

"Decent, safe and sanitary housing" means housing that is in sound, clean and weathertight condition and is in conformity with local and state housing and health codes.

"Department" means the Department of Community Affairs.

"Displaced" means required to vacate any real property lawfully occupied pursuant to any order or notice of any displacing agency on account of a program of acquisition, code enforcement proceedings or voluntary rehabilitation of buildings.

"Displacing agency" means any State Agency, unit of local government or publicly funded entity as herein defined.

" Dwelling " means the house, apartment or other residential unit that is the permanent place of principal lawful residence of a person or family and to which such person or family whenever absent has the intention of returning.

"Economic rent" means the fair market rental of the property on the open market.

"Emergency relocation" means when a lawful occupant of a dwelling unit is required to immediately vacate due to the enforcement of any applicable code.

"Family" means two or more individuals, regardless of blood or legal ties, who live together as a family unit.

"Farm operation" means any activity which is conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily, produces commodities in sufficient quantity to be capable of contributing materially to the operator's support. The term "contributing materially" used in this definition means that the farm operation contributes at least one-third of the operator's income.

"Incidental expenses" means the amount of actual costs incurred in the purchase of a replacement dwelling by a person who is displaced including but not limited to fees for legal services, title search, title insurance, recording of title instruments, mortgage applications, payment for loss of favorable financing, and credit reports. Prepaid expenses are not considered "incidental expenses".

"Lawful occupant" means a person whose occupancy of a dwelling unit or property is recognized by the owner and is not the result of a trespass or unauthorized sublease or assignment.

"Person" means any individual or family, owner of a business concern or farm operation, partnership, corporation or association.

"Personal property (tangible personal property)" means:

1. Tangible property which is situated on the real property vacated or to be vacated by a displaced person and

which is considered personal property and is non-compensable (other than for moving expenses) under the state law of eminent domain; and

2. In the case of a tenant, fixtures and equipment and other property which may be characterized as real property under state or local law, but which the tenant may lawfully, and at his election determines to move and for which the tenant is not compensated in the real property acquisition. In the case of an owner of real property, the determination as to whether an item of property is personal or real shall depend upon how it is identified in the acquisition appraisals and the closing or settlement statement with respect to the real property acquisitions: provided, that no item of property which is compensable under state law to the owner of real property in the real property acquisition may be treated as tangible personal property in computing actual direct losses of tangible personal property.

"Publicly funded entity" means a private entity that receives public funds from any municipal, county, state or federal program for use in a project that causes displacement.

"State Agency" means any department, division, office, agency or bureau of this state or any authority or instrumentality created or chartered thereby.

"Temporary relocation" means when a lawful tenant is required to move from a dwelling that is undergoing rehabilitation and, upon completion of the rehabilitation, may return.

"Unit of local government" means any political subdivision of this State, or any two or more such political subdivisions acting jointly pursuant to law, and any department, division, office, agency or bureau thereof or any authority of instrumentality created or chartered thereby.

"WRAP" means the Workable Relocation Assistance Plan required to be submitted to the Department for approval prior to the undertaking of any relocation activities.

Amended by R.1984 d.127, effective April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

Definitions of "Commissioner" and "Displaced" modified; "WRAP" added.

Amended by R.1987 d.518, effective December 21, 1987.

See: 19 N.J.R. 1596(a), 19 N.J.R. 2388(c).

Added definition "lawful occupant".

Amended by R.1990 d.113, effective February 5, 1990.

See: 21 N.J.R. 3694(a), 22 N.J.R. 336(a).

Added statutory references and amended "unit of local government".

Amended by R.1994 d.174, effective April 4, 1994.

See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Law Review and Journal Commentaries

Relocation Assistance. Judith Nallin, 136 N.J.L.J. No. 10, 59 (1994).

Case Notes

Former N.J.A.C. 5:40-1.7 definition of displaced person valid; assistance award determination. McNally v. Middletown Twp., 182 N.J.Super. 622, 442 A.2d 1075 (App.Div.1982).

Replacement housing must be open in accordance with Civil Rights Act of 1968 (citing former N.J.A.C. 5:40-2.3); no evidence of civil rights violation. *Rowe v. Pittsgrove Twp.*, 172 N.J.Super. 209, 411 A.2d 720 (App.Div.1980).

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that where, following initial discussions concerning acquisition of owner's beauty salon as part of local government's redevelopment plan, owner sold beauty shop to private entity, owner was not a "displaced person" under N.J.A.C. 5:11-1.2 since she was not displaced as a result of the local government acquiring her property or as the result of the local government ordering her to vacate it. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

Where tenant seeking relocation assistance had resided in a basement apartment since 2003 and in 2006 the apartment was inspected and determined to be an illegal second apartment in a legally zoned one-family home, the tenant's rental occupancy was not unlawful according to the definition of "lawful occupant" in N.J.A.C. 5:11-1.2. *Friend v. Borough of Lodi*, OAL Dkt. No. CAF 09330-06, 2006 N.J. AGEN LEXIS 949, Final Decision (November 13, 2006).

Tenant in resort-only zone ordered to vacate is displaced so as to qualify for relocation assistance; dwelling defined. *Moran v. Randolph Twp.*, 6 N.J.A.R. 58 (1980).

Tenant occupancy in single family residence zone not lawful occupancy to permit relocation assistance. *Hickey v. Park Ridge*, 5 N.J.A.R. 291 (1983).

No relocation benefits due fire displaces under former regulation. *Wright v. City of Hoboken*, 1 N.J.A.R. 203 (1980).

SUBCHAPTER 2. ELIGIBILITY

5:11-2.1 Building, housing, and health code enforcement

(a) Whenever a State Agency or unit of local government undertakes a program of building code enforcement, housing code enforcement or health code enforcement that causes the displacement of any person, the said State Agency or unit of local government shall provide relocation payments and assistance to all lawful occupants who are displaced, as provided in N.J.A.C. 5:11-3 and 4. The date of eligibility shall be the date occupants received formal written notice to vacate from the State Agency or unit of local government. Said written notice shall include the information required pursuant to N.J.A.C. 5:11-4.2.

(b) An order to vacate issued by a State Agency or unit of local government, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and N.J.A.C. 5:23-2.32(b)1, because a building has become unsafe or uninhabitable as a direct result of a natural disaster, soil subsidence, fire, a latent defect or other sudden and unforeseeable occurrence is not displacement within the meaning of these rules and no relocation benefits shall be due any occupants or former occupants of such a building. However, a municipality may, pursuant to N.J.S.A. 20:4-3.1, voluntarily provide relocation benefits to such displacees but shall receive no reimbursement through any State grant-in-aid for the cost of doing so.

(c) An owner-occupant who is displaced by health, building or housing code enforcement shall not be entitled to relocation benefits if the code violation which resulted in displacement was caused by factors for which the owner is liable. Any such owner-occupant who is entitled to benefits shall be entitled to the benefits applicable to tenants only.

(d) No tenant displaced by code enforcement shall be eligible for benefits if the code violation which resulted in displacement was primarily caused by that tenant's own conduct and not by factors for which the owner is liable under N.J.S.A. 20:4-4.1.

1. In the event that there has been no prosecution of the owner under N.J.S.A. 20:4-4.1, a displaced lawful occupant shall be presumed to be eligible for relocation benefits unless it is established by agreement or by administrative hearing that the code violation was primarily attributable to conduct of the displaced person.

Amended by R.1983 d.59, effective March 7, 1983.

See: 15 N.J.R. 6(b), 15 N.J.R. 330(b).

Added "municipality may provide benefits but shall not be reimbursed by the State".

Amended by R.1984 d.127, effective April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

(b) "Act of God" deleted; disaster and imminent hazard substituted.

Amended by R.1987 d.518, effective December 21, 1987.

See: 19 N.J.R. 1596(a), 19 N.J.R. 2388(c).

Added (d).

Amended by R.1989 d.188, effective April 3, 1989.

See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

In (d), cite to "N.J.A.C." changed to "N.J.S.A.".

Amended by R.1994 d.174, effective April 4, 1994.

See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Amended by R.1995 d.386, effective July 17, 1995.

See: 27 N.J.R. 1844(a), 27 N.J.R. 2714(a).

Amended by R.2004 d.222, effective June 21, 2004.

See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).

In (a), amended N.J.A.C. references throughout.

Law Review and Journal Commentaries

Relocation Assistance. Judith Nallin, 136 N.J.L.J. No. 10, 59 (1994).

Case Notes

Tenant waived any entitlement to relocation assistance by entering into settlement in dispossession action. *Herrera v. Township of South Orange Village*, 270 N.J.Super. 417, 637 A.2d 526 (A.D.1993), certification denied 136 N.J. 28, 641 A.2d 1039.

Landlord may enforce occupancy limits in renewal leases even if tenants would then be in violation of those limits; landlord through lease renewal, which will force the tenant to relocate, may be liable for relocation assistance comparable to what the tenant would have received under N.J.S.A. 2A:18-61.1(g)(3). *M.C. Associates v. Shab*, 226 N.J.Super. 173, 543 A.2d 1006 (App.Div.1988).

Relocation assistance benefits available to tenants whose occupancy was lawful under N.J.S.A. 20:4-4.1 unless it is established by agreement or by administrative hearing that the code violation was primarily attributable to conduct of the tenant. *Haddock v. Passaic, Community Development Dep't, City of Passaic*, 217 N.J.Super. 592, 526 A.2d 725 (App.Div.1987) certification denied 108 N.J. 645, 532 A.2d 228 (1987).

Petitioners, tenants displaced by building code enforcement activities, entitled to relocation assistance. *Haddock v. Passaic*, 10 N.J.A.R. 52 (1985) adopted—Dep't of Community Affairs, affirmed in part, reversed

on other grounds and remanded 217 N.J.Super. 592, 526 A.2d 725 (App.Div.1987) certification denied 108 N.J. 645, 532 A.2d 228.

Tenant not entitled to relocation assistance without showing uninhabitable premises. *Kern v. Borough of Belmar*, 97 N.J.A.R.2d (CAF) 20.

Where tenant seeking relocation assistance had resided in a basement apartment since 2003 and in 2006 the apartment was inspected and determined to be an illegal second apartment in a legally zoned one-family home, the tenant's rental occupancy was not unlawful according to the definition of "lawful occupant" in N.J.A.C. 5:11-1.2. *Friend v. Borough of Lodi*, OAL Dkt. No. CAF 09330-06, 2006 N.J. AGEN LEXIS 949, Final Decision (November 13, 2006).

Tenant of basement apartment that was inspected and determined to be an illegal second apartment in a legally zoned one-family home was not eligible for assistance under the Relocation Assistance Law of 1967, N.J.S.A. 52:31B-1 et seq., or the Relocation Assistance Act, N.J.S.A. 20:4-1 et seq., because the displacement was the result of an order issued to the landlord to correct a zoning violation; the fire official's statement that occupancy of the unit was also a fire code violation did not create an entitlement to assistance that did not otherwise exist. Tenant shall not be precluded by this decision from obtaining relocation assistance under either N.J.S.A. 2A:18-61.1g or 2A:18A-61.1h. *Friend v. Borough of Lodi*, OAL Dkt. No. CAF 09330-06, 2006 N.J. AGEN LEXIS 949, Final Decision (November 13, 2006).

Loss of housing which occurred when premises was evacuated for safety of tenants upon broken water main was a natural disaster that precluded payment of relocation benefits. *Union Gardens' v. Township of Montclair*, 95 N.J.A.R.2d (CAF) 85.

Tenants constructively discharged due to health hazards; relocation assistance. *Travers v. The Township of Old Bridge*, 94 N.J.A.R.2d (CAF) 96.

Eviction for nonpayment of rent; relocation assistance. *Varca v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 95.

Relocation assistance; illegal sublease. *Sanchez v. City of Paterson*, 94 N.J.A.R.2d (CAF) 51.

Termination of relocation assistance occurred on determination that repairs ordered by the Bureau of Local Construction Code Enforcement were completed. *Tilton v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 51.

Application for relocation assistance was denied for failure to comply with the rental agreement and by willful destruction of the rented property. *McCaskill v. Pennsauken Township*, 93 N.J.A.R.2d (CAF) 12.

Occupant of apartment who received improperly addressed violation notice and who immediately vacated was not entitled to relocation assistance. *Moore v. City of Camden*, 92 N.J.A.R.2d (CAF) 113.

Tenant displaced from premises as result of actions by the township to enforce its zoning ordinance was not entitled to relocation assistance. *Herrera v. Township of South Orange Village*, 92 N.J.A.R.2d (CAF) 85.

Tenant occupying premises in violation of resort-only zoning eligible for relocation assistance as a lawful occupant. *Moran v. Randolph Twp.*, 6 N.J.A.R. 58 (1980).

Determination of landlord-tenant relationship; relocation assistance denied to tenant as not lawful occupant in single family residence zone. *Hickey v. Park Ridge*, 5 N.J.A.R. 291 (1983).

5:11-2.2 Programs of acquisition

(a) Whenever any State Agency (except the New Jersey Department of Transportation), unit of local government or publicly funded entity acquires real property that causes the

displacement of people, businesses, or farm operations, the said State Agency, unit of local government or publicly funded entity shall provide relocation payments and assistance as provided in N.J.A.C. 5:11-3 and 4; provided, however, that if any acquisition of real property is made using funds provided by any Federal agency, all relocation payments shall be made in accordance with any applicable Federal regulations that provide for a higher level of benefits.

(b) The State Agency, unit of local government or publicly funded entity shall not be relieved of its obligation of providing payments and benefits as provided hereinafter by requiring the owner of a building to cause it to be vacated prior to the acquisition.

(c) The eligibility date for this section shall be the date of the first written offer to purchase the property.

Amended by R.1989 d.188, effective April 3, 1989.
See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

In (a), language added regarding acquisition of property and concomitant relocation payments with use of Federal funds and Federal benefit levels.

Amended by R.2004 d.222, effective June 21, 2004.
See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).

In (a), amended the N.J.A.C. reference.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that where local government determined that its redevelopment would cause the displacement of owner's beauty salon and notified her on January 21, 2005 that she might be eligible for relocation assistance and offered to purchase her property in a separate letter of the same date, the owner's beauty salon was eligible for relocation assistance as of January 21, 2005. However, since owner sold her property to a private entity on September 22, 2006 and did not sell it to a state agency, unit of local government, or publicly funded private entity, her beauty salon became ineligible for relocation assistance on that date. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that an offer to purchase property only establishes eligibility for relocation assistance but does not guarantee it. Continued eligibility for relocation assistance requires the actual acquisition of the real property by a state agency, unit of local government, or publicly funded private entity and to hold otherwise would guarantee relocation payments whenever any state agency, unit of local government, or publicly funded entity notified individuals and businesses that it was considering displacing them without doing so. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that local government was not equitably estopped from denying relocation assistance on theory that local government represented that it would provide relocation assistance to property owner and essentially induced her to sell her property to a private entity. The local government made no misrepresentations about relocation assistance but merely notified owner that her property was eligible for relocation assistance and it did not state that the property would qualify for relocation payments. As such, it was unreasonable for owner to believe that she would receive relocation assistance without qualifying for it. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

Condemnees whose land was taken for a new school were not entitled to relocation assistance. N.J.S.A. 20:4-1 et seq., 20:4-5. *Carlucci v. Jersey City Bd. of Educ.*, 92 N.J.A.R.2d (CAF) 1.

5:11-2.3 Evictions under N.J.S.A. 2A:18-61.1(g)

(a) Whenever an eviction is sought under the provisions of N.J.S.A. 2A:18-61.1(g) by an owner, whether said owner is a person, State Agency or unit of local government, the tenant shall be provided with the relocation payments and benefits as provided in subchapters 3 and 4 of this chapter. The date of eligibility shall be the date the tenant received a formal notice to vacate from the landlord as provided in N.J.S.A. 2A:18-61.2 and the displacing agency shall be deemed to be the State Agency or unit of local government that issues the notice of violation.

(b) The landlord shall provide the Department with the information required in subchapter 7 of this chapter.

(c) In cases where a landlord is to be cited for a violation pursuant to an illegal occupancy which could potentially result in a (g)3 eviction, the following shall be included as an insert sent with the violation notice:

IF, IN SEEKING TO CORRECT THE ILLEGAL OCCUPANCY FOR WHICH YOU HAVE BEEN CITED, IT IS NECESSARY FOR YOU TO EVICT ONE OR MORE TENANTS TO COMPLY, YOU MUST NOTIFY THOSE TENANTS OF THEIR POTENTIAL ELIGIBILITY FOR RELOCATION ASSISTANCE. FURTHER INFORMATION REGARDING YOUR RESPONSIBILITIES AS OWNER PURSUANT TO REGULATIONS CONCERNING EVICTION AND RELOCATION MAY BE OBTAINED BY CONTACTING THE FOLLOWING:

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF CODES AND STANDARDS
OFFICE OF LANDLORD-TENANT INFORMATION
PO BOX 805
TRENTON, NEW JERSEY 08625-0805
TELEPHONE: 609-633-6606

Amended by R.1984 d.127, effective April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

(c): address changed.

Amended by R.1994 d.174, effective April 4, 1994.

See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Amended by R.2004 d.222, effective June 21, 2004.

See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).

In (c), amended the address.

5:11-2.4 Displacement caused by public utilities

Whenever a public utility acquires real property that causes the displacement of persons, businesses or farm operations the public utility shall provide relocation payments and assistance as provided in subchapter 3 of this chapter. The date of eligibility shall be the date of initiation of negotiations.

5:11-2.5 Programs of rehabilitation

(a) Whenever a displacing agency undertakes a program of voluntary rehabilitation that causes displacement of persons, businesses or farm operations, the displacing agency shall

provide relocation payments and assistance as provided in N.J.A.C. 5:11-3 and 4. The date of eligibility shall be the date the residents are informed by the displacing agency that they must vacate the premises.

(b) In this instance only, the displacing agency shall be deemed to be the person or corporation who is receiving public funds for the rehabilitation and the public agency providing those funds. The public agency shall be responsible for submitting the WRAP (see N.J.A.C. 5:11-6.1(b)) and for complying with N.J.A.C. 5:11-4.

(c) In any case in which a Federal agency is providing funding for a rehabilitation program, relocation payments and assistance shall be made in compliance with applicable Federal requirements, any provisions of subchapters 3 and 4 of this chapter imposing different requirements notwithstanding.

(d) The WRAP submitted by the public agency shall be on standard forms required by the Department as well as in such format as may be required by the funding agency.

Amended by R.1984 d.127, effective April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

(c) and (d) added.

Amended by R.2004 d.222, effective June 21, 2004.

See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).

In (b), amended the N.J.A.C. references throughout.

Administrative correction.

See: 37 N.J.R. 3637(a).

SUBCHAPTER 3. RELOCATION PAYMENTS**5:11-3.1 Relocation payments generally**

(a) Whenever a displacing agency causes the displacement of persons, businesses or farm operations and those persons, businesses or farm operations payments shall be as described in this subchapter.

(b) Claims for relocation assistance must be filed within 12 months of the date of permanent resettlement.

Amended by R.1984 d.127, effective April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

(b) added.

Amended by R.1989 d.188, effective April 3, 1989.

See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

At (b), "receipt by claimant of the notice to vacate . . .", deleted; "the date of permanent resettlement", added.

Case Notes

Trespassing tenant not entitled to relocation assistance when notice to vacate served. Decree v. City of Newark, 97 N.J.A.R.2d (CAF) 49.

5:11-3.2 Moving expenses; residential

(a) An eligible person who is displaced from a dwelling unit and moves his or her personal property therefrom shall receive either:

1. The actual reasonable moving expenses incurred; or

2. A fixed payment, based on the number of rooms in the unit, not to exceed \$300.00 and a \$200.00 dislocation allowance.

(b) Moving expenses shall not be considered unreasonable due to distance if the distance is 50 miles or less. For good cause, a move of more than 50 miles may be deemed reasonable by the displacing agency.

R.1984 d.127, effective April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
Recodified from N.J.A.C. 5:11-3.5.
Amended by R.1994 d.174, effective April 4, 1994.
See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Case Notes

Moving expense assistance and dislocation allowance awarded (under former codification N.J.A.C. 5:40-3.5). *Moran v. Randolph Twp.*, 6 N.J.A.R. 58 (1980).

Unlawful tenant not entitled to moving expense assistance and dislocation allowance (under former codification N.J.A.C. 5:40-3.5). *Hickey v. Park Ridge*, 5 N.J.A.R. 291 (1983).

5:11-3.3 Emergency relocation

In the event a displacing agency causes a displacement that requires emergency relocation, the displacing agency shall

provide a payment of such amount as may be needed so that the displacee may obtain living quarters until permanently relocated. This payment shall be available immediately upon the displacement and shall be charged against the total relocation assistance amount payable in accordance with the statute.

Amended by R.1984 d.127, effective April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
Recodified from N.J.A.C. 5:11-3.11.
Lump sum limited to \$500.00.
Amended by R.1989 d.188, effective April 3, 1989.
See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).
\$500.00 limitation on emergency relocation assistance removed.
Amended by R.1994 d.174, effective April 4, 1994.
See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

5:11-3.4 Temporary relocation

(a) In the event permanent replacement housing is unavailable or in the instance of rehabilitation of housing wherein the displacee may return to his dwelling, the displacing agency may provide temporary replacement housing with the prior approval of the Department.

(b) Prior to approval of temporary relocation the displacing agency shall assure the Department that:

1. Permanent replacement housing will be available or the displacee may return to his dwelling unit within 12 months;

2. The temporary move will not affect the rights of the displacees;

3. That replacement housing will not be made available to those individuals not returning to rehabilitated housing on a priority basis; and

4. That the temporary relocation is required due to circumstances that are unavoidable or in the best interest of the displacee.

(c) After approval of temporary relocation the displacing agency shall provide written assurances to each family and individual to be temporarily relocated that:

1. In the instance that the displacee may return to his dwelling, such dwelling will be rehabilitated and available to him within 12 months from the date of the temporary move;

2. In the event that permanent replacement housing is unavailable, such housing will be available within 12 months;

3. Replacement housing will be made available on a priority basis to displacees choosing not to return to rehabilitated housing;

4. The temporary housing is decent, safe and sanitary and within the financial means of the displacee; and

5. The temporary move will not affect the rights of the displacees.

R.1984 d.127, effective April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
Recodified from N.J.A.C. 5:11-3.12.

Case Notes

Relocation assistance benefits denied; temporary housing offer. *Van Lenten v. Bureau of Rooming and Boarding House Standards*. 94 N.J.A.R.2d (CAF) 31.

5:11-3.5 Rental assistance payments

(a) A family or an individual lawfully occupying a rental dwelling unit for a period of not less than 90 days prior to the eligibility date as specified who vacates the rental dwelling unit after receiving governmental notice to vacate and who rents and occupies comparable decent, safe and sanitary replacement housing shall be eligible for a rental assistance payment in an amount not to exceed \$4,000 or such higher amount as may be established by statute.

(b) The actual amount of the rental assistance payment shall be the difference between the average monthly rent, including essential utilities, for the rental dwelling unit and the lesser of the "fair market rental" for the replacement unit, as determined in accordance with the current schedule issued by the United States Department of Housing and

Urban Development, provided, however, that for purposes of this computation, the "fair market rental" shall be increased by up to 20 percent if the Department agrees that a suitable replacement unit cannot be rented for a lesser amount, or the actual monthly rental payment paid for a replacement unit, times 48, not exceeding \$4,000 or such higher amount as may be established by statute.

1. Once calculated, the amount of this benefit shall remain constant and shall neither increase nor decrease.

2. If the rental assistance payment is in the amount of \$1,000 or less, the displacing agency shall make the entire payment at one time.

(c) If the rental assistance payment exceeds \$1,000, the displacing agency shall make the payment in three equal annual installments upon verification that the tenant remains in comparable standard housing and that rent payments are current, unless the relocation agency finds that there exists a reasonable cause for any non-payment of rent.

1. Should the tenant move outside the State and farther than 50 miles away from the unit from which he was displaced or fail to occupy comparable standard housing during the three-year period, the displacing agency may discontinue further rental assistance payments. The 50 mile radius provided herein may be enlarged by the displacing agency, in its discretion.

2. If the rental assistance payments are not consecutive because the tenant moved into substandard housing or moved outside the authorized area or failed to appear for payment when due, the tenant, if he or she is no longer living in substandard housing or outside the authorized area, must reactivate his or her claim within one year of the last prior date on which he or she would have been eligible to receive the rental assistance payment. A person who is unable to come to the relocation assistance office because of long-term illness or disability may file his or her claim through a family member or other authorized agent.

(d) Rental rates for comparable replacement housing shall be as set forth in a rent schedule based on FHA fair market rents for the area to which relocation occurs.

(e) A tenant shall also receive a payment to reimburse him for any fee paid to a licensed real estate salesman who finds a person replacement housing with prior approval of the displacing agency.

(f) A tenant who relocates into a dwelling unit which is subsidized by any governmental program on the basis of the tenant's income shall not receive any rental assistance payment in any year.

Amended by R.1982 d.71, effective March 15, 1982.
See: 14 N.J.R. 72(a), 14 N.J.R. 278(a).

(f) added.

Amended by R.1984 d.127, effective April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

Recodified from N.J.A.C. 5:11-3.2

Section substantially amended.

Amended by R.1988 d.41, effective January 19, 1988.

See: 19 N.J.R. 1930(a), 20 N.J.R. 185(a).

(b) and (c) substantially amended.

Amended by R.1989 d.188, effective April 3, 1989.

See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

In (a), language added providing for higher than \$4000.00 payments if established by statute.

Amended by R.1994 d.174, effective April 4, 1994.

See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Case Notes

Citation to former codification N.J.A.C. 5:40-3.2. *Moran v. Randolph Twp.*, 6 N.J.A.R. 58 (1980).

Rental assistance denied to unlawful tenant under order to vacate (under former codification N.J.A.C. 5:40-3.2). *Hickey v. Park Ridge*, 5 N.J.A.R. 291 (1983).

5:11-3.6 Downpayment assistance

(a) displaced tenant who is eligible to receive a rental assistance payment or a displaced owner-occupant of fewer than 180 days may elect to purchase a comparable replacement dwelling and, if he does so purchase, he shall receive an amount not to exceed \$4,000 or the amount necessary in order to make a downpayment on the purchase of a comparable standard dwelling adequate to accommodate such person and his family, whichever is less, subject to the following:

1. The full amount of the payment must be applied to the purchase price, including incidental payments, and must be listed on the settlement statement; and

2. Any rental assistance previously paid to the displaced individual shall be deducted from the downpayment assistance.

3. In the event the total of the minimum downpayment needed and incidental closing costs exceeds \$2,000, the displacee must match dollar for dollar the amount in excess of \$2,000, to a maximum payment of \$4,000.

4. If the displacee chooses to purchase a building containing more than one dwelling unit or commercial space, downpayment assistance shall be limited to that portion of the minimum downpayment required that is attributable on a pro rata basis to the dwelling unit to be occupied by the owner.

Amended by R.1984 d.127, effective April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

Recodified from N.J.A.C. 5:11-3.3

Substantially amended.

5:11-3.7 Replacement housing payments for owners

(a) Except as otherwise provided in N.J.A.C. 5:11-2.1(c), an individual who owns and occupies a dwelling unit for a period of not less than 180 days prior to the eligibility date as specified and who vacates the dwelling unit after notice to vacate and as a direct result of the cause of displacement and who purchases and occupies within one year a comparable replacement dwelling unit shall be eligible for a replacement housing payment in an amount not to exceed \$15,000.

(b) The amount of the replacement housing payment is the difference, between the reasonable cost, on the open market, of a comparable replacement dwelling, and the acquisition price (in the case of acquisition) or fair market value (in all other cases).

(c) The reasonable cost of a comparable replacement dwelling shall be estimated by any of the following methods at the option of the displacing agency:

1. Three comparables based on the asking price as adjusted for selling price as shown by market study;
2. An area-wide schedule; or
3. An alternative method approved by the Department.

(d) In no event shall the amount of the replacement housing payment exceed the actual difference in the actual cost of a decent, safe and sanitary replacement dwelling, including incidental expenses and the acquisition price.

(e) If the dwelling unit occupied by the displacee also included an area used for non-residential purposes the amount of the replacement housing payment shall be based on the imputed value of the residential portion of the dwelling unit.

(f) The payment shall also include the following elements:

1. The amount, if any, which will compensate a displaced person for any increased interest cost which such person is required to pay for financing the acquisition of a comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired was encumbered by a bona fide, duly recorded mortgage which was a valid lien 180 days prior to the issuance of formal notice to vacate. Such amount shall be equal to the excess in the aggregate interest (and other debt service) of the mortgage on the acquired dwelling, over the remainder of the term of the mortgage on the acquired dwelling, reduced to a discounted percent value.

2. Any other incidental expenses incurred in the purchase of a replacement dwelling.

R.1984 d.127, eff. April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

Recodified from N.J.A.C. 5:11-3.4.

Amended by R.1995 d.386, effective July 17, 1995.

See: 27 N.J.R. 1844(a), 27 N.J.R. 2714(a).

Amended by R.2004 d.222, effective June 21, 2004.

See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).

In (a), amended the N.J.A.C. reference.

Case Notes

Condemnees were not entitled to additional relocation payments. *Carlucci v. Jersey City Bd. of Educ.*, 92 N.J.A.R.2d (CAF) 1.

5:11-3.8 Payments to businesses

(a) An eligible business that is displaced from its place of operation and moves its personal property therefrom shall be entitled to receive payment for:

1. Actual reasonable moving expenses, as set forth in N.J.A.C. 5:11-3.9; actual reasonable direct loss of tangible personal property, as set forth in N.J.A.C. 5:11-3.10; actual reasonable expenses incurred in searching for a replacement business, as set forth in N.J.A.C. 5:11-3.11; and actual reasonable expenses for professional fees incurred in the renovation and lease, use or acquisition of the replacement site, as set forth in N.J.A.C. 5:11-3.13; or

2. Payment in lieu of moving and related expenses (paragraph 1 of this subsection) as set forth in N.J.A.C. 5:11-3.12.

As amended, R.1984 d.127. eff. April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

Recodified from N.J.A.C. 5:11-3.6.

(a)1: "and actual . . . in N.J.A.C. 5:11-3.13;" added.

Amended by R.2004 d.222, effective June 21, 2004.

See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).

Amended N.J.A.C. references throughout.

5:11-3.9 Moving expenses; business

(a) A relocation payment for moving expenses of a business shall be limited to the following items, as applicable:

1. The actual reasonable and necessary cost of moving the tangible personal property for a maximum distance of 50 miles, unless the distance is enlarged by the displacing agency, for cause.

2. The actual reasonable and necessary cost incurred for inspection and license fees required by statute or local ordinance to permit the operation of the business at the new location.

3. The actual reasonable and necessary cost of reconnecting utility service to machinery and equipment, including, without limitation, the cost incurred in adapting or converting relocated machinery or equipment to use a different type of power supply, to the extent that these services were required in the former location. Expenses incurred in providing utility service from the right-of-way to the building or improvements are excluded.

4. The actual reasonable and necessary cost incurred for any physical changes in or to an existing building to which a business relocates in order to accommodate the machinery and equipment relocated. Physical changes beyond those necessary to accommodate the machinery and equipment and which enhance the property's value are excluded, as are changes necessary to meet code requirements except when necessary to install specific equipment moved from the former location. The amount incurred shall not exceed the fair market value of the machinery and equipment requiring the physical change. In the event the cost does exceed the fair market value of the machin-

ery and equipment, the displacing agency shall then be responsible to pay only the fair market value.

5. The owner of a displaced business may elect to replace with a comparable item any item of personal property, including, without limitation, outdoor advertising displays or signs, utilized in its operation which is not to be moved. In such a case, the amount of the moving expense payment shall be the lesser of:

i. The actual cost of the substitute equipment delivered and installed at the new location less any proceeds from the disposition of the old equipment or, if a bona fide sale cannot be made, less the market value of the old equipment as determined by an independent appraisal; and

ii. The estimated cost of relocating the old equipment, as determined by the displacing agency.

(b) The business move may be accomplished by either of two methods, as described in this subsection:

1. The displaced business may use licensed moving companies or contractors as required and, if it does provide the displacing agency with moving cost estimates from three licensed moving companies or contractors. The displacing agency shall choose one of the three estimates and authorize payment up to that amount. In the event the displacing agency does not accept any of the three estimates provided, it may obtain one estimate and choose one of the four estimates and authorize payment up to that amount. The business may then use any mover it so chooses and be responsible for any additional cost.

2. The displaced business may choose to move itself upon prior notice to the displacing agency and shall submit the three moving estimates as in (b)1 above. The amount of the moving cost payment shall be the lesser of the bid chosen or the estimate obtained by the displacing agency.

As amended, R.1984 d.127. eff. April 16, 1984.

See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

Recodified from N.J.A.C. 5:11-3.7.

Section substantially amended.

Amended by R.1989 d.188, effective April 3, 1989.

See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

In (a)3 exclusions added re: utility service and improvements.

In (a)4 exclusions added re: those changes beyond what is necessary to accommodate equipment.

Administrative correction.

See: 36 N.J.R. 4298(a).

Cross References

Payments to businesses, see N.J.A.C. 5:40-3.8.

Case Notes

Relocation expense award modified; no award for improvements to property not needed to accommodate relocated machinery and equipment. *Foreign Auto Preparation Service v. New Jersey Economic Development Authority*, 201 N.J.Super. 428, 493 A.2d 550 (App.Div. 1985).

5:11-3.10 Loss of tangible personal property

(a) A displaced business that is eligible for moving expenses and elects not to move all or a part of the personal property may receive a payment for actual direct loss of the personal property not moved. This payment may be made only upon prior approval of the displacing agency and after a good faith effort has been made by the displacee to sell the personal property involved.

(b) The payment for loss of tangible personal property shall be calculated as follows:

1. In the event the item is sold the payment shall be the fair market value less the net sales amount (sales price less cost of sale);
2. In the event the item is not sold the payment shall be the fair market value. The item shall then be the property of the displacing agency.
3. In no event shall the payment exceed the estimated moving cost as determined by the displacing agency.

R.1984 d.127, eff. April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
Recodified from N.J.A.C. 5:11-3.8.

Cross References

Payments to businesses, see N.J.A.C. 5:40-3.8.

5:11-3.11 Expenses for searching for a replacement location

(a) In addition to moving expenses and loss of personal property payments, a displaced business shall be reimbursed for the actual and reasonable expenses incurred in searching for a replacement location, not to exceed \$1,000.00.

(b) These expenses may include transportation costs within 50 miles, time spent in searching, not exceeding \$15.00 per hour, and fees paid to a real estate agent for locating a site.

As amended, R.1984 d.127, eff. April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
Recodified from N.J.A.C. 5:11-3.9.
(a): \$100.00 added; \$500.00 deleted.
(b): \$15.00 added; \$10.00 deleted.

Cross References

Payments to businesses, see N.J.A.C. 5:40-3.8.

5:11-3.12 Payment in lieu of moving and related expenses

(a) The owner of a displaced business may receive an in lieu of moving and related expenses payment equal to the average net income for the last two years, but not less than \$2,500 nor more than \$10,000.

1. A person whose sole business at the displacement location is the rental of the property to others, or the owner of an outdoor advertising display at the displacement location, shall not qualify for a payment under this section.

(b) In order for an applicant to be eligible for an in lieu payment, the displacing agency shall determine that:

1. The business cannot be relocated without a substantial loss of its existing patronage; and
2. The business is not a part of a commercial enterprise having another business of the same or similar nature that is not being acquired; and
3. The business contributes materially to the income of the owner.

(c) The owner of a farm operation may receive payment in lieu of moving expenses calculated on the same basis as for a business, provided the displacing agency determines that:

1. The farm operation contributes materially to the operator's income; and
2. The displacement renders the farm operation an uneconomic unit.

R.1984 d.127, eff. April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
Recodified from N.J.A.C. 5:11-3.10.
Amended by R.1989 d.188, effective April 3, 1989.
See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).
Added (a)1., regarding sole business in rental of property or outdoor advertising display.

Case Notes

Net income line from federal income tax return was not appropriate figure upon which to base calculation of average net income for purposes of "in lieu of" relocation benefits payable to owner of displaced business. 60 West Jersey Corp. v. City of Elizabeth, 96 N.J.A.R.2d (CAF) 92.

5:11-3.13 Payment for professional fees

(a) The owner of a displaced business may receive a payment for professional fees for, without limitation, the following services:

1. Architect's plans for the new site, as required by local ordinance, showing modifications needed to make physical changes to an existing building; and
2. Legal services, including, without limitation, the researching of local ordinances and preparing of documents for submission to local construction officials, planning boards and boards of adjustment.

Adopted as R.1984 d.127, eff. April 16, 1984.
See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).
New Rule.

Cross References

Payments to businesses, see N.J.A.C. 5:40-3.8.

Case Notes

No recovery of attorney's fees incurred trying to obtain relocation assistance. *Middleton v. City of Newark*, 94 N.J.A.R.2d (CAF) 89.

SUBCHAPTER 4. RELOCATION ASSISTANCE

5:11-4.1 Relocation assistance generally

Whenever a displacing agency causes the displacement of an individual or business and that individual is eligible for relocation assistance the nature and extent of that assistance shall be as described in this subchapter.

Case Notes

Neither statute nor regulations require relocation within same municipality (citing former regulations). *Rowe v. Pittsgrove Twp.*, 172 N.J.Super. 209, 411 A.2d 720 (App.Div.1980).

Relocation assistance in business condemnation under former regulations; procedure; award; administrative exhaustion requirement. *Paterson Redevelopment Agency v. Schulman*, 78 N.J. 378, 396 A.2d 573 (1979) certiorari denied 100 S.Ct. 210, 444 U.S. 900, 62 L.Ed.2d 136.

Tenants unlawfully occupying premises were not entitled to relocation assistance benefits. *Little v. City of Paterson*, 96 N.J.A.R.2d (CAF) 46.

5:11-4.2 Notification

Whenever a displacing agency determines that their activities shall cause a displacement of individuals or businesses that are eligible for relocation payments and assistance, the displacing agency shall notify those individuals and businesses, in writing, at the earliest possible date of the benefits and obligations of the Act and this chapter. Said notice shall be issued immediately upon the determination of the displacing agency that displacement shall occur. The notice shall contain the nature and types of payments and assistance available, the eligibility criteria, and a notice that the displacee should not vacate the property prior to being authorized to do so in order to remain eligible for payment and assistance and that they should continue to pay rent to the landlord, as provided by the law.

Case Notes

Failure of Casino Reinvestment Development Authority to send tenants requisite notice that they should not vacate property before being authorized, so as to remain eligible for relocation assistance, and that tenants should continue to pay rent to landlord as provided by law, was insufficient to create liability on part of the authority. *214 Corp. v. Casino Reinvestment Development Authority*, 280 N.J.Super. 624, 656 A.2d 70 (L.1994).

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that where local government determined that its redevelopment would cause the displacement of owner's beauty salon and notified her on January 21, 2005 that she might be eligible for relocation assistance and offered to purchase her property in a separate letter of the same date, the owner's beauty salon was eligible for relocation assistance as of January 21, 2005. However, since owner sold her property to a private

entity on September 22, 2006 and did not sell it to a state agency, unit of local government, or publicly funded private entity, her beauty salon became ineligible for relocation assistance on that date. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that an offer to purchase property only establishes eligibility for relocation assistance but does not guarantee it. Continued eligibility for relocation assistance requires the actual acquisition of the real property by a state agency, unit of local government, or publicly funded private entity and to hold otherwise would guarantee relocation payments whenever any state agency, unit of local government, or publicly funded entity notified individuals and businesses that it was considering displacing them without doing so. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 978) adopted, which concluded that local government was not equitably estopped from denying relocation assistance on theory that local government represented that it would provide relocation assistance to property owner and essentially induced her to sell her property to a private entity. The local government made no misrepresentations about relocation assistance but merely notified owner that her property was eligible for relocation assistance and it did not state that the property would qualify for relocation payments. As such, it was unreasonable for owner to believe that she would receive relocation assistance without qualifying for it. *Koo v. Township of Bloomfield*, OAL Dkt. No. CAF 05832-08, 2009 N.J. AGEN LEXIS 48, Final Decision (January 16, 2009).

5:11-4.3 Assistance in obtaining housing

(a) Whenever an individual requires assistance in locating replacement housing the displacing agency shall:

1. Provide a list of decent, safe and sanitary replacement housing units that are available for sale or lease.
2. Assist in establishing the displaced individual's priority in subsidized housing and in applying therefor.
3. Provide information necessary for the displacee to obtain mortgage financing; and
4. Provide the name and address of other agencies that provide housing assistance to individuals.

5:11-4.4 Providing housing

(a) Whenever an individual is eligible for relocation payments and assistance, a displacing agency may, at its discretion, directly provide decent, safe and sanitary units, whether subsidized or not, that are not less desirable than the unit from which the displacee is displaced. In the event the displacee unreasonably rejects the housing so offered, the duty of the displacing agency to provide assistance is ended.

(b) Any displacing agency that terminates assistance pursuant to (a) above shall notify the displacee in writing of its intention to terminate assistance and the reasons therefor and shall advise the displacee of his or her right of appeal in accordance with N.J.A.C. 5:11-9.2.

Amended by R.1989 d.188, effective April 3, 1989.
See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

In (b), added requiring notification of termination of assistance.

Amended by R.2004 d.222, effective June 21, 2004.
See: 36 N.J.R. 1264(b), 36 N.J.R. 3055(c).
In (b), amended the N.J.A.C. reference.

5:11-4.5 Housing construction

Whenever there is insufficient housing available to accommodate all individuals requiring relocation, the displacing agency may construct, own, operate and maintain housing necessary to accommodate the displacees.

5:11-4.6 Equal opportunity

In carrying out relocation activities, the displacing agency shall take affirmative actions to provide displaced families and individuals maximum opportunities of selecting replacement housing within the community's total housing supply; lessen racial, ethnic, and economic concentrations; and facilitate desegregation and racially inclusive patterns of occupancy and use of public and private facilities.

5:11-4.7 Housing discrimination complaints

(a) Whenever an individual is refused replacement housing due to discrimination on the basis of race, color, religion, age, sex, marital or handicapped status, or national origin, the displacing agency shall:

1. Assist such individual in completing the necessary forms in order to file a complaint with the proper Federal and State agencies, unless such individual refuses such aid.
2. File the necessary forms with the proper Federal and State agencies on behalf of such individual unless such aid is refused by the individual.
3. Advise such individual that a complaint may be filed by said individual with proper Federal or State agencies, when such individual refuses said aid.
4. Keep proper records of all complaints filed on behalf of such individuals.

5:11-4.8 Self relocation and inspections

(a) The displacing agency shall inspect the dwellings of self-relocated families and individuals prior to the move if at all possible. When the agency does not have prior knowledge of the move, the family or individual must be traced.

(b) If a dwelling is found to be substandard, the agency must offer assistance in securing standard accommodations.

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. RELOCATION PLAN

5:11-6.1 Workable Relocation Assistance Plan (WRAP)

(a) In order to ensure that the relocation benefits required by statute, as well as by N.J.A.C. 5:11-3 and 4, are administered in a uniform manner, the displacing agency shall submit a Workable Relocation Assistance Plan (WRAP) to the Department for approval. Except as otherwise indicated in (d) below, no displacement may take place until the WRAP is approved.

(b) The WRAP shall be submitted by the displacing agency a reasonable time prior to the eligibility date for benefits as contained in subchapter 2 hereof. In the case of programs of rehabilitation, it is the responsibility of the public agency to submit the WRAP.

(c) The WRAP shall include such measures, facilities or services as are necessary in order to:

1. Determine the needs of displacees;
2. Assist displacees in obtaining replacement housing and business locations;
3. Secure the coordination of relocation activities with other displacing agencies;
4. Assist in minimizing hardships to displacees;
5. Determine the extent of the need of each displacee for relocation assistance;
6. Assure the availability of decent, safe and sanitary replacement housing;
7. Determine the source, amount and availability of funds necessary to complete relocation; and
8. Provide any other information deemed necessary by the Department to insure the provisions of the Act are carried out.

(d) In any case involving displacement from housing solely as a result of unanticipated conditions determined by a code enforcement agency to be an imminent hazard, the municipality shall, as a precondition to displacement, give notice to the Department of the impending displacement. Such notice may be given by telephone to (609) 292-7899, sent by facsimile to (609) 633-6729 or mailed to the following address:

Code Assistance Unit
Division of Codes and Standards
PO Box 802
Trenton, New Jersey 08625-0802