

CHAPTER 6

RELOCATION ASSISTANCE

Authority

N.J.S.A. 27:1A-5, 27:1A-6, 27:7-27, 27:7-72 through 27:7-88 and the Uniform Transportation Replacement Housing and Relocation Act (P.L. 1972, c.47, as amended by P.L. 1989, c.50, effective March 14, 1989).

Source and Effective Date

R.1999 d.220, effective June 24, 1999.
See: 31 N.J.R. 1180(a), 31 N.J.R. 1952(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 6, Relocation Assistance, expires on December 21, 2004. See: 36 N.J.R. 3235(a).

Chapter Historical Note

Chapter 6, Relocation Assistance, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 6 expired on June 6, 1984.

Chapter 6, Relocation Assistance, was adopted as new rules by R.1985 d.435, effective September 3, 1985. See: 17 N.J.R. 565(a), 17 N.J.R. 243(a).

Chapter 6, Relocation Assistance was repealed and adopted as new rules by R.1989 d.421, effective August 7, 1989. See: 21 N.J.R. 1273(a), 21 N.J.R. 2290(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Relocation Assistance, was readopted by R.1994 d.400, effective July 8, 1994. See: 26 N.J.R. 1958(a), 26 N.J.R. 3183(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Relocation Assistance, was readopted by R.1999 d.220, effective June 24, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

16:6-1.1 Purpose

The intent of the rules contained in this chapter is to comply with the provisions of the Uniform Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72 et seq., as amended, including P.L. 1989, c.50.

16:6-1.2 Relocation notices

(a) As soon as is practicable, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program. The term "agency" means the entity, public or private, including the State of New Jersey, Department of Transportation, counties, municipalities, and other public entities, utilizing State or Federal funds under an aid program administered by the State of New Jersey, Department of Transportation. The written description shall accomplish at least the following:

1. Inform the person that he or she may be displaced for the project and generally describe the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
2. Inform the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims and other necessary assistance to help the person successfully relocate;
3. Inform the person that he or she will not be required to move without at least 90 days advance written notice, and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available to them; and
4. Describe the person's right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible.

(b) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. Initiation of negotiations means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative, to purchase the real property. When this occurs, all occupants shall promptly be notified, in writing, of their eligibility for applicable relocation assistance.

(c) Ninety-day notice requirements are as follows:

1. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

2. The agency shall issue the notice 90 days before it expects the person to be displaced or earlier.

3. The 90 day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating at least 30 days in advance, the specific date by which he or she must move. If the 90 day notice is issued before a comparable replacement dwelling is made available, the notice shall state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available per these regulations.

4. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the agency determines that a 90 day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety.

16:6-1.3 Availability of comparable replacement dwelling before displacement

(a) No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (described in (b) below) has been made available to the person pursuant to this chapter. Where possible, three or more comparable replacement dwellings shall be made available. Only in those situations when the local housing market does not contain three comparable dwellings, may the agency make fewer than three referrals.

(b) The term "comparable replacement dwelling" means a dwelling which the Agency determines to be:

1. Decent, safe and sanitary;
2. Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present;

3. Adequate in size to accommodate the occupants;

4. In an area not subject to unreasonable adverse environmental conditions;

5. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance; and

8. Within the financial means of the displaced person.

- i. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180 day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs, and all incidental expenses, plus any additional amount required to be paid under replacement housing of last resort.

- ii. A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

- iii. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length of occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under replacement housing of last resort.

(c) A comparable replacement dwelling will be considered to have been made available to a person if:

1. The person is informed of its location;

(d) All claims for a relocation payment shall be filed with the agency within 18 months after, for tenants, the date of displacement; for owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

1. This time period shall be waived by the agency, for good cause as determined by the agency.

(e) If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) The agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, the agency may deduct from relocation payments any rent that the displaced person owes the agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant, in writing, of its determination, the basis for its determination, and the procedures for appealing that determination.

(h) Where a person is an alien not legally present in the United States, such a person(s) shall not be eligible for relocation payments or assistance. This provision does not affect any right such a person(s) may have to just compensation for any ownership interest in the acquired property. A person(s) may self-certify lawful residency status when requested to do so by the agency. However, the agency may seek verification of such certification, within its discretion, from the Federal Immigration and Naturalization Service (INS), notwithstanding such certification. Where the INS reports to the agency that such person has been determined to be present in the United States illegally at the time of acquisition and/or the time the person(s) is required to move by the agency, and the agency determines that denial of relocation benefits will not result in exceptional and extremely unusual hardship to such person's spouse, parent or child where they are legally present in the United States, then such person(s) shall be deemed as not being eligible for Uniform Act Relocation Payments and assistance of any kind. Where the determination by the INS is changed or modified, such information upon verification from INS, shall

be taken into consideration upon the making of an appeal by the applicant to the agency.

Amended by R.1999 d.220, effective July 19, 1999.

See: 31 N.J.R. 1180(a), 31 N.J.R. 1952(a).

Added (h).

SUBCHAPTER 2. PAYMENTS FOR MOVING AND RELATED EXPENSES

16:6-2.1 Payments for actual reasonable moving and related expenses; residential moves

(a) Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:

1. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the agency determines that relocation beyond 50 miles is justified;
2. Packing, crating, unpacking, and uncrating of the personal property;
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property;
4. Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;
5. Insurance for the replacement value of the property in connection with the move and necessary storage;
6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and
7. Other moving related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.

16:6-2.2 Fixed payment for moving expenses—residential moves

Any person displaced from a dwelling or seasonal residence is entitled to receive an expense and relocation allowance as an alternative to a payment for actual moving and related expenses under N.J.A.C. 16:6-2.1. This allowance shall be determined according to the applicable schedule maintained by the Property and Relocation Unit. In those instances involving a Federal project, the schedule shall be approved by the Federal Highway Administration.

Amended by R.1999 d.220, effective July 19, 1999.

See: 31 N.J.R. 1180(a), 31 N.J.R. 1952(a).

Substituted a reference to the Property and Relocation Unit for a reference to the Bureau of Property and Relocation.

16:6-2.3 Payment for actual reasonable moving and related expenses; nonresidential moves

(a) Any business or farm operation which qualifies as a displaced person pursuant to N.J.S.A. 27:7 et seq., as amended, is entitled to payment for such actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:

1. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified;

2. Packing, crating, unpacking, and uncrating of the personal property;

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.);

4. Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;

5. Insurance for the replacement value of the personal property in connection with the move and necessary storage;

6. Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit or certification;

7. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available;

8. Professional services necessary for:

i. Planning the move of the personal property;

ii. Moving the personal property; and

iii. Installing the relocated personal property at the replacement location;

9. Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move;

10. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

i. The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

ii. The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles);

11. The reasonable cost incurred in attempting to sell an item that is not to be relocated;

12. Purchase of substituted personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

i. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade in of the replaced item; or

ii. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate;

13. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000 as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

i. Transportation;

ii. Meals and lodging away from home;

iii. Time spent searching, based on reasonable salary or earnings; and

iv. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site; and

14. Other moving-related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.

(b) The following notification and inspection requirements apply to payments under this section:

(d) If the owner is reimbursed for the cost of moving the mobile home under this section, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) The acquisition by the agency of a portion of a mobile home park property may leave the remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this chapter.

SUBCHAPTER 3. ORGANIZATION AND PROCEDURES

16:6-3.1 Exercise of powers

The Department of Transportation may exercise, on behalf of any county, municipality, or other entity, as the case may be, the powers granted to these agencies under P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq., as amended), and under his chapter.

16:6-3.2 Delegation of powers

Ordinarily, the Property and Relocation Unit, within Right of Way Office, will be responsible for administering this chapter and the attendant Federal and State law, on behalf of the Commissioner of Transportation.

Amended by R.1999 d.220, effective July 19, 1999.

See: 31 N.J.R. 1180(a), 31 N.J.R. 1952(a).

Substituted a reference to the Property and Relocation Unit for a reference to the Bureau of Property and Relocation, and substituted a reference to the Right of Way Office for a reference to the Division of Right of Way.

16:6-3.3 Appeal of agency determination

(a) Any aggrieved person may file a written appeal, regardless of form, with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this chap-

ter. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a relocation payment.

(b) The appeal must be initiated within 90 days after the person receives written notification of the agency's determination on the person's claim. The written appeal should be addressed to the Right of Way District Manager. If the matter is not resolved to the person's satisfaction, the person may request an in-person review by writing to the New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600, Attention: Manager of Right of Way, who is the Commissioner's authorized designee to hear appeals.

(c) A person has the right to be represented by legal counsel or other representative in connection with the appeal, but solely at the person's own expense. The person shall be permitted to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the agency. The agency may impose reasonable conditions on the person's right to inspect, consistent with applicable laws. In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(d) Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall advise the person of his or her opportunity to request a contested case before the Office of Administrative Law, conducted 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.1999 d.220, effective July 19, 1999.

See: 31 N.J.R. 1180(a), 31 N.J.R. 1952(a).

In (b), substituted a reference to the Right of Way District Manager for a reference to the Right of Way District Supervisor and substituted a reference to the Manager of Right of Way for a reference to the Director of Right of Way.

16:6-3.4 Federal law

The administration of relocation assistance shall be provided consistent with applicable Federal law and regulations.