

CHAPTER 13**LIMITED DIVIDEND AND NONPROFIT HOUSING CORPORATIONS AND ASSOCIATIONS****Authority**

N.J.S.A. 52:27D-22 and 40A:20-20.

Source and Effective Date

R.1997 d.253, effective May 21, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Executive Order No. 66(1978) Expiration Date

Chapter 13, Limited Dividend and Nonprofit Housing Corporations and Associations, expires on May 21, 2002.

Chapter Historical Note

Chapter 13, Limited Dividend and Nonprofit Housing Corporations and Associations, was adopted as R.1971 d.15, January 22, 1971. See: 2 N.J.R. 70(b), 3 N.J.R. 20(a).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1988 d.49, effective December 24, 1987. See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1992 d.290, effective June 22, 1992. See: 24 N.J.R. 1668(a), 24 N.J.R. 2556(b).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1997 d.253, effective May 21, 1997. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**5:13-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Limited Dividend Nonprofit Housing Corporations or Associations Law, P.L. 1949, c.184, which was repealed by P.L. 1991, c.431, but the requirements of which, and of this chapter, continue to be applicable to housing projects organized and operating under it on or before April 17, 1992.

“Authority” means the Public Housing and Development Authority within the Department of Community Affairs.

“Blighted area” means any area or part of any area, together with building or buildings thereon, which is blighted, as defined by any law of the State of New Jersey.

“Cooperative” means any corporation herein defined, the projects of which have been financed under Section 213 of the National Housing Act or any other Federal law, or under any State law or any incorporated or unincorporated association of three or more persons, not for pecuniary profit, organized pursuant to any law of the State or the Federal government for the primary purpose of providing housing accommodations for its members, stockholders and others, and for the operation, management and maintenance of same.

“Family” means the definition of family determining eligibility for occupancy in a housing project as prescribed by a Federal or State agency or any other public source, which is primarily responsible for financing, or insurance of the financing of such project.

“Federal Administrator” means the Administrator of Federal Housing Administration, his successors, officials, employees or agents.

“FHA” means the Federal Housing Administration in the United States Department of Housing and Urban Development.

“Gross shelter rent” means the gross rent or carrying charges less the cost of utilities furnished by the project; utilities shall include gas and electricity if supplied by the project; cost of heating fuel, cost of water supplied and sewage charges, if any.

“HMFA” means the New Jersey Housing and Mortgage Finance Agency in, but not of the Department of Community Affairs.

"Housing association" means any limited distribution or non-profit partnership, limited partnership, limited partnership association, trust, single proprietorship or other unincorporated association organized in accordance with the provisions of the Act.

"Housing corporation" means any private, limited-dividend or nonprofit housing corporation organized in accordance with the provisions of the Act.

"Housing sponsor" means any housing corporation or association as defined in this Section.

"Income limits" means the income limits determining eligibility for occupancy in a housing project as prescribed by a Federal or State agency or any other public source which is primarily responsible for the financing or the insurance of the financing of the project.

"Lease" means any agreement made by and between a corporation or association formed under the Act and any person or persons in connection with the right of occupancy to any unit in a project of such corporation or association and shall include for the purpose hereof any occupancy agreement between a member or stockholder of a corporation formed under the Act as a cooperative, entitling such member or stockholder to the right to occupy a particular unit in a project constructed by such corporation.

"Mortgage" shall include "Deed of Trust".

"Mortgaged property" includes all property, real or personal, covered by a mortgage and all personal property belonging to the project and used in connection with the furnishing of a project constructed under Section 202 of the Housing Act of 1959.

"Principal wage earner" means only the actual family head and for the purpose hereof shall include, in addition to said actual family head, his or her husband or wife, if any; provided however, this definition shall apply only to cooperative type projects financed under an FHA insured (Section 213) mortgage.

"Project" means any work or undertaking whether new construction or rehabilitation to provide decent; safe and sanitary dwelling units for families in need of housing; including any buildings, land (including demolition, clearance or removal of buildings from land), equipment, facilities or other real or personal properties which are necessary, convenient or desirable appurtenances, such as, but not limited to, streets, sewers, water, utilities, parks, site preparation, landscaping and administrative, community health, recreational, educational, welfare, commercial or other facilities, or to provide any part or combination of the foregoing.

"Regulatory agreement" means any agreement entered into by a housing sponsor and any State or Federal agency as approved by the Authority setting forth terms and conditions under which the development and operation of a project may function.

"Rent" means the amount paid under a lease or occupancy agreement by a tenant for the purpose of entitling such tenant to occupy a particular unit in a project and shall include, for the purposes hereof, the carrying charges assessed by a corporation as a cooperative against any member or stockholder thereof for occupancy of a particular unit in the project.

"Service charge" means moneys paid by a housing corporation or housing association to a municipality in which the project of such housing corporation or housing association is located, in lieu of taxes, where the housing corporation or housing association is entitled to tax exemption under Section 18 of the Act.

"State" means the State of New Jersey.

"State Administrator" means the administrator of the Public Housing and Development authority who is also the Commissioner of the Department of Community Affairs, State of New Jersey.

"State Deputy Administrator" means the Deputy Administrator of the Public Housing and Development Authority, who is also the Director, Division of Codes and Standards, Department of Community Affairs, State of New Jersey.

"Tenant" means any person having a lease or entitled to occupancy under an occupancy agreement and shall include any member or stockholder of a corporation as a cooperative entitled to occupancy in any unit in a project built under the Act.

Amended by R.1974 d.166, effective June 26, 1974.

See: 6 N.J.R. 221(a), 6 N.J.R. 256(b).

Condominium definition added.

Amended by R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

Deleted definition of "Council".

Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA" to "HMFA".

Amended by R.1992 d.290, effective July 20, 1992.

See: 24 N.J.R. 1668(a), 24 N.J.R. 2556(b).

Definition for condominium, exception for gross shelter rent, deleted; N.J.S.A. citation updated.

Amended by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Amended "State Deputy Administrator".

Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA" to "HMFA".

Recodified from 5:13-1.10 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.8, Tenant priorities, recodified to 5:13-1.6.

5:13-1.9 Applications for dwelling leases and rentals

(a) Housing sponsors shall maintain an adequate supply of applications for leases in a form approved by the Authority in which specific provisions shall be made to disclose priority status of applicants as provided for in N.J.A.C. 5:13-1.5, Tenant application, selection and priorities.

(b) Any person shall be permitted to file an application.

(c) All applicants shall be filed in duplicate.

(d) No conditions shall be imposed on any applicant in connection with the filing or execution of application forms.

(e) A copy of these regulations shall be maintained at any place at which a housing sponsor solicits or accepts applications, and shall be available to applicants upon request.

(f) Each application shall be dated and numbered serially as received; excepting, however, those applications disclosing priority shall be numbered serially separately and bear the prefix "P" or, if HMFA priorities, the prefix "HMFA-P" to so indicate and shall be separately maintained and transmitted to the Authority for approval.

(g) The housing sponsor shall investigate the statements in the application regarding employment and income of all members of the tenant family by directing a written inquiry to their employers.

(h) For self-employed applicants, the housing sponsor shall obtain from the applicant a sworn statement of his last Federal Income Tax return.

(i) In the case of any other applicant, the housing sponsor shall obtain a sworn statement of the Federal Income Tax return when requested by the Authority to do so.

(j) If an applicant claims priority status the housing sponsor shall verify the statements, supporting such claim, including, if necessary, inquiry to the relocation, health or building officer of the municipality in which the applicant asserts he has been or is to be displaced or in which said applicant states he lives in a blighted area or substandard housing.

(k) Upon request of the Authority, the housing sponsor shall transmit copies of all applications to the Authority, indicating those that it proposes to accept.

(l) The Authority shall review each application submitted to it and shall approve or disapprove the recommendation of the housing sponsor.

(m) In any case in which the Authority has required submission of an application, no lease shall be executed or occupancy permitted until the application of the prospective tenant has been approved in writing by the Authority.

(n) Each lease shall contain a clause making the application a part thereof and providing that the housing sponsor may terminate the lease upon 30-day written notice, if the application is found to contain a material misrepresentation.

Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA-P" to "HMFA-P".

Recodified from 5:13-1.11 and amended by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

In (a), amended N.J.A.C. reference; substantially amended (k); in (l), substituted "shall" for "will" and inserted "submitted to it"; and, in (m), inserted "In any case in which the Authority has required submission of an application,". Former N.J.A.C. 5:13-1.9, Procedures for priority applications, recodified to 5:13-1.7.

5:13-1.10 List of nonapplicants

Each project management office will maintain a list of all persons who have indicated an interest in making application for tenancy, but who did not formally apply. A statement as to their reasons for nonapplication shall be listed and a report of these nonapplications shall be sent monthly to the Authority; such list shall disclose whether such nonapplicant appears to have priority status as provided for in Section 1.7 (Tenant application, selection and priorities) by affixing the letter "P" next to the name of the nonapplicant appearing to have priority status.

Recodified from 5:13-1.12 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.10, Public notice to applicants on rights, recodified to 5:13-1.8.

5:13-1.11 Leases

(a) Every lease made by a housing sponsor shall be on a form approved by the Authority.

(b) No lease shall be for a term exceeding 24 months.

(c) Every lease shall contain a clause prohibiting the subletting of the dwelling or the renting of any part of it.

(d) A lease may require a security deposit in an amount approved by the Authority, but not more than one month's rent; provided that, said funds shall be held in trust fund against which only delinquencies under the terms of the lease after deduction of any rent due at said time and approved by the Authority.

(e) The lease shall include any charges to be made for utilities, special services, or other facilities to be furnished to the tenant by the housing sponsor.

(f) No one connected with the housing sponsor shall request or receive directly or indirectly any payment whatsoever in connection with the obtaining of a lease.

(g) Violation of this regulation by any employee or other agent of the housing sponsor shall be cause for discharge.

(h) When applying for renewal of lease, each tenant shall be required to furnish the same information and be subject to the same investigation as for an initial lease. Such renewal application may be subject to approval by the Authority.

(i) The lease shall contain a provision providing for the eviction of any tenant based on a change in their income which disqualifies a tenant from continued occupancy under the regulations or regulatory agreements.

Recodified from 5:13-1.13 by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.11, Applications for dwelling leases and rentals, recodified to 5:13-1.9.

5:13-1.12 Rents and charges

(a) The rent schedule approved by the Authority shall be adequate to pay all necessary and reasonable expenses including, but not limited to, the cost of operation and maintenance, reserves for replacement, vacancy and other contingencies, payments in lieu of taxes, mortgage interest and amortization payments, mortgage-insurance premiums and dividends on investments.

(b) The amount of payment in lieu of taxes approved by the Authority shall be the maximum amount, not exceeding the statutory maximum, that is, the greater of the tax on the property on which the project is located for the year in which the undertaking of the project is commenced or 15 percent of the annual gross shelter rents, that can be paid without endangering or impairing the viability of the project. The payment in lieu of taxes shall be in an amount less than the statutory maximum during any year in which such lesser amount is necessary for project viability.

Amended by R.1988 d.571, effective December 19, 1988.
See: 20 N.J.R. 2425(a), 20 N.J.R. 3123(a).

Substituted "shall" for "will" in (a); added (b).
Recodified from 5:13-1.14 by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.12, List of nonapplicants, recodified to 5:13-1.10.

5:13-1.13 General reports

(a) The housing sponsor shall prepare the following reports and submit them to the Authority, or make them available for review, when requested by the Authority to do so:

1. A monthly report of occupancy;
2. A monthly report of all persons who had indicated an interest; but did not formally apply, and a statement for reason of such nonapplication;
3. An annual budget of operating income and expense;

4. An annual financial report by a certified public accountant;

5. Minutes of the meeting of the Board of Directors and of the stockholders within ten days after the meeting;

6. Such other reports or specific answers to questions as the Authority may require from time to time.

Recodified from 5:13-1.15 and amended by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

In (a), inserted reference to preparation of reports prior to submission and reference to review of reports upon request. Former N.J.A.C. 5:13-1.13, Leases, recodified to 5:13-1.11.

5:13-1.14 Nondiscrimination

(a) In the operation of housing projects, no person shall be subject to any discrimination because of race, religious principles, color, national origin or ancestry.

(b) All facilities of a housing project shall be equally available to all tenants.

(c) No person or family shall be denied the right to file an application for tenancy whose source of income is derived from welfare or public assistance funds.

(d) If otherwise qualified, they shall be considered as eligible for occupancy under the same provisions that apply to all eligible applicants.

Recodified from 5:13-1.16 by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.14, Rents and charges, recodified to 5:13-1.12.

5:13-1.15 Administrative remedies and procedures

Any person or housing sponsor may at any time file with the Authority a complaint concerning any matter subject to the Act and these regulations; provided however, nothing in this Section shall be construed to limit the Authority from conducting on its own initiative and in the absence of any such complaint, investigations and inspections pertaining to adherence to the requirements of the Act and the regulations on the part of any person or housing sponsor.

Recodified from 5:13-1.17 by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.15, General reports, recodified to 5:13-1.13.

5:13-1.16 Administrative orders on complaints

(a) Upon receipt of a complaint to, or discovery of a violation of these regulations by the Authority, the Authority will notify the offending party of the complaint and the nature thereof and request that within two weeks of receipt of such notice that the offending party provide:

1. A statement that the cause of the complaint has been removed or abated; or
2. Refutation in writing that the complaint is proper; or

3. A statement of intent to correct the violation within a reasonable time.

(b) Within seven days after receipt of such statements or expiration of the two week period, the Authority may issue such order as it deems appropriate and necessary.

Recodified from 5:13-1.18 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.16, Nondiscrimination, recodified to 5:13-1.14.

5:13-1.17 Rights to hearing

Any person or housing sponsor aggrieved by any order issued under N.J.A.C. 5:13-1.16 shall be entitled to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

Added N.J.A.C. 5:13-1.18 cite and hearing before "Office of Administrative Law".

Amended by R.1992 d.290, effective July 20, 1992.

See: 24 N.J.R. 1668(a), 24 N.J.R. 2556(b).

Reference to Administrative Procedure Act and Uniform Administrative Procedure Rules added.

Recodified from 5:13-1.19 and amended by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Amended N.J.A.C. reference. Former N.J.A.C. 5:13-1.17, Administrative remedies and procedures, recodified to 5:13-1.15.

5:13-1.18 Request for a hearing

An application for a hearing must be filed with the State Administrator within 15 business-days of the receipt by the applicant therefor of the notice or order complained of. Such application must be accompanied by a statement of issues of law and of fact which the applicant asserts are germane to the application. Copies of all such statements shall be provided to all parties in interest.

Amended by R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

Deleted old (b)-(c).

Recodified from 5:13-1.20 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.18, Administrative orders on complaints, recodified to 5:13-1.16.

5:13-1.19 Stay of action

A request by the applicant for a stay of notice or order complained of may be granted by the State Administrator pending final determination; provided that, no such stay shall be granted except upon such terms and conditions as will insure compliance with the provisions of the Act and this chapter.

Amended by R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

Deleted "at the hearing or" when stay may be granted.

Recodified from 5:13-1.25 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.19, Rights to hearing, recodified to 5:13-1.17.

5:13-1.20 Declaratory rulings

(a) Upon request of any interested party the State Administrator may, in his discretion, make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by the State Administrator.

(b) A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged.

(c) Full opportunity for hearing shall be afforded to all interested parties.

(d) Such ruling shall be deemed a decision or action subject to review before the Office of Administrative Law.

(e) Nothing in this Section shall affect the right or practice of the State Administrator in his sole discretion to render advisory opinions.

As amended, R.1983 d.145, eff. May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

In (d) charged review before the Appellate Division of the Superior Court to the Office of Administrative Law.

Recodified from 5:13-1.27 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.20, Request for a hearing, recodified to 5:13-1.18.

5:13-1.21 Informal disposition

Nothing in this Chapter shall be construed to preclude the State Administrator to dispose of any contested case by stipulation, agreed settlement, or consent order.

Recodified from 5:13-1.28 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

5:13-1.22 (Reserved)

R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

This section formerly contained rules concerning conduct of hearing and evidence.

5:13-1.23 (Reserved)

R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

This section formerly contained rules concerning transcripts.

5:13-1.24 (Reserved)

R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

This section formerly contained rules concerning findings of fact.

5:13-1.25 (Reserved)

Recodified to 5:13-1.19 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

5:13-1.26 (Reserved)

R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

This section formerly contained rules concerning final report and order.

5:13-1.27 (Reserved)

Recodified to 5:13-1.20 by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

5:13-1.28 (Reserved)

Recodified to 5:13-1.21 by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

SUBCHAPTER 2. LIMITED DIVIDEND HOUSING CORPORATIONS AS COOPERATIVES

5:13-2.1 Scope

The provisions of this subchapter shall apply to Limited Dividend Corporations formed as Cooperatives under the Act and financed under an FHA-insured (Section 213) mortgage and shall supplement the provisions of N.J.A.C. 5:13-1 as they apply to such corporations.

Amended by R.1997 d.253, effective June 16, 1997.
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Substituted "and shall supplement the provisions of N.J.A.C. 5:13-1 as they apply to such corporations" for "in addition to provisions contained in Sections 1.2 through 1.28 of this Chapter".

5:13-2.2 Management, operation and maintenance of cooperative projects

(a) Dwelling units in any project hereunder shall be restricted for occupancy to families in which the principal wage earner's net annual income at the time of application and for the taxable year preceding the making of such application does not exceed seven times the annual rent (including the estimated value or cost to them of water, heat, electricity, gas or other utilities) of the dwelling units to be occupied by such families. The term "net annual income" as used herein shall mean the annual income of the principal wage earner of the family but shall not include any pension, compensation or disability payment received from the Federal or State government by any veteran, or any widow or orphan of any deceased serviceman or veteran by reason of, or as a result of, active military or naval service.

(b) The corporation is entitled to charge the applicant a fee for its investigation regarding employment and income as required in subsection (a) of this Section. Said fee, however, may not exceed \$5.00.

(c) With the exception of superintendents or janitors of the project, all persons occupying units of the project, including members, officers or agents of the corporation, shall be treated the same and shall be governed by the same principles in connection with the rent to be charged for the units occupied by them. No officer, employee or agent of the corporation shall receive any special privileges in connection with occupancy of any unit in the project.

5:13-2.3 Stock transfer

(a) Notwithstanding the provisions of any certificates of incorporation or bylaws promulgated thereunder, in order to better effectuate the purpose of providing accommodations for families in need of housing and to perpetuate the nonprofit purpose and intent of cooperative type housing, it shall be mandatory on the corporation to exercise its option to purchase, at par value less any amounts due by the stockholder to the corporation, the shares of stock and occupancy agreement offered by a stockholder desiring to leave the project. The corporation shall then resell the stock at par value plus a reasonable service charge to be approved by the Authority.

(b) Upon written request by the corporation setting forth good and sufficient reasons, the Administrator is authorized to waive in writing to the corporation the provisions of this Section.