

CHAPTER 40**RELOCATION ASSISTANCE AND EVICTION****Authority**

N.J.S.A. 2A:18-61.1, 20:4-10 and 52:31B-10.

Source and Effective Date

R.1999 d.135, effective May 3, 1999.
See: 31 N.J.R. 508(a), 31 N.J.R. 1186(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 40, Relocation Assistance and Eviction, expires on October 30, 2004.

Chapter Historical Note

Chapter 40, Relocation Assistance and Eviction, was originally codified in Title 5 as Chapter 11, Relocation Assistance and Eviction. Chapter 11 was filed prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 11, Relocation Assistance and Eviction, was readopted as R.1984 d.127, effective March 28, 1984. See: 16 N.J.R. 175(a), 16 N.J.R. 870(b).

The expiration date of Chapter 11, Relocation Assistance and Eviction, was extended by gubernatorial waiver from March 1, 1989 to April 1, 1989. See: 21 N.J.R. 592(a). Subsequently Chapter 11 was readopted as R.1989 d.188, effective March 10, 1989. See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Relocation Assistance and Eviction, was readopted as R.1994 d.174, effective March 9, 1994. See: 26 N.J.R. 289(a), 26 N.J.R. 1493(a).

Pursuant to Reorganization Plan No. 002-1998, Chapter 11, Relocation Assistance and Eviction, was recodified as N.J.A.C. 5:40, effective July 1, 1998. See: 30 N.J.R. 1347(a), 30 N.J.R. 2644(a).

Pursuant to Executive Order No. 66(1978), Chapter 40, Relocation Assistance and Eviction, expired on March 9, 1999.

Chapter 40, Relocation Assistance and Eviction, was adopted as new rules by R.1999 d.135, effective May 3, 1999. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**5:40-1.1 Introduction**

The Relocation Assistance Law of 1967 (P.L. 1967, c.79, N.J.S.A. 52:31B-1 et seq.), the Relocation Assistance Act (P.L. 1971, c.362, N.J.S.A. 20:4-1 et seq.) and the Eviction Law (P.L. 1974, c.49, N.J.S.A. 2A:18-61.1 et seq.) were passed by the legislature in order to establish and assure the uniform, fair and equitable treatment of persons displaced due to state and local programs of acquisition, code enforcement and voluntary rehabilitation of buildings. These regulations are promulgated so that the Department of Community Affairs may carry out the provisions of the Act.

Case Notes

Citation. Hickey v. Park Ridge, 5 N.J.A.R. 291 (1983).

5:40-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context or any definition set forth in P.L. 1967, c.79 (N.J.S.A. 52:31B-1 et seq.) or P.L. 1971, c.362 (N.J.S.A. 20:4-1 et seq.) clearly indicates otherwise.

“Business” means any lawful activity, except a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities or any other personal property;
2. For the sale of services to the public;
3. By a non-profit organization; or
4. Solely for the purpose of qualifying for moving and related expenses, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, (personal property) or services by the erection and maintenance of an outdoor advertising display or displays. Such displays do not necessarily have to be located on the premises on which any of the cited activities are conducted.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Comparable replacement dwelling” means a dwelling which is:

1. Decent, safe and sanitary;
2. Functionally equivalent and substantially the same as the former dwelling with respect to number of rooms, areas of living space, age and state of repair, provided that it is standard and adequate in size to accommodate the family or individual;
3. In an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources;
4. In an area not generally less desirable than the area in which the acquired dwelling was located in regard to public and commercial facilities;
5. In an area reasonably accessible to the displaced person’s present or potential place of employment;
6. Open to all persons regardless of race, color, religion, age, sex, marital or handicapped status or national origin in a manner consistent with Title VIII of the Civil Rights Act of 1968 and the New Jersey Law Against Discrimination as amended and not inconsistent with any Federal statutes, rules or regulation applicable.

7. Within the financial means of the displaced person. For the purpose of this definition, any monies paid hereunder shall be included in determining financial means.

“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).

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

5:40-2.1 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. 5:40-3 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. 5:40-4.2.

(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).

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.

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).

5:40-2.2 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. 5:40-3 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.

Case Notes

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.

5:40-2.3 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 HOUSING AND DEVELOPMENT
OFFICE OF LANDLORD-TENANT INFORMATION
PO BOX 805
TRENTON, NEW JERSEY 08625-0805
TELEPHONE: 609-530-5423

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).

5:40-2.4 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.

5:40-2.5 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. 5:40-3 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. 5:40-6.1(b)) and for complying with N.J.A.C. 5:40-4.

(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.

SUBCHAPTER 3. RELOCATION PAYMENTS**5:40-3.1 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.

5:40-3.2 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).

5:40-3.3 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).

5:40-3.4 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.

5:40-3.5 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).

5:40-3.6 Downpayment assistance

(a) 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.

5:40-3.7 Replacement housing payment for owners

(a) Except as otherwise provided in N.J.A.C. 5:40-2.1(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).

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.

5:40-3.8 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. 5:40-3.9; actual reasonable direct loss of tangible personal property, as set forth in N.J.A.C. 5:40-3.10; actual reasonable expenses incurred in searching for a replacement business, as set forth in N.J.A.C. 5:40-3.11; 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. 5:40-3.13; or

2. Payment in lieu of moving and related expenses (paragraph 1 of this subsection) as set forth in N.J.A.C. 5:40-3.12.

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.

5:40-3.9 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 building 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 machinery 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.

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).

5:40-3.10 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.

5:40-3.11 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.

5:40-3.12 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.

5:40-3.13 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

5:40-4.1 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.

5:40-4.2 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).

5:40-4.3 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.

5:40-4.4 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. 5:40-9.2.

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

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

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

5:40-4.5 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.

5:40-4.6 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.

5:40-4.7 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.

5:40-4.8 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

5:40-6.1 Workable Relocation Assistance Plan (WRAP)

(a) In order to insure that the relocation benefits required are administered in a uniform manner, the displacing agency shall, except in cases involving displacement solely as a result of code enforcement in unsafe buildings or other imminent hazard situations, submit a Workable Relocation Assistance Plan (WRAP) to the Department for approval. No relocation activities may take place until the WRAP, where required, 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. Secure the coordination of relocation activities with other displacing agencies;
5. Assist in minimizing hardships to displacees;
6. Determine the extent of the need of each displacee for relocation assistance;
7. Assure the availability of decent, safe and sanitary replacement housing; and
8. Determine the source, amount and availability of funds necessary to complete relocation.
9. Provide any other information deemed necessary by the Department to insure the provisions of the Act are carried out.

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

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

(a): Changed "Program" to "Plan".

(a)3: Deleted "Provide an analysis of Federal, State and local program affecting the availability of housing" and inserted new (a)3. Amended by R.1985 d.623, effective December 16, 1985.

See: 17 N.J.R. 2321(a), 17 N.J.R. 2971(a).

Added text in (a) "except in cases . . . imminent hazard situations," and "where required."

5:40-6.2 Joint exercise

(a) A displacing agency may contract with another agency in order to provide the benefits required in subchapters 3 and 4 of this chapter and two or more displacing agencies may agree to provide the benefits jointly; provided that the Department gives prior approval. In the event of a displacing agency contracting with another or in the event of joint exercise, the ultimate responsibility for relocation assistance and benefits remains with the displacing agency.

(b) In any case in which displacement is being undertaken by a "unit of local government" that is a chartered private entity, responsibility for the filing of the WRAP shall rest with the political subdivision by which the private entity was chartered to exercise governmental powers and, unless otherwise agreed between the political subdivision and the private entity, primary responsibility for providing relocation assistance shall rest with the political subdivision.

Amended by R.1990 d.113, effective February 5, 1990.
See: 21 N.J.R. 3694(a), 22 N.J.R. 336(a).

Adds (b) clearly setting out responsibility rests with political subdivision by which private entity was chartered.

5:40-6.3 Relocation records and reports

(a) The displacing agency is responsible for keeping up-to-date records on the relocation of all site displacees. These records shall be retained for the Department's inspection and audit for a period of three years following completion of the project or program or the completion of the making of relocation payments, whichever is later.

1. Relocation record: The displacing agency shall develop and maintain a relocation record, beginning with the information secured during the first interview to assess the needs of the displaced person. A separate record shall be prepared for each family, even though the family may not be maintaining a separate household, each individual maintaining a self-contained unit, or a non-housekeeping unit; and each business concern, non-profit organization and farm operation. The record shall contain all data relating to relocation of the displaced person, including the nature and dates of services that are provided, the type and amount of relocation payments made, and the location to which those displaced are relocated, including a description of the accommodation.

Amended by R.1994 d.174, effective April 4, 1994.
See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

SUBCHAPTER 7. DISPLACEMENT THROUGH LANDLORD'S ACTION

5:40-7.1 General notice

(a) Whenever a landlord intends to terminate a tenancy because of enforcement of building, housing or health codes, public acquisition of the premises or participation in a government-sponsored program of voluntary rehabilitation, including, without limitation, new construction, the landlord shall give written notice of his intent to the tenant.

1. This notice shall specify in detail the reasons why the landlord wants the tenant to vacate the premises.

2. Unless N.J.A.C. 5:40-7.2 shall apply, the notice shall include the following statement in capital letters:

I AM ASKING YOU TO MOVE BECAUSE OF GOVERNMENT ACTION. YOU MAY BE ELIGIBLE FOR FINANCIAL AND OTHER BENEFITS UNDER THE RELOCATION ASSISTANCE AND RESIDENTIAL EVICTION ACTS (N.J.S.A. 52:31B-1 et seq., N.J.S.A. 20:4-1 et seq., and N.J.S.A. 2A:18-61.1 et seq.). YOU MAY CALL THE RELOCATION OFFICE AT (giving the accurate address and the telephone number of the person responsible for relocation in this area).

Amended by R.1981 d.69, effective March 3, 1981.

See: 13 N.J.R. 67(b), 13 N.J.R. 189(b).

Old text deleted, new text substituted therefor.

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

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

(a): "zoning" deleted; "health" substituted in its place.

Case Notes

Landlord failed to comply with regulations governing notice to quit; failure to satisfy Anti-Eviction Act. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Notice to quit served pursuant to code violation will satisfy "specify in detail" requirements only if it complies with regulations governing notice. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Notices to quit must strictly comply with provisions of Anti-Eviction Act. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Regulation governing notice has force and effect of law. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Occupant of illegal dwelling unit in basement was not eligible for relocation assistance when landlord was otherwise unaware of unlawful occupancy. *Woodson v. City of Patterson*, 95 N.J.A.R.2d (CAF) 79.

5:40-7.2 Additional notice for proceedings under N.J.S.A. 2A:18-61.1(g)

(a) In cases arising under N.J.S.A. 2A:18-61.1g(1) or g(3), the following statement shall be included in the notice in capital letters:

I MUST GIVE YOU THIS NOTICE BECAUSE I PLAN TO SEEK EVICTION UNDER THE RESIDENTIAL EVICTION LAW (N.J.S.A. 2A:18-61.1) AND THE REGULATIONS OF THE DEPARTMENT OF COMMUNITY AFFAIRS. THE CAUSE FOR WHICH I WANT YOU TO LEAVE IS THE FOLLOWING:

g(1) THAT I WANT TO PERMANENTLY BOARD UP OR DEMOLISH THE UNIT YOU ARE LIVING IN BECAUSE IT HAS BEEN CITED FOR SUBSTANTIAL VIOLATIONS AND IT IS ECONOMICALLY UNFEASIBLE FOR ME TO ELIMINATE THE VIOLATIONS, OR

g(3) THAT I HAVE BEEN CITED BY LOCAL OR STATE HOUSE INSPECTORS FOR ILLEGAL OCCUPANCY AND THE ONLY WAY TO CORRECT THIS VIOLATION IS TO REMOVE THE TENANT. I AM ENTITLED TO TRY TO EVICT YOU IN THE COURTS 90 DAYS AFTER THE DATE OF THIS NOTICE. IF YOU RECEIVE A SUMMONS TO APPEAR IN COURT AND FAIL TO APPEAR YOU ARE LIKELY TO LOSE YOUR CASE BECAUSE YOU AREN'T THERE. HOWEVER, IN NO CASE CAN THE JUDGE EVICT YOU AND ISSUE A WARRANT FOR POSSESSION UNLESS THE RELOCATION LAWS HAVE BEEN COMPLIED WITH.

YOU MAY BE ELIGIBLE FOR FINANCIAL AND OTHER BENEFITS UNDER THE RELOCATION ASSISTANCE AND RESIDENTIAL EVICTION ACTS. (N.J.S.A. 52-31B-1 et seq., N.J.S.A. 20:4-1 et seq., and N.J.S.A. 2A:18-61 et seq.) YOU MAY CALL THE RELOCATION OFFICE AT _____ (giving the accurate address and the telephone number of the person responsible for relocation in this area).

(b) In cases arising under N.J.S.A. 2A:18-61.1(g)2, the following statement shall be included in the notice in capital letters:

I MUST GIVE YOU THIS NOTICE BECAUSE I PLAN TO SEEK EVICTION UNDER THE RESIDENTIAL EVICTION LAW (N.J.S.A. 2A:18-61.1) AND THE REGULATIONS OF THE DEPARTMENT OF COMMUNITY AFFAIRS. THE CAUSE FOR WHICH I WANT YOU TO LEAVE IS THAT I WANT TO COMPLY WITH LOCAL OR STATE HOUSING INSPECTORS WHO HAVE CITED ME FOR SUBSTANTIAL VIOLATIONS AND IT IS UNFEASIBLE TO COMPLY WITHOUT REMOVING THE TENANTS.

THE PROCEDURE WHICH IS FOLLOWED ONCE YOU HAVE RECEIVED THIS NOTICE FROM ME IS FOR THE DEPARTMENT OF COMMUNITY AFFAIRS TO UNDERTAKE AN INVESTIGATION OF THIS CAUSE FOR EVICTION TO FIND OUT IF IT IS JUSTIFIED BY THE VIOLATIONS OR CIRCUMSTANCES THE DEPARTMENT OF COMMUNITY AFFAIRS WILL INFORM THE TENANTS AND THE _____ (fill in the name of the local inspection agency), OF MY EFFORTS TO TRY TO EVICT YOU, THE DEPARTMENT WILL ASK FOR THEIR WRITTEN COMMENTS AND PREPARE A RECOMMENDATION WHICH WILL BE FORWARDED TO THE DISTRICT COURT WHICH WILL CONDUCT ANY EVICTION PROCEEDINGS, AS WELL AS TO THE _____ (fill in the name of the local inspection agency), THE OWNER AND THE TENANTS. IF THE DEPARTMENT OF COMMUNITY AFFAIRS DECIDES THAT EVICTION FOR THE CAUSE STATED ABOVE IS JUSTIFIED, THE _____ (fill in the name of the local inspection agency), WILL BEGIN PROVIDING FINANCIAL AND OTHER RELOCA-

TION ASSISTANCE AS PROVIDED UNDER THE RELOCATION AND EVICTION LAWS. (N.J.S.A. 52:31B-1 et seq., N.J.S.A. 20:4-1 et seq., and N.J.S.A. 2A:18-61 et seq.) IF THE DEPARTMENT OF COMMUNITY AFFAIRS DECIDES THAT EVICTION IS NOT JUSTIFIED, I AM STILL ENTITLED TO TRY TO EVICT YOU IN THE COURTS 90 DAYS AFTER THE DATE OF THIS NOTICE. IF YOU RECEIVE A SUMMONS TO APPEAR IN COURT AND FAIL TO APPEAR YOU ARE LIKELY TO LOSE YOUR CASES BECAUSE YOU AREN'T THERE. HOWEVER, IN NO CASE CAN THE JUDGE EVICT YOU AND ISSUE A WARRANT FOR POSSESSION UNLESS THE RELOCATION LAWS HAVE BEEN COMPLIED WITH.

(c) Landlords may obtain copies of this required statement from the Office of Landlord/Tenant Information, Department of Community Affairs, PO Box 805, Trenton, N.J. 08625-0805. Spanish speaking tenants shall be provided with this statement in Spanish, and such statement is also available at the same address.

Amended by R.1981 d.69, effective March 3, 1981.
See: 13 N.J.R. 67(b), 13 N.J.R. 189(b).

Section substantially amended.

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

(c) changed address.

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

Landlord failed to comply with regulations governing notice to quit; failure to satisfy Anti-Eviction Act. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Notices to quit must strictly comply with provisions of Anti-Eviction Act. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Regulation governing notice requirement has force and effect of law. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Notice to quit served pursuant to code violation will satisfy "specify in detail" requirements only if it complies with administrative regulations governing notice. *Aspep Corp. v. Giuca*, 269 N.J.Super. 98, 634 A.2d 582 (L.1993).

Hispanic tenant, illiterate in English, was entitled to keep pet and to remain as tenant, despite landlord's rule requiring permission to have pet; rules and regulations given to tenant to sign were not in Spanish. *5000 Park Associates v. Collado*, 253 N.J.Super. 653, 602 A.2d 803 (L.1991).

Landlord's notice to Hispanic tenant to cease and notice to quit were not "suitable notice" and were inadequate; tenant was illiterate in English and notices were not in Spanish. *5000 Park Associates v. Collado*, 253 N.J.Super. 653, 602 A.2d 803 (L.1991).

5:40-7.3 Landlord's obligations regarding notice to Department of Community Affairs

(a) The landlord shall, simultaneously with service of notice of the tenants in cases arising under N.J.S.A. 2A:18-61.1(g)2, provide to the Department of Community Affairs the following information and documentation.

1. A copy of the notice to the tenants.

2. The names and addresses of all the tenants to be evicted under N.J.S.A. 2A:18-61.1g(2).

(b) In the case of an eviction pursuant to N.J.S.A. 2A:18-61.1(g)2, a written statement shall also be supplied describing the specific violations the elimination of which necessitates removal of the tenant.

(c) In cases arising under N.J.S.A. 2A:18-61.1(g)2 in which the Department of Community Affairs was not the inspection agency, the landlord shall provide the Department of Community Affairs with a copy of the official inspection report which shows all cited violations and a copy of any applicable local ordinance.

Law Review and Journal Commentaries

Landlord/Tenant—Anti-Eviction Act—Relocation Act. P.R. Chenoweth, 135 N.J.L.J. No. 14, 55 (1993).

5:40-7.4 Responsibilities of Department of Community Affairs

(a) The following actions shall be taken by the Department of Community Affairs in each instance in which a landlord invokes N.J.S.A. 2A:18-61.1g(2):

1. Upon receipt of the landlord's materials, the Department shall acknowledge receipt of such materials and, if necessary, request submission of any additional required information. Such additional information shall be submitted within 15 days of such request.

(b) Upon receipt of the materials, each affected tenant shall be sent a copy of the landlord's statement on the need for eviction and a letter explaining the applicable law and procedures and requesting optional written comments from the tenant about the landlord's proposed action.

(c) The premises shall be inspected, the tenant's comments and the landlord's statement shall be assessed and, where applicable, the Department of Community Affairs shall consult with the local inspection agency. On the basis of this information, a conclusion as to the feasibility of achieving compliance through elimination of the violations without removal of the tenant shall be reached by the Department of Community Affairs within 60 days of its receipt of the original notice from the landlord. Notice of this conclusion shall be given to the Court having jurisdiction, the appropriate relocation agency, the landlord, the affected tenants and the local inspection agency within 90 days of receipt of the landlord's notice.

(d) If it is concluded by the Department of Community Affairs that it is feasible to effect compliance without removal of the tenants, the notice shall so advise the court and further shall advise the tenant that, should he fail to appear in court to contest the eviction, he may very likely be subject to a default judgment and eviction.

(e) The notice of the Department's conclusion shall include the name, address and telephone number of the appropriate relocation agency.

(f) The name and address of the tenants, any tenant comments, and any explanatory letter shall be enclosed with the notice of the Department's conclusion to the Court.

Amended by R.1981 d.69, effective March 3, 1981.

See: 13 N.J.R. 67(b), 13 N.J.R. 189(b).

Reference to N.J.S.A. 2A:18-61.1g(1) and g(3) deleted.

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

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

(c) having "jurisdiction" added after "court"; "relocation" added before "agency", and substituted for "displacing".

(e) "relocation" substituted for "displacing" added before "agency".

5:40-7.5 Availability of funds

(a) In the event that the displacing agency receives a notice of the conclusion of the Department that compliance cannot be effected without removal of the tenant, the appropriate displacing agency shall determine whether sufficient funds and an appropriate WRAP are available to provide timely relocation payments and assistance.

(b) In the event the displacing agency has insufficient funds to provide the relocation required, it shall within three days notify the Department of Community Affairs of this fact so that appropriate notice can be included in the notice of determination made to the court and all affected parties.

(c) If adequate relocation resources are not found, then the displacing agency shall submit an amended Workable Relocation Assistance Plan (WRAP), with adequate provision for such funding, within 30 days.

(d) The displacing agency shall proceed to obtain the necessary funds as quickly as possible.

(e) The Department of Community Affairs will advise the District Court of its obligation to stay any warrant for possession until the relocation payments and assistance can be provided.

Amended by R.1981 d.69, effective March 3, 1981.

See: 13 N.J.R. 67(b), 13 N.J.R. 189(b).

Section title was "Requirements for Workable Relocation Assistance Plan". (a) deleted and (a)1 through (a)5 renumbered as (a) through (e).

SUBCHAPTER 8. GRANTS-IN-AID

5:40-8.1 General

Any displacing agency may apply for and receive State grants-in-aid, when available, to cover the costs or a portion thereof, for relocation assistance payments. Application shall be made in accordance with the procedures adopted by the Department. The amount of the grant-in-aid shall be determined as described in N.J.A.C. 5:40-8.2.

5:40-8.2 Funding criteria

(a) A municipality meeting the following criteria may receive the total cost of relocation assistance and payments.

1. A population of less than 10,000;
2. A budget of less than \$2.5 million;
3. 20 percent or more of the present housing stock in a deteriorated or dilapidated condition;
4. A lack of other state or federal funding for the purpose of relocation assistance.

(b) All municipalities not meeting the above criteria may be funded on a matching basis.

(c) A publicly funded entity may receive a grant-in-aid on a project by project basis through agreement with the Department. In no event shall the amount of the grant-in-aid exceed 50 percent of the relocation costs.

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

(a)2: changed "\$1 million" to "\$1.5 million".
Amended by R.1989 d.188, effective April 3, 1989.
See: 21 N.J.R. 231(b), 21 N.J.R. 891(a).

(a)2: changed "\$1.5 million" to "\$2.5 million".
Amended by R.1994 d.174, effective April 4, 1994.
See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

5:40-8.3 Costs for planning and obtaining financing

Any Federal or State agency that is administering a Federal or State project or a Federal or State Assisted project may apply for a grant-in-aid to provide loans to nonprofit, limited dividend or cooperative organizations or to public bodies for the necessary and reasonable expenses, prior to construction, for planning and obtaining Federally insured mortgage financing for the rehabilitation or construction for displaced persons as set forth in N.J.S.A. 20:4-17. Any such grants-in-aid shall be repaid to the Department under the terms and conditions as set forth in N.J.S.A. 20:4-17.

5:40-8.4 Administrative costs

Whenever the Department approves a request of a displacing agency so that said displacing agency may contract with another agency to provide regionalized relocation benefits said regionalized agency may be eligible to receive a grant-in-aid to cover the reasonable and necessary costs of administration.

5:40-8.5 Recovery of relocation assistance costs

(a) Any displacing agency that receives a State grant-in-aid shall, as a condition of the receipt of that grant-in-aid, prosecute in a civil or criminal penalty action any real property owner who is or might be, in the judgment of either the displacing agency or the Department, responsible for any housing or construction code violations that resulted in displacement and consequent eligibility for relocation assistance.

(b) Once there has been a final court adjudication in any civil or criminal penalty action brought under (a) above and paragraph (a) of section 1 of P.L. 1983, c.536 (N.J.S.A. 20:4-4.1), and once the relocation assistance costs have been determined, the displacing agency shall promptly present a statement of relocation costs, indicating the date by which payment must be made, to the real property owner.

(c) In the event that payment is not made by the real property owner within 10 days of the date on which payment is due, interest on the unpaid balance shall accrue at the annual rate of 18 percent, pursuant to paragraph (b) of section 1 of P.L. 1983, c.536 (N.J.S.A. 20:4-4.1) and the displacing agency shall prepare and file a lien statement pursuant to paragraph (c) of said section 1 of P.L. 1983, c.536. The displacing agency shall assign to the Department an interest in the lien that is equal to the unrepaid amount of the grant-in-aid, plus accrued interest thereon. The displacing agency shall assist the Department, as may be required, in any foreclosure, by the Department, of the lien.

(d) The displacing agency shall pay to the Department, out of any funds recovered by it from the real property owner, a proportion of such recovered funds that is the same as the proportion of the total relocation assistance resulting from code enforcement at that owner's property that was paid by the Department.

(e) In the event that the displacing agency does not elect to bring a civil action to recover relocation assistance costs, pursuant to section 1 of P.L. 1984, c.30 (N.J.S.A. 20:4-4.2), the displacing agency shall, at the request of the Department, assign its right to recovery of such funds to the Department. In the event of any recovery in any such case, the Department shall repay to the displacing agency a proportion of the recovered funds, exclusive of attorneys' fees and costs, that is the same as the proportion of the relocation assistance that was paid by the displacing agency from its own funds.

New Rule, R.1989 d.402, effective August 7, 1989.
See: 21 N.J.R. 1039(a), 21 N.J.R. 2288(b).

SUBCHAPTER 9. ADMINISTRATION**5:40-9.1 Administrative agency**

These rules shall be administered by the Housing Production and Community Development Element of the Division of Housing and Community Resources, Department of Community Affairs, PO Box 806, Trenton, New Jersey 08625-0806.

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

Language change: "regulations" to "rules". Name of Bureau and Division changed and street address changed to PO Box 806.
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).

5:40-9.2 Right of hearing and time of filing

(a) Any person aggrieved by a final determination by a displacing agency other than a State agency may appeal such determination to the Housing Production and Community Development Element, which shall thoroughly review the matter and issue its findings as to the merits of the claim for relocation payments or benefits. Such appeals shall be made in writing within 15 calendar days of receipt of written notice of the determination.

(b) The Division of Housing and Community Resources shall provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to any person aggrieved either by a final determination of a displacing agency which is a State agency or by findings issued by the Housing Production and Community Development Element pursuant to (a) above.

1. Such hearing shall be conducted under the auspices of the Office of Administrative Law and the final decision shall be made by the Commissioner.

2. Any request for a hearing shall be made in writing within 15 days of receipt of written notice of the State agency determination or the findings of the Housing Production and Community Development Element, as the case may be.

(c) The parties to any hearing before the Office of Administrative Law shall be the displacing agency and the person aggrieved by the final determination of such agency.

1. Representatives of the Housing Production and Community Development Element may appear at any such hearing to testify as to the findings of the Element.

2. In all cases which it has reviewed, the Element shall provide the Office of Administrative Law and the parties with a determination memorandum setting forth the claims of the parties, the facts as determined by the Element, the regulations, statutory provisions and case law which the Element deems to be applicable, and the Element's conclusions and the reason therefor.

3. Any party to a hearing before the Office of Administrative Law may request accelerated disposition of a case. Any such request shall be made in accordance with the procedure set forth in the rules of the Office of Administrative Law at N.J.A.C. 1:1-9.4.

Amended by R.1981 d.183, effective June 4, 1981.

See: 13 N.J.R. 186(d), 13 N.J.R. 332(a).

Section substantially amended.

Amended by R.1982 d.487, effective January 17, 1983.

See: 14 N.J.R. 1188(a), 15 N.J.R. 83(b).

Added (c).

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

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

Names of Bureau and Division changed to include "community development" and "development".

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).

Case Notes

Unsuccessful applicant for relocation benefits was not entitled to a hearing on its claim. In re Berwick Ice, Inc., 231 N.J.Super. 391, 555 A.2d 735 (A.D.1989).

Commissioner of community affairs has the jurisdiction to hear cases brought under the Relocation Assistance Act of 1971 where a municipality is the displacing agency. Atty.Gen.F.O.1979, No. 3.

Local government agency action appealed pursuant to former regulation. Moran v. Randolph Twp., 6 N.J.A.R. 58 (1980).

5:40-9.3 Time for displacing agency final determination

A displacing agency shall have 15 days from the date of request to give written notice of the grant or denial of relocation payments or benefits. In the event written notice is not given within this time, the request will be deemed denied for purposes of N.J.A.C. 5:40-9.2. Notice of denial of relocation payments or benefits shall include the reasons for such denial and notice of the right to request a hearing pursuant to N.J.A.C. 5:40-9.2 and the procedure therefor, including the 15 day time limit for making such request.