

CHAPTER 15

HOUSING FOR OLDER PERSONS

Authority

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

Source and Effective Date

R.2005 d.371, effective October 4, 2005.
See: 37 N.J.R. 1682(a), 37 N.J.R. 4277(a).

Chapter Expiration Date

Chapter 15, Housing for Older Persons, expires on October 4, 2010.

Chapter Historical Note

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

Pursuant to Executive Order No. 66(1978), Chapter 15, Housing for Older Persons, was readopted as R.2000 d.187, effective April 7, 2000. See: 32 N.J.R. 648(a), 32 N.J.R. 1619(b).

Chapter 15, Housing for Older Persons, was readopted by R.2005 d.371, effective October 4, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

13:15-1.1 Purpose

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

13:15-1.2 Exemption

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

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

Amended by R.2005 d.371, effective November 7, 2005.
See: 37 N.J.R. 1682(a), 37 N.J.R. 4277(a).

In (a), substituted "the Law Against Discrimination" for "this chapter".

13:15-1.3 Elderly housing programs

The provisions regarding familial status in this chapter shall not apply to housing provided under any State program

that the Attorney General determines is specifically designed and operated to assist elderly persons (as defined in the State program); or provided under any Federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the Federal program).

Amended by R.2005 d.371, effective November 7, 2005.
See: 37 N.J.R. 1682(a), 37 N.J.R. 4277(a).
Rewrote the section.

13:15-1.4 62 or over housing

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

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

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

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

Example 2: The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the

35 units previously described need not be required to leave Blueberry Hill to qualify for the "62 or over" exemption.

13:15-1.5 55 or over housing

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the requirements of (b)1 or (b)2 below, and the requirements of (c).

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

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

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

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

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

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

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

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

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

vii. The vacancy rate of the housing facility.

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

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

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

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

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

iii. Age verification procedures;

iv. Lease provisions;

v. Written rules and regulations; and

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

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

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