

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS

Housing for Older Persons

Proposed Readoption with Amendments: N.J.A.C. 13:15

Authorized By: J. Frank Vespa-Papaleo, Esq., Director, Division on Civil Rights

Authority: N.J.S.A. 10:5-8 and 10:5-12

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-169

Submit comments by July 15, 2005 to:
Gary LoCassio, Assistant Director
Division on Civil Rights
P.O. Box 089
Trenton, New Jersey 08625-0089

The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (Division), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to 49. Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1c, the Division's rules governing housing for older persons, N.J.A.C. 13:15, expire on October 4, 2005. The Division has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. However, the Division, pursuant to its rulemaking authority found at N.J.S.A. 10:5-8, proposes amendments to N.J.A.C. 13:15-1.2 and 1.3 in order to incorporate and clarify recent amendments to the LAD, and to ensure that the Division's rules are consistent with the Federal Fair Housing Act (FHA), 42 U.S.C. §3601 et seq. and regulations promulgated thereunder. The readoption with amendments is required in order for the Division to achieve certification as a substantially equivalent agency by the Department of Housing and Urban Development (HUD), and to enter into a work-sharing relationship with HUD.

The LAD prohibits housing discrimination based on familial status. However, the statute

also provides that this prohibition does not apply to housing for older persons as that term is defined in the LAD. N.J.S.A. 10:5-5. The chapter to be readopted clarifies the types of housing for older persons that automatically qualify for this exemption.

N.J.A.C. 13:15-1.1 sets forth the purpose of the chapter.

N.J.A.C. 13:15-1.2 provides that housing that satisfies the requirements of this chapter as housing for older persons is not subject to the prohibitions against discrimination in housing based on familial status.

N.J.A.C. 13:15-1.3 sets forth the requirements of elderly housing programs that are exempt from the prohibitions against discrimination in housing based on familial status.

N.J.A.C. 13:15-1.4 sets forth the requirements for housing intended for, and occupied by, persons 62 years of age or older in order to be exempt from the prohibitions against discrimination in housing based on familial status.

N.J.A.C. 13:15-1.5 sets forth the requirements for housing intended and operated for persons 55 years of age or older in order to be exempt from the prohibitions against discrimination in housing based on familial status.

The proposed amendment to N.J.A.C. 13:15-1.2 is intended to clarify that housing that meets the requirements of housing for older persons is exempt from the prohibitions against discrimination on the basis of familial status in the Law Against Discrimination. The proposed amendment to N.J.A.C. 13:15-1.3 codifies a recent amendment to the LAD with respect to elderly housing programs that are exempt. The proposed amendment provides that the Attorney General determines if a State program is specifically designed and operated to assist elderly persons (as defined in the State program), and that the Secretary of the United States Department of Housing and Urban Development determines if a Federal program is specifically designed and operated to assist elderly persons (as defined in the Federal program). This proposed amendment was required by HUD to enable the Division to obtain substantial equivalency certification.

As the Division has provided a 60-day comment period on the notice for this proposal,

this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption will have a beneficial social impact on the residents of New Jersey, particularly persons who benefit from housing intended to address the needs of person 62 years of age and older, and housing intended to address the needs of persons 55 years of age and over. The rules will continue to clarify the statutory exception to the LAD's prohibitions against housing discrimination based on familial status for housing intended for older persons. The proposed amendments will also have a beneficial impact on the residents of New Jersey by conforming the Division's regulations to recent amendments to the LAD.

Economic Impact

The rules proposed for readoption with amendments will have no economic impact on businesses or the real estate industry since all legal obligations arising under the rules have been mandated by existing Federal or State law and, therefore, the rules proposed for readoption with amendments present no new legal obligations. The proposed amendments will have a positive economic impact on the State as it will permit the Division to enter into a work-sharing agreement with HUD, allowing the Division to become eligible for Federal funding for case processing and other outreach initiatives.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption and the proposed amendments do not exceed Federal standards. The rules proposed for readoption with amendments are intended to implement the LAD, and are not intended to implement any program under Federal law. Adoption of the proposed readoption with amendments is necessary for the Division to obtain substantial equivalency certification from HUD in order to enter into a work-sharing relationship. To that end, the standards for housing for older persons in the proposed readoption with amendments are the same as the Federal standards for housing for older persons set forth in the FHA.

Jobs Impact

The Division believes that the rules proposed for readoption with amendments will have no impact on the number of jobs in the State.

Agriculture Industry Impact

The Division believes that the rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The costs of compliance with the rules proposed for readoption with amendments for any affected small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq., is unchanged from the existing rules, and is likely to be minimal or nonexistent. All legal obligations arising under the rules proposed for readoption with amendments have already been mandated by existing Federal or State laws. Moreover, the rules proposed for readoption with amendments will not impose new reporting, recordkeeping or other compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. The rules merely clarify the provisions of the LAD that permit certain housing to be offered to and maintained exclusively for older persons. Accordingly, the rules proposed for readoption with amendments should have no impact on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. No professional services are required for compliance.

Smart Growth Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey

Administrative Code at N.J.A.C. 13:15.

Full text of the proposed amendments follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:15-1.2 Exemption

(a) The provisions regarding familial status in [this chapter] **the Law Against Discrimination** do not apply to housing which satisfies the requirements of N.J.A.C. 13:15-1.3, 1.4 or 1.5.

(b) (No change.)

13:15-1.3 Elderly housing programs

The provisions regarding familial status in this chapter shall not apply to housing provided under any State program that the **Attorney General determines is specifically designed and operated to assist elderly persons (as defined in the State program); or provided under any Federal program that the** Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons[,] (as defined in the [State] **Federal** program).