

CHAPTER 15
HOUSING FOR OLDER PERSONS

Authority

N.J.S.A. 10:5-1 et seq.

Source and Effective Date

R.2000 d.187, effective April 7, 2000.
See: 32 N.J.R. 648(a), 32 N.J.R. 1619(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 15, Housing for Older Persons, expires on October 4, 2005. See: 37 N.J.R. 1682(a).

Chapter Historical Note

Chapter 15, Housing for Older Persons, was adopted as R.1995 d.243, effective May 15, 1995. See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Housing for Older Persons, was readopted as R.2000 d.187, effective April 7, 2000. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

13:15-1.1 Purpose

The purpose of this chapter is to effectuate the exemption in the Law Against Discrimination, N.J.S.A. 10:5-1 to 42, and the Fair Housing Act, 42 U.S.C. § 3601 et seq., that relates to housing for older persons.

13:15-1.2 Exemption

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

(b) Nothing in this chapter limits the applicability of any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

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 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 program.

13:15-1.4 62 or over housing

(a) The provisions regarding familial status in this chapter shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

1. There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
2. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over; and
3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of (a) above:

Example 1: John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in 24 C.F.R. § 100.304, as set forth by the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Federal Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

Example 2: The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave Blueberry Hill to qualify for the "62 or over" exemption.

13:15-1.5 55 or over housing

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided

that the housing satisfies the requirements of (b)1 or (b)2 below, and the requirements of (c).

(b) If either of the following requirements, and the requirements of (c) below, are satisfied, the provisions regarding familial status shall not apply to housing intended for occupancy by at least one person 55 years of age or older per unit:

1. The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

2. It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph, the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph:

i. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable;

ii. The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;

iii. The income range of the residents of the housing facility;

iv. The demand for housing for older persons in the relevant geographic area;

v. The range of housing choices for older persons within the relevant geographic area;

vi. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this paragraph; and

vii. The vacancy rate of the housing facility.

(c) If the following requirements of this subsection, and of either (b)1 or 2 above, are satisfied, the provisions regarding familial status shall not apply to housing intended for occupancy by at least one person 55 years of age or older per unit:

1. At least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph until 25 percent of the units in the facility are occupied; and

2. The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

i. The manner in which the housing facility is described to prospective residents;

ii. The nature of any advertising designed to attract prospective residents;

iii. Age verification procedures;

iv. Lease provisions;

v. Written rules and regulations; and

vi. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

1. On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

2. There are unoccupied units, provided that at least 80 percent of such units are reserved for occupancy by at least one person 55 years of age or over.

3. There are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty units are occupied by at least one person who is 55 years of age or older. Eighteen units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82 percent of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years or older. If John or Mary are accepted for occupancy, then 81 out of the 99 occupied units (82 percent) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services

specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988, 67 percent of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under (d)1 above, Green Meadows qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80 percent of the occupied units of the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under (d) above, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80 percent of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in (c)1 above that at least 80 percent of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25 percent) are occupied. When the 50th unit is occupied, then 80 percent of the 50 occupied units (that is, 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.