

Proposal 2: The affirmative vote of a majority of the votes cast on the Proposal is required for approval of the amendment to the Director Deferred Compensation Plan provided that the total vote cast on the Proposal represents over 50% in interest of all shares entitled to vote on the Proposal. For purposes of the vote on Proposal 2, abstentions and broker non-votes will have the same effect as votes against the proposal, unless holders of more than 50% in interest of all common shares entitled to vote on the Proposal cast votes, in which event broker non-votes will not have any effect on the result of the vote.

Proposal 3: The affirmative vote of a majority of all of the votes cast at the Annual Meeting is required for ratification of the appointment of PricewaterhouseCoopers LLP as the Company’s independent registered public accounting firm for 2010. For purposes of the vote on Proposal 3, abstentions will not be counted as votes cast and will have no effect on the vote.

Can I Change My Vote?

You may revoke your proxy before it is voted at the Annual Meeting by entering a new vote by internet or telephone, by submitting a new proxy with a later date, by voting in person at the Annual Meeting or by notifying the Company’s Secretary in writing prior to the Annual Meeting as follows: Ann M. McCormick, 850 Clinton Square, Rochester, New York 14604.

Can I Access the Notice of Annual Meeting, Proxy Statement, Annual Report on Form 10-K and the Annual Report on the Internet?

The Notice of Annual Meeting, Proxy Statement, Annual Report on Form 10-K for the fiscal year ended December 31, 2009 and 2009 Annual Report are available on the Company’s website at www.homeproperties.com under the heading “Investors”.

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PROPOSAL 1
ELECTION OF DIRECTORS

At the Annual Meeting, 11 individuals will be elected to serve as Directors until the 2011 Annual Meeting and until their successors are elected.

The Board of Directors has nominated Stephen R. Blank, Josh E. Fidler, Alan L. Gosule, Leonard F. Helbig, III, Charles J. Koch, Nelson B. Leenhouts, Norman P. Leenhouts, Edward J. Pettinella, Clifford W. Smith, Jr., Paul L. Smith, and Amy L. Tait to serve as Directors (the "Nominees"). Each of the Nominees is currently serving as a Director of the Company. The Board of Directors anticipates that each of the Nominees will serve as a Director if elected.

The affirmative vote of a plurality of the votes cast at the Annual Meeting is required for the election of the Nominees as Directors.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE NOMINEES.

Information Regarding Nominees for Director

The following paragraphs provide information as of the date of this proxy statement about each Nominee. The information presented includes information each Director has given us about their age, all positions they hold, their principal occupation and business experience for the past five years, and the names of other publicly-held companies of which they currently serve as a Director or have served as a Director during the past five years. In addition to the information presented below regarding each Nominee's specific experience, qualifications, attributes and skills that led our Board to the conclusion that they should serve as a Director, we also believe that all of our Nominees have a reputation for integrity, honesty and adherence to high ethical standards. They each have demonstrated business acumen and an ability to exercise sound judgment, as well as a commitment of service to the Company and our Board.

Stephen R. Blank, age 64, has been a Director of the Company since 2009. Since 1998, Mr. Blank has been a Senior Resident Fellow, Finance, at the Urban Land Institute ("ULI"), a non-profit education and research institute which studies land use and real estate development policy. Prior to joining ULI, Mr. Blank served from 1993 to 1998 as Managing Director - Real Estate Investment Banking of CIBC Oppenheimer Corp. From 1989 to 1993, Mr. Blank was Managing Director of the Real Estate Corporate Finance Department of Cushman & Wakefield, Inc. From 1979 to 1989, Mr. Blank served as Managing Director - Real Estate Investment Banking of Kidder, Peabody & Co. From 1973 to 1979, Mr. Blank was employed by Bache & Co., Incorporated as Vice President, Direct Investment Group. Mr. Blank is Chairman of the Board of Trustees of Ramco-Gershenson Properties Trust (NYSE: RPT) and a Director of MFA Financial, Inc. (NYSE: MFA). For both companies, he also serves as Chairman of the Audit Committee and as a member of the Compensation Committee. From May 1999 to February 2007, Mr. Blank was a member of the Board of Directors of BNP Residential Trust, Inc. Mr. Blank is a graduate of Syracuse University and received a Masters of Business Administration Degree in Finance from Adelphi University.

Mr. Blank's knowledge of the real estate industry as evidenced by his position at ULI, his experience in the investment banking industry, including his expertise in public and private real estate finance, and his service on the boards and committees of other public and private companies led the Board to conclude that he should continue to serve as a Director.

Josh E. Fidler, age 54, has been a Director of the Company since 2004. Mr. Fidler is a founding partner of Boulder Ventures, Ltd., a manager of venture capital funds, which has been in operation since 1995. Since 1985, he also has been a principal in a diversified real estate development business known as The Macks Group. In 1999, the Company

acquired 3,297 apartment units from affiliates of The Macks Group. Mr. Fidler was also a principal of the entity which owned a 240-unit apartment community which the Company purchased in 2004. He is a graduate of Brown University and received a law degree from New York University. Mr. Fidler is a member of the Maryland Region Advisory Board of SunTrust Bank, the Board of Johns Hopkins Medicine and President of the Board of Trustees of The Park School.

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Mr. Fidler's experience as an acquirer, developer, owner and manager of multifamily properties, as well as his background as a venture capitalist experienced in evaluating investment opportunities, led the Board to conclude that he should continue to serve as a Director.

Alan L. Gosule, age 69, has been a Director of the Company since 1996. Mr. Gosule is a partner in the law firm of Clifford Chance US LLP in New York, New York and has practiced law with that firm and its predecessor since 1991. From 2002 to August 2005, he served as the Regional Head of Clifford Chance's Real Estate Department for the Americas and, prior to 2002, was the Regional Head of the firm's Tax, Pension and Employment Department for the Americas. Prior to 1991, Mr. Gosule practiced law with the firm of Gaston & Snow, where he was a member of that firm's Management Committee and the Chairman of the Tax Department. Mr. Gosule currently serves on the Boards of MFA Financial, Inc. (NYSE: MFA), F.L. Putnam Investment Management Company and Pioneer Natural Resources, GP, LLC, the general partner of Pioneer Southwest Energy Partners, L.P. He also serves as a member of the Board of Trustees of the Ursuline Academy. Mr. Gosule is a graduate of Boston University and received a Juris Doctor Degree from Boston University Law School and an LLM in Taxation from Georgetown Law School.

Mr. Gosule's experience as a lawyer and partner of a major international law firm, his knowledge of tax law and related matters, including real estate investment trusts, and his experience in advising and serving on the boards and committees of other public and private companies led the Board to conclude that he should continue to serve as a Director.

Leonard F. Helbig, III, age 64, has been a Director of the Company since 1994. Since September 2002 he has served as a Director of Integra Realty Resources in Philadelphia. He is also an active owner and manager of various self storage and manufactured housing communities throughout the northeast. Between 1980 and 2002 he was employed by Cushman & Wakefield, Inc. where he held various senior management positions. From 1980 through 1987, he founded and served as National Director of the firm's Valuation and Consulting Services. From 1987 until 2002, Mr. Helbig served as President of Financial Services. Between 1995 and 2000, he also served as Executive Managing Director of Asset and Property Management Services. He was a member of Cushman & Wakefield's Board of Directors and Executive and Management Committees. He maintains active memberships in various international industry associations such as the ULI, the International Council of Shopping Centers and the National Multi Housing Council. He also holds the MAI professional designation from the Appraisal Institute. Mr. Helbig is a graduate of LaSalle University in Philadelphia with a Bachelor of Science Degree in Industrial Management.

Mr. Helbig's corporate management experience and his experience in the acquisition, disposition, development, leasing, management and appraisal of commercial and multifamily real estate led the Board to conclude that he should continue to serve as a Director.

Charles J. Koch, age 63, became a Director of the Company on March 1, 2010. From 1973 to 2004, Mr. Koch was employed by Charter One Financial, Inc. and its wholly-owned subsidiary, Charter One Bank, N.A. He was elected President and Chief Operating Officer in 1980, President and Chief Executive Officer in 1988 and Chairman, President and Chief Executive Officer in 1995. He served in those capacities until the sale of Charter One Financial, Inc. to The Royal Bank of Scotland in 2004. He was a Director of The Royal Bank of Scotland from 2004 until 2009. He is currently a Director of Assurant, Inc. (NYSE: AIZ) where he also serves as a member of the Compensation Committee and as the Chair of the Finance and Investment Committee. In addition, he is a Director of Citizens Financial Group (an affiliate of The Royal Bank of Scotland) and The Federal Home Loan Bank of Cincinnati where he also serves as a member of the Personnel, Governance and Finance and Risk Management Committees. Mr. Koch is Chairman of the Board of Trustees of Case Western Reserve University and on the Board of Directors of John Carroll University. He is a graduate of Lehigh University and holds a Masters of Business Administration Degree from Loyola College of Maryland.

Mr. Koch's experience as a Chief Executive Officer of a public company resulting in his broad understanding of the operational, financial and strategic issues facing a public company led the Board to elect Mr. Koch as a Director and to recommend him for election by the stockholders.

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Nelson B. Leenhouts, age 74, has served as Board Co-Chair since his retirement as Co-Chief Executive Officer effective January 1, 2004. He had served as Co-Chief Executive Officer, President and a Director of the Company since its inception in 1993. Since its formation, he has also served as a Director of Home Properties Resident Services, Inc. (“HPRS”), for which he had also served in various officer capacities prior to his retirement. Nelson Leenhouts also served as a Senior Advisor to the Company pursuant to an Employment Agreement with a term that expired on December 31, 2006. In addition, he was employed by the Company to fulfill additional responsibilities with respect to the Company's development activities pursuant to a Development Agreement, the term of which also expired on December 31, 2006. Nelson Leenhouts subsequently entered into an Employment Agreement with a term that expired on December 31, 2007. Until December 31, 2008, he continued as an employee of the Company working as a liaison to the development team, but he did not have an employment agreement. Nelson Leenhouts was the founder, and a co-owner, together with Norman Leenhouts, of Home Leasing Corporation (“Home Leasing”). Since 2006, he has been the Chief Executive Officer of Home Leasing, which focuses on the development and management of affordable housing in the Greater Rochester, New York area. Nelson Leenhouts is a graduate of the University of Rochester. He is the twin brother of Norman Leenhouts and the uncle of Amy L. Tait.

Nelson Leenhouts’ role as one of the Company’s founders and his knowledge about the Company’s operations and culture along with his experience in all aspects of the real estate industry with a particular focus on property management and development led the Board to conclude that he should continue to serve as a Director.

Norman P. Leenhouts, age 74, has served as Board Co-Chair since his retirement as Co-Chief Executive Officer effective January 1, 2004. He had served as Board Chair, Co-Chief Executive Officer and a Director of the Company since its inception in 1993. Since its formation, he also has served as a Director of HPRS. Norman Leenhouts also served as a Senior Advisor to the Company pursuant to an Employment Agreement with a term that expired on December 31, 2006. Prior to January 1, 2006, Norman Leenhouts was a co-owner, together with Nelson Leenhouts, of Home Leasing, where he had served as Board Chair since 1971. He is currently the Chairman of Broadstone Real Estate, LLC, formed to contain the property management business of Home Leasing, and of Broadstone Net Lease, Inc., which is a private real estate investment trust that invests in net lease properties, as well as Broadstone Ventures, LLC and Broadstone Asset Management, LLC. Norman Leenhouts and his wife are also the sole owners of Knollwood Ventures, Inc., a spin-off from Home Leasing as of January 1, 2006. He is a member of the Board of Trustees of the University of Rochester, Roberts Wesleyan College and The Charles E. Finney School, where he also serves as Board Chair. Norman Leenhouts is a graduate of the University of Rochester. He is the twin brother of Nelson Leenhouts and the father of Amy L. Tait.

Norman Leenhouts’ role as one of the Company’s founders and his knowledge about the Company’s operations and culture along with his experience in all aspects of the real estate industry with a particular focus on acquisitions and finance led the Board to conclude that he should continue to serve as a Director.

Edward J. Pettinella, age 58, has served as President and Chief Executive Officer of the Company since 2004. He is also a Director. He joined the Company in 2001 as an Executive Vice President and Director. He is also the President and Chief Executive Officer of HPRS. From 1997 until February 2001, Mr. Pettinella served as President, Charter One Bank of New York and Executive Vice President of Charter One Financial, Inc. From 1980 through 1997, Mr. Pettinella served in several managerial capacities for Rochester Community Savings Bank, Rochester, NY, including the positions of Chief Operating Officer and Chief Financial Officer. Mr. Pettinella serves on the Board of Directors of Rochester Business Alliance, United Way of Greater Rochester, The Lifetime Healthcare Companies, National Multi Housing Council and Syracuse University School of Business. He is also a member of ULI and serves on the Board of Governors of the National Association of Real Estate Investment Trusts. Mr. Pettinella is a graduate of the State University of New York at Geneseo and holds a Masters of Business Administration Degree in Finance from Syracuse University.

Mr. Pettinella's role as Chief Executive Officer responsible for the Company's day-to-day operations and strategic initiatives, as well as his experience in corporate finance and public company operations, led the Board to conclude that he should continue to serve as a Director.

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Clifford W. Smith, Jr., age 63, has been a Director of the Company since 1994. Mr. Smith is the Epstein Professor of Finance of the William E. Simon Graduate School of Business Administration of the University of Rochester, where he has been on the faculty since 1974. He has written numerous books and articles on a variety of financial, capital markets and risk management topics and has held editorial positions for a variety of journals. Mr. Smith is a graduate of Emory University and has a PhD from the University of North Carolina at Chapel Hill.

Mr. Smith's expertise in corporate finance, strategic planning, executive compensation and corporate governance, about which he has taught and written for many years, led the Board to conclude that he should continue to serve as a Director.

Paul L. Smith, age 74, has been a Director of the Company since 1994. Mr. Smith was a Director, Senior Vice President and the Chief Financial Officer of the Eastman Kodak Company from 1983 until he retired in 1993. He was a member of the Financial Accounting Standards Advisory Council. He is currently a Director and Audit Committee Chairman of Constellation Brands, Inc. (NYSE: STZ; ASX: CBR). He is also a member of the Board of Trustees of the George Eastman House and Ohio Wesleyan University. Mr. Smith is a graduate of Ohio Wesleyan University and holds a Masters of Business Administration Degree in Finance from Northwestern University.

Mr. Smith's background in corporate finance and accounting as Chief Financial Officer of The Eastman Kodak Company, and his ability to serve as an audit committee financial expert and to Chair the Audit Committee led the Board to conclude that he should continue to serve as a Director.

Amy L. Tait, age 51, has served as a Director of the Company since its inception in 1993. From 1983 until 2001, Mrs. Tait also held several positions with Home Properties and its predecessor, Home Leasing Corporation, including Senior and Executive Vice President and Chief Operating Officer. She resigned her full-time position as Executive Vice President in 2001 to spend more time with family. She founded Tait Realty Advisors, LLC in 2001, and is currently the Chief Executive Officer and a Director of Broadstone Real Estate, LLC, which she co-founded in 2006. She is also a principal in Broadstone Ventures, LLC, Broadstone Net Lease, Inc. and Broadstone Asset Management, LLC, all private commercial real estate management and investment companies. Mrs. Tait is a Director of IEC Electronics Corp. (AMEX: IEC), where she also serves on the Audit Committee, and is currently a member of the M&T Bank Rochester Regional Advisory Board and the Boards of the United Way of Greater Rochester and the Allendale Columbia School. She also serves on the Executive Advisory Board of the William E. Simon Graduate School of Business Administration of the University of Rochester. Mrs. Tait is a graduate of Princeton University and holds a Masters of Business Administration Degree from the William E. Simon Graduate School of Business Administration of the University of Rochester. She is the daughter of Norman Leenhouts and the niece of Nelson Leenhouts.

Mrs. Tait's experience in all aspects of the real estate industry and her corporate finance background led the Board to conclude that she should continue to serve as a Director.

BOARD MATTERS

Board Composition

The Company is managed by its Board of Directors. If all of the Nominees are elected, the Board will have 11 members.

Board Meetings

The Board holds regular meetings on a quarterly basis. Pursuant to the Company's By-Laws, the Board Chair, President or a majority of the Board of Directors may call for a special meeting of the Board. During 2009, the full Board of Directors met five times, including regular and special meetings. Each Director attended all of the Board's meetings.

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Board Independence

Ten of the Company's eleven current Board members are not employed by the Company. The Board of Directors has determined that seven of the ten non-employee Directors are "independent" within the meaning of the Securities and Exchange Commission ("SEC") and the New York Stock Exchange ("NYSE") current Director independence standards. The independent Directors are: Stephen Blank, Josh Fidler, Alan Gosule, Leonard Helbig, Charles Koch, Clifford Smith and Paul Smith. This represents more than a majority of the members of the Board of Directors. The Directors determined by the Board not to be independent under the above standards were Nelson Leenhouts, Norman Leenhouts, Edward Pettinella and Amy Tait.

In determining the independence of each Director, the Corporate Governance/Nominating Committee of the Board considered any relationships between the Company and the individual Director and the Director's immediate family members as required under the applicable standards. The Board, consistent with the view of the NYSE, determined that the ownership of even a significant amount of stock in the Company is not a bar to a finding of independence. Consistent with this view of the NYSE, the Board also has determined that ownership of limited partnership units in Home Properties, L.P. ("UPREIT Units") does not bar the Board from determining that a Director is independent. Messrs. Blank, Gosule, Helbig, Koch, C. Smith and P. Smith have no relationship with the Company other than their compensation and benefits as members of the Board and its Committees and ownership of the Company's Common Stock.

In evaluating the independence of Mr. Fidler, the Corporate Governance/Nominating Committee and the full Board considered the additional relationships between Mr. Fidler and the Company and determined that none of them was material and that Mr. Fidler is independent. Specifically, Mr. Fidler is a principal in a diversified real estate development business known as The Macks Group. In 1999, the Company acquired 3,297 apartment units from affiliates of The Macks Group. As partial consideration for the purchase, Mr. Fidler and members of his family acquired approximately 800,000 UPREIT Units. Pursuant to the purchase agreement, the Company agreed for a period of ten years not to sell or refinance the apartments in a transaction which would require the sellers to recognize taxable income deferred in connection with the sale. In addition, the Company agreed to register with the SEC shares of its Common Stock for which the UPREIT Units could be exchanged, to pay dividends on the UPREIT Units at the same rate and times as those paid on the Company's Common Stock, and to provide the holders of the UPREIT Units certain rights to protect their tax and economic interests in the event of a "going private" transaction involving the Company. The Board determined that these rights are not material to the Company and do not impair Mr. Fidler's independence from management. In addition, in 2004, the Company acquired a 240-unit apartment community for \$29,496,000 in cash from an entity owned by Mr. Fidler and members of his family. Certain customary representations and warranties by both the Company and the sellers continue to survive, including related indemnity obligations for any breaches. The Board determined that since no breaches have occurred in the almost six years since the acquisition and since any breaches by either the Company or the sellers would not be material to the Company, the ongoing contractual provisions are not material to the Company and do not impair Mr. Fidler's independence from management.

Nelson Leenhouts is not an independent Director because he was employed by the Company until December 31, 2008. Norman Leenhouts and Amy Tait were determined not to be independent because of their interests in and control over Clinton Square, the building in which the Company has its headquarters as disclosed in "Transactions with Related Persons, Promoters and Certain Control Persons." Edward Pettinella is not independent as he is currently employed by the Company.

Board Evaluation

In 2009, each Board member participated in a written self-evaluation of his or her performance as a Board member as well as an evaluation of the Board as a whole. The Board and members of senior management also participated in a written evaluation of the Chief Executive Officer.

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Director Qualifications

The minimum qualifications for prospective Board members are a successful professional career as well as the potential to contribute to the effectiveness of the Board. Beyond those minimum qualifications, the first priority in selecting members of the Board is to attract a group of individuals that will maximize shareholder value, which generally means attracting individuals of the highest capabilities. Another focus is on individuals who demonstrate the highest ethical standards. Critical Board functions involve setting the basic strategy of the Company, monitoring senior management and offering insight/expertise in the selection of tactics and operational policies drawing on Directors' experiences outside the Company. In discharging its responsibilities, diversity of experience and perspectives is considered valuable. In considering Board composition and nomination for new Board members, the Corporate Governance/Nominating Committee focuses on several aspects of prior experience including real estate (especially multifamily real estate) experience, experience as a Chief Executive Officer of a public company, accounting/audit experience, legal experience and academic experience. Continuity also is viewed as a valuable Board asset, thus some diversity in ages among Board members is beneficial so that the Board does not face major turnover at any single date.

Process for Identifying and Evaluating Nominees for Directors

The Corporate Governance/Nominating Committee utilizes a variety of methods for identifying and evaluating nominees for Director. The Committee develops and updates a list of potential Board candidates that meet the Board qualifications as described above. Candidates may come to the attention of the Committee through current Board members, stockholders, management or other individuals. Mr. Koch, who was elected to the Board effective March 1, 2010, was brought to the Committee's attention and recommended for consideration by Mr. Pettinella who had worked previously with Mr. Koch. To date, the Committee has not utilized the services of a professional service firm to identify potential candidates, but it may do so in the future. If a vacancy on the Board occurs or is anticipated, the Committee selects candidates to have personal meetings with members of the Committee, the Co-Chairs of the Board and the Chief Executive Officer. Selected candidates would then be invited to meet with other Board members and management. A candidate, if acceptable, would then be elected by the Board (in the event of a mid-term vacancy) or be nominated to stand for election at the next annual stockholders' meeting.

Stockholder Nominees

The Corporate Governance/Nominating C