

CHAPTER 24

CONDOMINIUM, FEE SIMPLE AND COOPERATIVE CONVERSION AND MOBILE HOME PARK RETIREMENT

Authority

N.J.S.A. 2A:18-61.12 and 2A:18-61.38.

Source and Effective Date

R.1995 d.366, effective July 12, 1995.
See: 27 N.J.R. 1718(a), 27 N.J.R. 2578.

Executive Order No. 66(1978) Expiration Date

Chapter 24, Condominium and Cooperative Conversion, expires on June 12, 2000.

Historical Note

Chapter 24, Condominium and Cooperative Conversion, became effective February 9, 1978 as R.1978 d.22. See: 9 N.J.R. 410(a), 10 N.J.R. 55(b). Chapter 24 was readopted as R.1985 d.529, effective September 30, 1985. Pursuant to Executive Order No. 66(1978), Chapter 24 was readopted as R.1990 d.379, eff. July 10, 1990. See: 22 N.J.R. 1455(b), 22 N.J.R. 2276(a). See: Source and Effective Date.

See subchapter and section annotations for specific rulemaking.

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SUBCHAPTER 1. GENERAL PROVISIONS

Authority

N.J.S.A. 2A:18-61.12 and 2A:18-61.38.

Source and Effective Date

R.1985 d.529, effective September 30, 1985.
See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Historical Note

All provisions of this subchapter became effective February 9, 1978 as R.1978 d.22. See: 9 N.J.R. 410(a), 10 N.J.R. 55(b). Amendments became effective May 7, 1981 as R.1981 d.131. See: 13 N.J.R. 70(a), 13 N.J.R. 258(e), 13 N.J.R. 333(c). Further amendments became effective September 10, 1981 as R.1981 d.354. See: 13 N.J.R. 392(a), 13 N.J.R. 562(a). This subchapter was readopted pursuant to Executive Order 66(1978) effective September 30, 1985 with amendments effective October 21, 1985 as R.1985 d.529. See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a). See chapter and section levels for further amendments.

5:24-1.1 Introduction

P.L. 1975, c.311, which amended and supplemented P.L. 1974, c.49 (N.J.S.A. 2A:18-61.1 through 61.12), became effective on February 19, 1976. P.L. 1981, c.8, which amended P.L. 1974, c.49 and P.L. 1975, c.311 so as to extend certain protections to owners of mobile homes in mobile home parks being permanently retired from the rental market, became effective January 26, 1981. The rules contained in this subchapter have been adopted to enable the Department of Community Affairs (DCA) to implement these laws and to assist owners and tenants of properties affected by them in complying with, and realizing the protection provided by, their requirements.

5:24-1.2 Procedures; definitions

(a) When an owner seeks to convert a building from the rental market to a condominium or a cooperative or fee simple ownership of two or more dwelling units, or to convert a mobile home park from the rental market to a condominium or cooperative or fee simple ownership of two or more units or park sites, or to retire a mobile home park permanently from the rental market, there are several procedures required to be followed pursuant to N.J.S.A. 2A:18-61.6 through 61.12.

(b) The following terms used in the statutes and these rules are defined as follows:

1. "Multiple dwelling" shall mean any building or structure of one or more stories and any land appurtenant thereto, and any portion thereof, in which three or more units of dwelling space are occupied, or are intended to

be occupied, by three or more persons who live independently of each other; provided, that this definition shall not be construed to include any building or structure defined as a hotel in N.J.S.A. 55:13A-3, or registered as a hotel with the Commissioner of Community Affairs, or occupied or intended to be occupied exclusively as such, or any building under a condominium form of ownership.

2. "Condominium", as in N.J.S.A. 46:8B-1 et seq., means the form of ownership of real property under a master deed providing for ownership by one or more owners of units of improvements together with an undivided interest in common elements appurtenant to each such unit.

3. "Cooperative" means a housing corporation or association which entitles the holder of a share of membership interest thereof to possess and occupy for dwelling purposes, a house, apartment or other structure owned or leased by said corporation or association, or to lease or purchase a dwelling to be constructed by said corporation or association.

4. "Mobile home park" means any park, including, without limitation, a trailer park or camp, equipped to accommodate mobile homes on a year-round basis.

5. "Rooming or boarding house" means a building or structure having at least two dwelling units which do not have separate cooking and sanitary facilities for the unit and which are occupied by persons living independently of each other, and having at least 15 percent of such units occupied by persons who either have no other residence or who reside there for more than 90 days.

6. "Comparable housing or park site" means housing that is:

i. Decent, safe, sanitary, and in compliance with all local and State housing codes;

ii. Open to all persons regardless of race, creed, national origin, ancestry, marital status or sex; and

iii. Provided with facilities equivalent to that provided by the landlord in the dwelling unit or park site in which the tenant or mobile home owner then resides in regard to each of the following:

(1) Apartment size, including number of rooms, or park site size;

(2) Rent range;

(3) Apartment's major kitchen and bathroom facilities; and

(4) Special facilities necessary for the handicapped or infirm;

iv. Located in an area not less desirable than the area in which the tenant or mobile home owner then resides in regard to each of the following:

(1) Accessibility to the tenant or mobile home owner's place of employment;

(2) Accessibility of community and commercial facilities; and

(3) Environmental quality and conditions; and

v. In accordance with additional reasonable criteria that the tenant or mobile home owner has requested in writing at the time of making any request under P.L. 1975, c.311, as amended.

Amended by R.1985 d.529, effective October 21, 1985.

See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Substantially amended.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Definition of comparable housing or park site added.

5:24-1.3 Documents required; conversion

(a) Any owner who intends to convert a multiple dwelling, a rooming or boarding house or a mobile home park into a condominium or cooperative, or to fee simple ownership of units or park sites, must first provide tenants with a "notice of intent" and a "full plan of conversion."

(b) These two items must include all the items described below and must be provided to all affected tenants 60 days before serving the three year notice of intent to institute proceedings to evict.

(c) Both the notice of intent and the full plan of conversion shall be sent by certified mail, and if not claimed they shall be sent by regular mail.

(d) A duplicate of the 60-day notice and full plan shall be transmitted to the clerk of the municipality.

(e) Any material change in the full plan of conversion or amendment to the Public Offering Statement (POS) under N.J.S.A. 45:22A-21 et seq. and N.J.A.C. 5:26 shall require such extension of the 90-day exclusive right to purchase as may be necessary to allow tenants who have not yet purchased their units at least 30 days remaining in which to exercise such exclusive right.

1. If the purchase contract offered by the developer does not include a contingency provision allowing a purchaser at least 60 days in which to secure financing for the purchase, then, unless the developer is providing such financing upon terms found by the Division of Codes and Standards to be reasonable, the exclusive right to purchase period shall be extended as long as may be necessary to allow such tenants at least 60 days in which to exercise such exclusive right.

2. A change shall be deemed "material" for the purpose of (e) of this section if so deemed by the Division of Housing and Development pursuant to N.J.A.C. 5:25-3.3(a).

3. A change shall be deemed "material" for the purpose of (e) above if it is deemed by the Division of Codes and Standards to be a "material change" as defined in N.J.A.C. 5:26-1.3.

4. Any determination by the Division of Codes and Standards that a change is material shall be made within the 90 day exclusive right to purchase period or within such further period as may be required by the Division of Codes and Standards in order to investigate any allegation made during such 90 day period as to the existence of any circumstance or condition that might constitute or necessitate a material change.

As amended, R.1981 d.131, eff. May 7, 1981.
See: 13 N.J.R. 70(a), 13 N.J.R. 258(e), 13 N.J.R. 333(c).
(e) added.

Amended by R.1985 d.429, effective October 21, 1985.
See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Substantially amended.

Amended by R.1990 d.507, effective October 15, 1990.
See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Conversion added to title.

Amended by R.1995 d.366, effective July 3, 1995.
See: 27 N.J.R. 1718(a), 27 N.J.R. 2578(a).

In (e), designated existing text as new 1 and renumbered former 1 to 3 as 2 to 4; substituted "Division of Codes and Standards" for "Division of Housing and Development" throughout; and corrected citations.

Case Notes

Compliance with notice to quit and demand for possession requirements in cooperative conversion; tenant not qualified for 40 year stay under Senior Citizens and Disabled Protected Tenancy Act granted one-year eviction stays. *Radin v. Bartolomei*, 195 N.J.Super. 626, 481 A.2d 313 (Law Div.Sp.Div.Pt.1984).

5:24-1.4 Contents of notice of intent to convert

(a) The notice of intent to convert shall consist of three items as follows:

1. Notice to the tenants of their right to purchase ownership in the premises at a specified price in accordance with section 5 of the act;

2. Notice that the tenant in occupancy at this time shall have an exclusive right to purchase the unit or park site or shares of stock allocated thereto for the first 90 days after such notice, and that during this 90-day period the unit or site cannot be shown to a third party unless the tenant has in writing waived the right to purchase;

3. A copy of this subchapter or any statement of tenants' rights in relation to conversion subsequently approved for this purpose by the Department of Community Affairs. These may be obtained from: Bureau of Homeowner Protection, Office of Landlord-Tenant Information, CN 805, Trenton, New Jersey 08625.

As amended, R.1981 d.354, eff. September 10, 1981.
See: 13 N.J.R. 392(a), 13 N.J.R. 562(a).

(a)3: address change
Amended by R.1985 d.529, effective October 21, 1985.
See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).
Address change.
Amended by R.1995 d.366, effective July 3, 1995.
See: 27 N.J.R. 1718(a), 27 N.J.R. 2578(a).
In (a)3 corrected an address.

Case Notes

Incorporation by reference of other documents in landlord's notice of intention to convert to condominium. *809-811 Washington Street Associates v. Grego*, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

Summary of tenants rights is not required in notice of intent to convert. *809-811 Washington Street Associates v. Grego*, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

Apartment owner failed to fulfill obligation of full compliance with antieviction statute. *Amato v. Pelligrini*, 246 N.J.Super. 34, 586 A.2d 856 (L.1990).

5:24-1.5 Full plan of conversion

(a) The "full plan of conversion shall contain the documents and information required in (d) below and in either (b) or (c) below, as may be appropriate, and shall be in compliance with the requirements of (e) and (f) below.

(b) The full plan of condominium or fee simple conversion shall contain the following documents and information:

1. A legal description of the property to be converted together with a map showing the site plan and typical floor plans;

2. The price of the unit being offered;

3. Terms of sale, including copies of sales agreements, financial arrangements, mortgages, and so forth;

4. Copies of the instruments which will be delivered to the purchaser to evidence his interest in the condominium including the unit deed, master deed, bylaws of the condominium association, and such other instruments required to secure purchaser in the possessing of his unit;

5. A statement as to whether a clear marketable title will be given, listing any encumbrances that will survive closing;

6. A statement as to whether a title company, licensed to do business in New Jersey, attests to the validity of the condominium and agrees to insure title to the individual units;

7. A statement of existing taxes and existing or proposed special taxes or assessments which affect said property, indicating those that will carry over to the condominium;

8. An engineering survey, prepared by a licensed engineer or registered architect which shall include mechanical, structural, electrical and engineering reports to disclose the condition and age of the building and its components as of the date of offering. Survey must include items in (d) below;

9. An audited statement of expenses on the property being offered, certified by an independent public accountant, for the past five years or the period of the seller's ownership of the property, whichever is less;

10. Disclosure of all contracts, appointments, agreements and binding obligations made or to be made by the seller that will be binding upon the condominium, setting forth the full details thereof, including the length of time of the obligations or arrangements;

11. A statement that all deposit moneys will be kept in trust until completion of the transaction. The name and address of the escrow agent or trust account to be disclosed;

12. A projected schedule of income and expenses (budget) for the first year of operation of the condominium, including monthly carrying charges for each unit;

13. Disclosure as to the legal jurisdiction wherein the property lies, and a statement as to the extent to which such property is in compliance with all applicable zoning and housing codes and other applicable regulations;

14. The seller's name, address, and the form, date and jurisdiction of organization, and the address of its sales office.

(c) The full plan of cooperative conversion shall contain the following documents and information, which shall be in addition to any requirements which may be imposed by the Bureau of Securities in the New Jersey Department of Law and Public Safety:

Note: This is in addition to any requirements which may be imposed by the Bureau of Securities in the New Jersey Department of Law and Public Safety.

1. Detailed terms of the transaction including the selling price of each unit or share;

2. A legal description of the property to be converted together with a map showing the site plan and typical floor plans;

3. The nature of the interest in the property and how title thereto is to be held;

4. The basis, rate and method of computing depreciation;

5. The nature of the fiduciary relationship of the principals involved, their financial relationship, past, present and future, to the property offered to be converted;

6. All restrictions, if any, or transfer of participant's interest;

7. A statement that all deposit moneys will be kept in trust until completion of the transaction, the name and address of the escrow agent or trust account to be disclosed;

8. The plan shall clearly define which of the real estate holdings offered are in fee ownership or on leaseholds;

9. The terms and conditions of such leaseholds shall be fully disclosed;

10. Copies of the instruments which will be delivered to the purchaser to evidence his interest in the cooperative including the bylaws of the cooperative, the proprietary lease and such other instruments required to secure purchaser in the possession of his unit;

11. A statement as to whether a clear and marketable title will be given, listing any encumbrances that will survive closing;

12. A statement as to whether a title company, licensed to do business in New Jersey, attests to the validity of the cooperative and agrees to insure title to the property;

13. A projected schedule of income and expenses (budget) for the first year of operation of the cooperative, indicating monthly carrying charges for each unit;

14. A statement of any existing taxes and existing or proposed special taxes or assessments which affect said property, indicating those that will carry over to the cooperative;

15. An engineering survey, prepared by a licensed engineer or registered architect which shall include mechanical, structural, electrical and engineering reports to disclose the condition and age of the building and its components as of the date of offering. Survey must include items listed in subsection (c) of this section;

16. An audited statement of expenses on the property being offered, certified by an independent public accountant, for the past five years or the period of the seller's ownership of the property, whichever is less;

17. Disclosure of all contracts, appointments, agreements, and binding obligations made or to be made by the seller that will be binding upon the cooperative, setting forth the full details thereof, including the length of time of the obligations or arrangements;

18. Disclosure as to the legal jurisdiction wherein the property lies and a statement as to the extent to which such property lies and a statement as to the extent to which such property is in compliance with all applicable zoning and housing codes and other applicable regulations;

19. The seller's name, address, and the form, date and jurisdiction of organization and the address of its sales office.

(d) Rules concerning the engineering survey outline are as follows.

1. The engineering survey shall be in narrative form and include, but not be limited to description and condition of all applicable items in the outline below, in the order listed. The outline is intended as an aid to the inspecting architect or engineer and not as a questionnaire.

- i. Address;
- ii. Block number, lot number;
- iii. Zoning;
- iv. Year built;
- v. Violations outstanding—building, housing, air pollution, fire, other authorities;
- vi. Alterations—date, number and brief description;
- vii. Class of construction (fireproof, non-fireproof, and so forth).

2. Site:

- i. Location;
- ii. Size—dimensions, acreage;
- iii. Streets—project owned or public:
 - (1) Paving—material;
 - (2) Curbing—material;
 - (3) Sidewalks—material;
 - (4) Drainage;
 - (5) Catch basins—type sewers;
 - (6) Street lighting;
 - (7) Drives—paving, curbing, drainage;
 - (8) Off-street parking areas—paving, curbing, drainage.
- iv. Utilities—give company or municipality furnishing service:
 - (1) Water supply;
 - (2) Sanitary sewers;
 - (3) Storm sewers;
 - (4) Gas;
 - (5) Electric;
 - (6) Telephone.
- v. Subsoil conditions including water conditions;
- vi. Number of buildings and use.

3. Structural system:

- i. Steel or concrete frame;
- ii. Other—describe;
- iii. Type of foundations.

4. Exterior of building:

- i. Walls (describe wall materials on all sides at all levels);
- ii. Insulation—"R" number;
- iii. Windows (types and materials) in all parts of building:
 - (1) Sills;
 - (2) Grilles;
 - (3) Stormsash;
 - (4) Screens;
 - (5) Hardware;
 - (6) Single or double glazing;
 - (7) Caulking.
- iv. Parapets and copings—materials;
- v. Chimneys and caps—number and materials for each:
 - (1) Boilers;
 - (2) Incinerators;
 - (3) Fireplaces;
 - (4) Other.
- vi. Balconies and terraces:
 - (1) Deck finish;
 - (2) Balustrade (type and material);
 - (3) Copings;
 - (4) Railings;
 - (5) Soffit;
 - (6) Doors to balcony—type and material.
- vii. Tenant entrances:
 - (1) Marques;
 - (2) Canopy;
 - (3) Exterior doors;
 - (4) Vestibule doors;
 - (5) Exterior stairs;
 - (6) Railings;
 - (7) Other.
- viii. Service entrances:
 - (1) Doors;
 - (2) Gates;
 - (3) Exterior stairs;

- (4) Railings;
- (5) Other.
- 5. Roofs and roof structures:
 - i. Type roofs (for all areas):
 - (1) Material (give number of plies if built up);
 - (2) Insulation—"R" number;
 - (3) Surface finish;
 - (4) Age;
 - (5) Bond or guarantee (if any);
 - (6) If old roof is recovered, give date and description;
 - (7) Flashing materials;
 - (8) Drains;
 - (9) Gutters and leaders.
 - ii. Skylights;
 - iii. Bulkheads—wall materials:
 - (1) Stair;
 - (2) Elevator;
 - (3) Other.
 - iv. Water tank enclosure (if any);
 - v. Metal work at roof levels:
 - (1) Exterior metal stairs;
 - (2) Ladders;
 - (3) Railings;
 - (4) Other.
- 6. Fire escapes:
 - i. Number;
 - ii. Type;
 - iii. Material.
- 7. Yards and courts:
 - i. Paving;
 - ii. Drainage;
 - iii. Railings;
 - iv. Stairs;
 - v. Fencing or walls;
 - vi. Other.
- 8. Interior stairs:
 - i. Number of stairs of each type;
 - ii. Enclosure—construction and interior finishes;
 - iii. Stair construction (steel, concrete, wood, and so forth);
 - iv. Treads and risers—materials;
 - v. Railings.
- 9. Elevators:
 - i. Number of passenger and service elevators;
 - ii. Manufacturer;
 - iii. Age;
 - iv. Type operation and speed (feet per minute):
 - (1) Manual;
 - (2) Automatic (type controls);
 - (3) Doors (sliding, swinging, manual, automatic);
 - (4) Date and description of improvements;
 - (5) Location of machine rooms;
 - (6) Type of machine and input power:
 - (A) DC to motor;
 - (B) AC to motor—generator set;
 - (C) Other.
 - v. Description of cabs:
 - (1) Floor;
 - (2) Walls;
 - (3) Ceiling;
 - (4) Date of last inspection (for example government);
 - (5) Maintenance contract, and so forth.
- 10. Laundry rooms:
 - i. Location and number of rooms;
 - ii. Washers—number;
 - iii. Dryers—number;
 - iv. Laundry trays—number;
 - v. Room ventilation;
 - vi. Dryer ventilation;
 - vii. Operation (co-op owned, common element or concession).
- 11. Refuse disposal:
 - i. Method of disposal;
 - ii. Number of incinerators or compaction units:
 - (1) Approval by authority having jurisdiction;
 - iii. Storage location;

- iv. Pick-up schedule;
- v. Public or contract collection.
- 12. Plumbing and drainage:
 - i. Water supply:
 - (1) Source or company—approvals as required;
 - (2) Meters—individual or common charges;
 - (3) Piping—materials, age, condition, insulation (Date and description of replacement or major improvements);
 - ii. Describe system, pumps, storage;
 - iii. Fire protection system—standpipes, hoses, sprinklers, siamese connections;
 - iv. Water storage tanks:
 - (1) Number;
 - (2) Material;
 - (3) Location;
 - (4) Capacity—fire reserve.
 - v. Water pressure;
 - vi. Sanitary sewage system;
 - vii. Piping—age and materials;
 - viii. Sewage pumps (if any);
 - ix. Sewage disposal—public, private, treatment, drainfield, sewer;
 - x. Storm drainage system;
 - xi. Piping—age and materials;
 - xii. Pumps (if any);
 - xiii. Method of disposal.
- 13. Heating:
 - i. Method;
 - ii. Number of boilers;
 - iii. Fuel;
 - iv. Manufacturer of boilers, age and date of installation;
 - v. Manufacturer of burners, age and date of installation;
 - vi. Date of boiler inspection;
 - vii. Capacity of oil tank;
 - viii. Location of oil tank;
 - ix. Date and description of major changes or improvements to system;
 - x. Type of controls;
 - xi. Description of radiators, piping, insulation, valves, pumps, and so forth;
 - xii. Method of heating and distributing domestic hot water.
- 14. Ventilation:
 - i. System—describe (Include windowless areas, halls, garages, laundries, kitchens, baths.
- 15. Air conditioning:
 - i. Type system—central system or individual units;
 - ii. Window unit ownership—tenant, common element or co-op;
 - iii. Water tower, air-cooled condensers—location.
- 16. Gas supply:
 - i. Type—bottled or main service;
 - ii. Meters—individual or common;
 - iii. Piping—material, condition.
- 17. Pest control:
 - i. Need and frequency of service.
- 18. Electrical:
 - i. Date of installation;
 - ii. Improvements—date and complete description;
 - iii. Meters—common or individual;
 - iv. Service entrance equipment including:
 - (1) Voltage and current ratings;
 - (2) Phases.
 - v. Ratings of main fuses, distribution breakers or fuses to apartments;
 - vi. Adequacy of:
 - (1) Service (average number circuits per apartment and capacities);
 - (2) Lighting and fixtures;
 - (3) Convenience outlets; appliance outlets (average number per room including air-conditioner outlets).
 - vii. Intercommunication system and door signal system;
 - viii. Switchboard;
 - ix. Television reception facilities:
 - (1) Master antenna—apartment outlet distribution;
 - (2) Cable television;
 - (3) Antenna by tenants;

(4) Security television: Number cameras, monitors.

x. Description and adequacy of lighting:

- (1) Entrance;
- (2) Halls and stairs;
- (3) Yard;
- (4) Site.

19. Garages and parking areas:

- i. Location;
- ii. Number of parking spaces and how allocated;
- iii. Type of parking (attended?);
- iv. Ventilation—method;
- v. Fire protection;
- vi. Drains.

20. Recreation facilities:

- i. Swimming pool—approval by authorities;
- ii. Other.

(e) In order to meet the procedural requirements to evict tenants who choose not to purchase ownership in the condominium, fee simple development or cooperative, a three-year notice of intention to initiate a court action for eviction must be given.

1. The owner must wait 60 days after serving the "notice of intent" to convert and "the full plan of conversion" before giving the three year notice.

2. Where a written lease is in effect for a longer period than three years, no court action seeking eviction can be instituted until the lease expires.

3. Serving the three year notice shall have no effect on the total 90 days of exclusive right to purchase provided for in the Act. The final 30 days can run concurrently with the beginning of the three year notice.

4. This three year notice shall specify the cause for terminating the tenancy and shall be served personally upon the tenant by giving him a copy or by leaving a copy at the usual place of abode with some member of the family above the age of 14, or by certified mail; if the certified letter is not claimed, notice shall be sent by regular mail.

(f) Copies of the full plan of conversion shall conform to the following standards:

1. No printing shall be in a type smaller than six point;
2. There shall be a front cover that shall contain the name and address both of the developer and of the development;

3. There shall be a reasonably detailed table of contents setting forth the subject matter of the various sections, subsections and documents contained in the full plan of conversion and the page on which each begins;

4. The text shall be printed on good quality unglazed white paper that is no smaller than 8½ inches by 11 inches and no larger than 8½ inches by 14 inches. The cover may be of a different color, but all printing on the cover shall be legible; and

5. Each copy shall be bound, at a minimum, with heavy-duty staples.

As amended, R.1981 d.354, effective September 10, 1981.

See: 13 N.J.R. 392(a), 13 N.J.R. 562(a).

(a) Substantially amended, (b) "Condominium" added, (c) "cooperative" added.

Amended by R.1985 d.529, effective October 21, 1985.

See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Substantially amended.

Amended by R.1991 d.108, effective March 4, 1991.

See: 22 N.J.R. 3669(a), 23 N.J.R. 687(b).

Fee simple developments added; standards for full plan of conversion added at (f).

Case Notes

Conversion plan for condominium complied with regulation requiring it to state whether any title company had agreed to ensure title to individual units. 809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

It was not improper for landlord converting to condominium to present full plan of conversion to tenants as part of public offering statement. 809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

If notice of intention to convert to condominium is accompanied by copy of regulations governing conversions, approved summary of tenants rights is not required. 809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

Nothing in the Anti-Eviction Act or attendant regulations precludes incorporation by reference of other documents in notice of intention to convert to condominium. 809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

Department letter approving application for registration of landlord's public offering statement was limited to approval of compliance with Planned Real Estate Development Full Disclosure Act and did not express opinion regarding compliance with Anti-Eviction Act. 809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 (A.D.1992).

Department registration of landlord's public offering statement did not preclude court from reviewing the form of combined public offering statement and full plan of conversion to determine conformity with the Anti-Eviction Act and implementing regulations. 809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 (A.D. 1992).

Apartment owner failed to fulfill obligation of full compliance with antieviction statute. Amato v. Pelligrini, 246 N.J.Super. 34, 586 A.2d 856 (L.1990).

Full and complete compliance with condominium conversion statute and implementing regulations is required of condominium developers. Market Dundee Corp. v. Jaramillo, 244 N.J.Super. 385, 582 A.2d 850 (L.1990).

5:24-1.6 Rights of tenants and mobile home owners in occupancy

(a) Tenants in occupancy prior to the recording of the master deed, deed establishing a fee simple lot or deed transferring the property to a cooperative corporation or association who have received the three year notice of eviction on the grounds of conversion, or mobile home owners who have received the 18 month notice of eviction on the grounds of permanent retirement of the mobile home park from the rental market, have the right, for 18 full months after the receipt of such notice, to request of the landlord, and to be offered by the landlord, personally or through an agent, a reasonable opportunity to examine and rent "comparable housing," as defined in N.J.A.C. 5:24-1.2.

(b) In order to be deemed to have offered a tenant or a mobile home owner a reasonable opportunity to examine and rent comparable housing, a landlord, or a person clearly authorized by a letter to the tenant or mobile home owner to be the landlord's agent, must offer a comparable rental unit or mobile home park site fulfilling the definition of "comparable housing" set forth in N.J.A.C. 5:24-1.2. An offer of comparable housing must include the following elements:

1. The offer must be made with reasonable notice in order to give the tenant or mobile home owner a fair opportunity to examine and rent the unit or mobile home park site. Reasonable notice must be given to the tenant or mobile home owner by personal service or certified mail no less than 72 hours in advance, exclusive of legal holidays, of the opportunity to examine comparable housing;

2. If the landlord of the proposed comparable unit or mobile home park site should reject the application of any tenant or mobile home owner for such comparable housing, the offer shall not be construed as an offer of comparable housing as required in these rules; and

3. In no case shall a comparable rental unit or mobile home park site be deemed to have been offered if it was not available to be rented to the tenant or mobile home owner.

Amended by R.1985 d.529, effective October 21, 1985.

See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Substantially amended.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Comparable housing moved to 1.1; provision for mobile home owners added.

Case Notes

Notice provided to tenant upon conversion of apartment building to condominium ownership should fully apprise tenant of right to purchase, and of rights as tenant if he chooses not to purchase. *Riotto v. Van Houten*, 235 N.J.Super. 162, 561 A.2d 691 (L.1988), affirmed 235 N.J.Super. 177, 561 A.2d 1168.

Landlord in action for possession of unit following conversion to condominium form of ownership not required to provide comparable housing after notice of conversion when tenant did not request it;

landlord not estopped from enforcing notice of conversion; landlord waived right to summary eviction pursuant to conversion statute by collecting rent for two years after expiration of three-year period following notice of conversion. *Fairken Assoc. v. Hutchin*, 223 N.J.Super. 274, 538 A.2d 465 (Law Div.1987).

5:24-1.7 Evictions

(a) In order to evict for conversion from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites at the end of the three year notice period, or in order to evict for permanent retirement of a mobile home park from the rental market and the end of the 18 month notice period, the landlord must prove in court that the tenant or mobile home owner was offered comparable housing as requested and as defined in N.J.A.C. 5:24-1.2 and reasonable opportunity to examine and rent such housing, as described in N.J.A.C. 5:24-1.6(b).

(b) The court has authority under P.L.1975, c. 311, as amended, to authorize one-year stays of eviction with reasonable rent increases until the court is satisfied that the tenant or mobile home owner has been offered comparable housing and a reasonable opportunity to examine and rent such housing.

(c) If, after at least one one-year stay has been authorized, the landlord provides the tenant or mobile home owner with a "hardship relocation compensation," which shall consist of a waiver of payment of five months' rent, and has demonstrated this to the court, then the court cannot authorize any further stays. A warrant for possession could then issue at the end of the one-year stay.

(d) If the landlord does not provide the relocation compensation of five months' rent and fails, within one year of a prior stay, to allege to the court that the tenant was offered a reasonable opportunity to examine and rent comparable housing, the court shall automatically renew the one-year stay.

(e) The court can grant up to five one-year stays if evidence is not provided to the court of a reasonable opportunity to examine and rent comparable housing or of the payment of a hardship relocation compensation of waiver of payment of five months' rent.

Amended by R.1985 d.529, effective October 21, 1985.

See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Reference changed from "1.5" to "1.6".

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Provisions added for conversion from rental market to condo or permanent retirement of mobile home.

Case Notes

"Hardship relocation compensation" is not necessarily "automatic," in that landlord had alternative to offer tenant hardship relocation compensation of waiver of payment of five months' rent. *Daskel Investors, Inc. v. Rosenbloom*, 244 N.J.Super. 393, 582 A.2d 854 (L.1990).

Notice provided to tenant upon conversion of apartment to condominium ownership should fully apprise tenant of rights. *Riotto v. Van Houten*, 235 N.J.Super. 162, 561 A.2d 691 (L.1988), affirmed 235 N.J.Super. 177, 561 A.2d 1168.

Additional one-year eviction stays cannot be granted if landlord waives five months rent; unclean hands doctrine not invoked; comparable housing search; notice of hardship relocation compensation; regulatory purpose to give landlord alternative to providing comparable housing. *Mountain Management Corp. v. Hinnant*, 201 N.J.Super. 45, 492 A.2d 693 (App.Div.1985).

5:24-1.8 Moving expense compensation

Any tenant whose tenancy began before the conversion, and is not evicted on grounds other than that of a conversion, and any mobile home owner who is not being evicted on grounds other than permanent retirement of the mobile home park from the rental market, shall receive from the landlord a moving expense compensation of a waiver of payment of one month's rent. No warrant of possession can be given until payment of one month's waiver has been proved. Even if tenants or mobile home owners leave without eviction proceedings, they are entitled to the waiver of payment of one month's rent. Nothing in this section in any way waives the rights of other parties under the security deposit law.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Mobile home owners also eligible for moving expense compensation.

5:24-1.9 Required statement

(a) Any tenants who begin their initial tenancy after the master deed or deed establishing fee simple lots or deed to a cooperative corporation or association is filed by the owner must be provided at the time of applying and at the establishment of a rental agreement with a separate statement conforming exactly to the words in capital letters which follow. The statement must be included as the first clause of any written lease. This is the statement:

STATEMENT

THIS BUILDING (PARK) HAS BEEN CONVERTED TO A CONDOMINIUM OR COOPERATIVE OR TO FEE SIMPLE OWNERSHIP OF THE DWELLING UNITS OR PARK SITES. YOUR TENANCY CAN BE TERMINATED UPON 60 DAYS NOTICE IF YOUR APARTMENT (OR PARK SITE) IS SOLD TO A BUYER WHO SEEKS TO PERSONALLY OCCUPY IT. IF YOU MOVE OUT AS A RESULT OF RECEIVING SUCH A NOTICE, AND THE LANDLORD ARBITRARILY FAILS TO COMPLETE THE SALE, THE LANDLORD SHALL BE LIABLE TO YOU FOR TREBLE DAMAGES AND COURT COSTS.

(b) If a tenant whose tenancy began after the conversion was initiated and was not given proper notice as provided in (a) above, the tenant will have the right to a three year notice as provided for in the previous portion of these regulations.

(c) If an owner has given the proper statement as part of the lease as described in (a) above, the owner will still be required to provide a 60-day notice prior to instituting court action for eviction which specified the cause in detail and is served personally as required for any eviction. The notice must say that the apartment has been sold to a buyer who seeks to personally occupy it.

Amended by R.1985 d.529, effective October 21, 1985.

See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Substantially amended.

5:24-1.10 Landlord's liability

(a) The landlord, whether the owner of the building or of the unit, can be liable to a former tenant in a civil action for triple damages plus attorney's fees and court costs for violating the requirements of N.J.A.C. 5:24-1.9.

(b) This penalty of triple damages plus attorney's fees and court costs is also applicable where a tenant vacates the premises after being given a notice alleging that the landlord seeks to personally occupy the premises under paragraph L of N.J.S.A. 2A:18-61.1, and the landlord thereafter arbitrarily fails to execute the contract for sale or take personal occupancy, but instead permits personal occupancy by another tenant.

(c) This penalty of triple damages plus attorney's fees and court costs is also applicable where a tenant or mobile home owner vacates the premises after being given a notice alleging that the landlord seeks to permanently board up or demolish the premises or retire the premises from rental use under subparagraph g(1) or paragraph h of N.J.S.A. 2A:18-61.1 and the landlord thereafter permits personal occupancy of the premises by another tenant or mobile home owner within five years of such vacancy.

(d) A tenant must sue in a civil court action to recover any such damages.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Term "owner" changed to "landlord;" (c) added.

Amended by R.1995 d.366, effective July 3, 1995.

See: 27 N.J.R. 1718(a), 27 N.J.R. 2578(a).

Corrected a citation.

5:24-1.11 Copies of this subchapter required to be furnished to certain tenants

(a) Copies of this subchapter shall be provided to all tenants of buildings, and all mobile home owners in mobile home parks, either about to be, or being, converted to a condominium or cooperative or fee simple ownership of two or more units or park sites as part of the 60-day notice of intent to convert and the full plan of conversion. The mobile home owner or tenant's receipt of a copy of these rules shall be interpreted as being an integral and procedurally necessary part of the "full plan of conversion" described in N.J.A.C. 5:24-1.5.

(b) Copies of this subchapter shall be provided to all mobile home owners in mobile home parks being permanently retired from the rental market at or prior to the time at which eviction notices are served.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3218(a).

Provision for mobile home owners added; copies of N.J.A.C. 5:24 to be distributed with all eviction notices.

Case Notes

Apartment owner failed to fulfill his obligation of full compliance with antieviction statute where owner did not prove that up-to-date copy of administrative code provisions relating to condominium conversion were served on tenant. *Amato v. Pelligrini*, 246 N.J.Super. 34, 586 A.2d 856 (L.1990).

Landlord's obligation to notify tenant of rights upon conversion of apartment to condominium ownership was not complete upon landlord's offer to provide tenant with copies of notice of intent to convert and full plan of conversion. *Riotto v. Van Houten*, 235 N.J.Super. 162, 561 A.2d 691 (L.1988), affirmed 235 N.J.Super. 177, 561 A.2d 1168.

Landlord's failure to properly notify tenant of rights upon conversion of apartment building to condominium ownership prevented landlord from bringing action to summarily dispossess tenant from unit. *Riotto v. Van Houten*, 235 N.J.Super. 162, 561 A.2d 691 (L.1988), affirmed 235 N.J.Super. 177, 561 A.2d 1168.

5:24-1.12 Standards of fair dealing

(a) Any discount or reduction in sales price offered to a tenant in occupancy in order to induce such tenant to agree to purchase his unit during the exclusive right to purchase period shall be available, without any change that would have the effect of raising the price to such tenant, for the entire exclusive right to purchase period. Any subsequent discount or reduction in sales price, offered at any time during the exclusive right to purchase period, must be continued through the end of that period.

(b) No owner of a building or of a unit or of a proprietary lease to a unit, or person acting on behalf of or with the consent of such owner, shall engage in any course of conduct which unreasonably disturbs any tenant in the lawful use and occupancy of any unit. The conduct hereby prohibited shall include, but not be limited to, willful interruption or discontinuance of services or failure to correct violations of applicable housing, health and safety codes and the issuance of false or otherwise illegal notices.

(c) No owner of a building or of a unit or of a proprietary lease to a unit shall impose an unreasonable rent increase on a tenant lawfully occupying any unit. An increase shall be presumed to be unreasonable if it is in excess of the increase that would be allowed under any municipal rent control ordinance applicable to the building immediately

prior to conversion or if it reflects increased costs attributable directly or indirectly to the conversion which do not add services or amenities not previously provided. For the purposes of (c) of this section, repairs required by applicable codes shall not be deemed to be amenities.

R.1981 d.354, eff. September 10, 1981.

See: 13 N.J.R. 392(a), 13 N.J.R. 562(a).

Amended by R.1987 d.292, effective July 20, 1987.

See: 19 N.J.R. 797(a), 19 N.J.R. 1291(c).

Added text in (a) "Any subsequent discount ..."

Case Notes

Preconversion tenant rent cannot be increased above amount allowed under rent control ordinance; rent control ordinances cannot discriminate against condominium owners; standard for rent increases without control ordinance is reasonableness. *AMN, Inc. of New Jersey v. South Brunswick Twp. Rent Leveling Board*, 93 N.J. 518, 461 A.2d 1138 (1983).

Property tax increase after conversion, due solely to conversion, cannot be passed on to tenants as rent increase without provision of additional services or amenities. *B.H. Associates v. Brudner*, 185 N.J.Super. 403, 449 A.2d 23 (Ct.Ct.1982) appeal dismissed 190 N.J.Super., 461 A.2d 753.

Rent increase for preconversion tenant in condominium unit subject to rent control ordinance (statutory decision); regulation declarative of legislative intent. *G.D. Management Co. v. Negri*, 182 N.J.Super. 409, 442 A.2d 611 (App.Div.1982).

Tax increases resulting from conversion are considered conversion costs and cannot be passed on to tenants despite rent control ordinance permitting pass through; anticipated use theory applied in tax valuation; income method of valuation using maximum rents permitted. *Borough of Little Ferry v. Vecchiotti*, 7 N.J.Tax 389 (Tax Ct.1985).

Only rent increases permitted by ordinance may be charged to tenants protected under Senior Citizens and Disabled Protection Act; increased costs due to conversion cannot be recovered through rent increases without provision of additional services and amenities; increased taxes resulting from conversion are increased costs. *Berkley Arms Apartment Corp. v. Hackensack*, 6 N.J.Tax 260 (Tax Ct.1983).

SUBCHAPTER 2. SENIOR CITIZENS AND DISABLED PROTECTED TENANCY

Subchapter Historical Note

All provisions of this subchapter became effective February 1, 1982 as R.1982 d.9. See: 13 N.J.R. 802(a), 14 N.J.R. 144(a). This subchapter was readopted pursuant to Executive Order 66(1978) effective September 30, 1985 with amendments effective October 21, 1985. See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a). See chapter and section levels for further amendments.

5:24-2.1 Introduction

(a) This subchapter is adopted pursuant to P.L. 1981, c.226 (N.J.S.A. 2A:18-61.22 et seq.), hereinafter referred to as "the Act".

(b) All terms defined in the Act shall have the same definitions as in the Act when used in this subchapter.

5:24-2.2 Application forms

(a) A tenant seeking protected tenancy status pursuant to the Act shall apply to the appropriate administrative agency or officer on a form prescribed by the Division of Codes and Standards of the Department of Community Affairs.

(b) The prescribed form shall require at least the following information:

1. Name of applicant;
2. Name of spouse, if residing in the same household;
3. Address, including apartment number;
4. Municipality;
5. County;
6. Name of building or project, if any;
7. Whether or not the dwelling unit is the applicant's principal place of residence;
8. The date on which the applicant began occupying a dwelling unit in the building as his or her principal place of residence;
9. The total combined income for the last full calendar year, of all members of the household residing in the dwelling unit at the time of application for protected tenancy status, regardless of whether or not such income is taxable;
10. Date of birth of applicant;
11. Date of birth of spouse, if residing in the same household;
12. Whether or not disability is claimed and, if so, the nature of the disability;
13. Current monthly rental and any surcharges.

Amended by R.1985 d.529, effective October 21, 1985.

See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Added text "and development".

Amended by R.1995 d.366, effective July 3, 1995.

See: 27 N.J.R. 1718(a), 27 N.J.R. 2578(a).

Substituted: "Division of Codes and Standards" for "Division of Housing and Development".

5:24-2.3 Application procedure

(a) A tenant seeking protected tenancy status shall file a completed application form with the administrative agency or officer within 60 days of receipt of a notice and application form from the administrative agency or officer provided, however that a completed application form may be submitted at any time prior to the date of conversion recording if the administrative agency or officer is satisfied that there was reasonable cause for the delay in filing. Such reasonable cause shall include, but not be limited to, disability incurred at any time subsequent to receipt by the tenant of the notice and application form.

(b) Upon request of the administrative agency or officer, a tenant seeking protected tenancy status shall supplement the form with such documentation as the administrative agency or officer shall deem necessary in order to make a determination as to eligibility.

1. An application may be deemed incomplete, and may be rejected, if supplementary documentation is not provided to the administrative agency or officer within 10 days of request therefor; provided however, that this provision shall not be construed as precluding timely reapplication.

i. With respect to income, such documentation may include, but shall not be limited to, copies of income tax returns and certification of the amount received in Social Security payments or in payments from other sources of non-taxable income.

ii. Proof of age shall be in the form of a copy of a birth record or such documentation evidenced by a public record as the administrative agency or officer shall deem to be equivalent.

iii. Proof of disability shall be in the form of certification of entitlement to Social Security or SSI disability benefits, or of proof that the applicant has been honorably discharged, or released under honorable circumstances, from active service in any branch of the United States Armed Forces and is rated as having a 60 percent disability or higher as a result of that service by the Veterans' Administration, or, if the applicant does not receive such disability benefits or have such rated disability, of such evidence as the administrative agency or officer shall deem to be equivalent.

2. If the administrative agency or officer does not request supplementary documentation, the application shall be deemed to have been complete upon submission.

(c) Taxable income shall include all income subject to the New Jersey Gross Income Tax, without allowance for any deductions or exemptions. Non-taxable income shall include, without limitation, any excluded pension payments (exclusive of moneys designated as refunded employee contributions), any Social Security, SSI or Railroad Retirement payments, any payments from any public assistance program and any interest on tax exempt securities or accounts. Any lump-sum, non-repeated distribution shall be considered as income only to the extent of the amount of annuity actuarially available to a person of the recipient's age and sex, at the prevailing interest rate, during the year in question, out of the lump-sum payment after there has been subtracted from such lump-sum payment any contributions made by the recipient or by a person who designated the recipient as his or her beneficiary.

Amended by R.1988 d.191, effective May 2, 1988.

See: 20 N.J.R. 349(a), 20 N.J.R. 978(a).

Added text "Any lump-sum, ..."

Amended by R.1991 d.252, effective May 20, 1991.

See: 23 N.J.R. 645(a), 23 N.J.R. 1662(a).

Honorable discharge with 60 percent or more disability included in definition of disabled tenant.

Case Notes

Lump sum pension payment to tenant after death of tenant's husband was not part of tenant's annual income in determination of protected status in conversion of condominium. *Prudential Ins. Co. of America v. Guttenberg Rent Control Bd.*, 220 N.J.Super. 25, 53 A.2d 374 (App.Div.1987) certification denied 109 N.J. 505, 537 A.2d 1294 (1987).

Applicant's net business income utilized for determination of protected tenancy status; Senior Citizens and Disabled Protected Tenancy Act constitutional and retroactive in effect. *Edgewater Investment Associates v. Borough of Edgewater*, 201 N.J.Super. 267, 493 A.2d 11 (App.Div.1985) affirmed 103 N.J. 227, 510 A.2d 1178.

5:24-2.4 Principal residence requirement

(a) No protected tenancy status shall be allowed for a tenant not occupying the dwelling unit as his or her principal residence.

(b) A dwelling unit shall be presumed to be a tenant's principal residence if it is physically occupied by the tenant for at least 184 days in each calendar year.

(c) In the event that a dwelling unit claimed to be a tenant's principal residence is not physically occupied by such tenant for at least 184 days per year, the administrative agency or officer may allow or disallow protected tenancy status upon consideration of all relevant factors, including, without limitation, voting address, automobile registration and address on driver's license, address shown on Federal and State income tax forms, mailing address, amount of time spent at the claimed permanent residence and at other locations and occupancy of the units by others.

5:24-2.5 Determination of eligibility

(a) As required by the Act, the administrative agency or officer shall make a determination as to a tenant's eligibility within 30 days of receipt of a completed application from such tenant. An application form shall be deemed to be completed when all supplementary documentation required by the administrative agency or officer has been submitted.

(b) The administrative agency or officer shall determine each applicant to be eligible, conditionally eligible or ineligible.

1. A tenant shall be determined to be eligible only if he or she has established, to the reasonable satisfaction of the administrative agency or officer, that he or she meets all requirements established by the Act as of the date of application.

2. A tenant shall be determined to be conditionally eligible only if he or she has established to the reasonable satisfaction of the administrative agency or officer, that he or she meets all requirements established by the Act as of the date of application, except the one-year residency requirement or the 62-year age requirement, or both; provided, however, that the one-year residency require-

ment shall not apply to a tenant who is occupying the unit as his or her principal residence under a lease with a term of more than one year.

i. A conditionally eligible tenant shall automatically become eligible if the conversion recording, as defined in the Act, occurs after the tenant's first anniversary of establishing a principal residence in the building, if applicable, or 62nd birthday, whichever is later.

ii. If the conversion recording precedes either such first anniversary, in the case of a tenant not having a lease with a term of more than one year, or such 62nd birthday, the tenant shall automatically become ineligible.

iii. In the event that a tenant is determined to be conditionally eligible the determination notice sent to the tenant and to the owner shall indicate the date after which the tenant will be eligible if the conversion recording has not been made.

3. Any tenant not determined to be either eligible or conditionally eligible shall be determined to be ineligible.

(c) Both the owner and the tenant shall have the right to review any documentation upon which a determination by the administrative agency or officer was based within five days of receipt by the owner or tenant, as the case may be, of notice of the determination.

1. The notice of determination shall include the following sentence, which shall be printed prominently and in capital letters: "YOU HAVE THE RIGHT TO REVIEW, AT THIS OFFICE, ANY DOCUMENTATION UPON WHICH THIS DETERMINATION WAS BASED WITHIN FIVE DAYS OF YOUR RECEIPT OF THIS NOTICE."

Amended by R.1988 d.362, effective August 1, 1988.

See: 20 N.J.R. 1026(b), 20 N.J.R. 1877(a).

Added (c).

Amended by R.1991 d.252, effective May 20, 1991.

See: 23 N.J.R. 645(a), 23 N.J.R. 1662(a).

Residency requirement changed from two years to one year, and not applicable in the case of a principal resident lease for more than one year.

5:24-2.6 Subsequent determination of ineligibility

(a) Upon presentation to the administrative agency or officer of credible evidence indicating that a tenant is no longer qualified under the Act for protected tenancy status, the administrative agency or officer shall thoroughly investigate the matter and shall make a determination as to continued eligibility. Notice of such determination shall be given to both the owner of the building, or of the unit, as the case may be, and to the tenant.

(b) A tenant claiming continued eligibility and any person contesting such claim shall present such evidence as the administrative agency or officer may require. All parties in interest shall be given an opportunity to examine and respond to such evidence as may be presented by another party.

5:24-2.7 Administrative hearings

(a) Any person aggrieved by any determination of an administrative agency or officer shall be entitled to an administrative hearing before such agency or officer or before a hearing officer designated by such agency or officer.

(b) Application for an administrative hearing shall be made within 10 days of receipt by the aggrieved person of notice of such determination. The application shall include a statement setting forth a credible factual basis for a finding that a determination either granting or denying protected tenancy status, as the case may be, was based upon incorrect or incomplete information and/or setting forth the manner in which the determination is alleged to be contrary to law.

(c) All notices of determination issued by an administrative agency or officer shall advise the recipient of the right to a hearing and of the 10 day application requirement, including the information required to be included in the application, and shall give the name and address of the person to whom applications for hearings are to be made.

(d) Administrative hearings shall be held within 10 days of application therefor, except that the administrative agency or officer may hold hearings later due to extenuating circumstances such as, without limitation, a large number of applications for hearings being received within a short period of time.

(e) Notice of administrative hearings shall be given to all known parties in interest, all of whom shall have the opportunity to testify and present evidence and to examine adverse witnesses and evidence, including without limitation, application forms and supporting documentation previously submitted to the administrative agency or officer.

(f) A sound recording of the administrative hearing shall be made, and a transcript shall be obtainable, in accordance with the rules applicable to the municipal courts.

(g) Within 10 days of the hearing, the administrative agency or officer shall issue a written final decision either upholding or revising the original determination and stating the reasons therefor. Appeal from such final decision shall be to the courts.

Amended by R.1988 d.361, effective August 1, 1988.
See: 20 N.J.R. 437(a), 20 N.J.R. 1878(a).

Added text to (b) "The application shall ..." and added text to (c) "including the information required to be included in the application".

5:24-2.8 Rent increases

(a) The protection provided by section 10 of the Act to tenants in municipalities with rent control ordinances in effect shall apply to all protected tenants, and to all tenants, regardless of age, condition, length of residency or income, to whom notice of termination pursuant to section 3g of P.L. 1974, c.49 (N.J.S.A. 2A:18-61.2) has been given. Any provision in any rent control ordinance to the contrary notwithstanding, the protection provided by the rent control ordinance shall apply even if a unit, or the proprietary lease thereto, is sold to a person who purchases three or fewer units. A fair return of hardship increase application may be made by the owner of any such unit or proprietary lease, subject to the provisions of section 10 of the Act.

(b) In conformity with the Act, no rent increase shall be required of any tenant in any converted building in any municipality not having a rent control ordinance if such increase would be deemed unreasonable pursuant to N.J.A.C. 5:24-1.12(c).

5:24-2.9 Procedural requirements for owners

(a) An owner providing notice to an administrative agency or officer of his or her intention to file an application for registration of conversion with the Division of Codes and Standards shall provide to the administrative agency or officer sufficient current copies of the following forms provided by the Division of Codes and Standards:

1. Instruction sheet;
2. Tenant notification requirement;
3. Application form;
4. Tenant affidavit;
5. Income eligibility list;
6. Completed notice form.

(b) Such owner shall not be deemed to have complied with the notice requirement until all requirements of the Act and of this section have been satisfied.

1. Copies of all forms shall be provided for distribution to all tenants, regardless of apparent eligibility, and a sufficient quantity of unsealed, stamped, addressed envelopes shall be provided by the owner for this purpose.

(c) Forms at variance with the forms provided by the Division of Codes and Standards shall not be accepted.

(d) Notice of the conversion recording shall be given by the owner to the administrative agency or officer and to the Division of Codes and Standards within 10 days of such conversion recording.

Amended by R.1985 d.529, effective October 21, 1985.
See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).

Added text "and development".
Amended by R.1995 d.366, effective July 3, 1995.
See: 27 N.J.R. 1718(a), 27 N.J.R. 2578(a).
Substituted "Division of Codes and Standards" for "Division of Housing and Development" throughout.

5:24-2.10 Certification by administrative agency

(a) Within 10 days of receipt of the required tenant list, forms and stamped envelopes, the administrative agency or officer shall mail to each tenant the notice required by the Act, together with all other forms required pursuant to N.J.A.C. 5:24-2.9.

(b) Within two business days of the mailing of such notices, the administrative agency or officer shall provide to the owner an affidavit or certification of mailing by the person who mailed the notices. A duplicate of such affidavit or certification shall be included in the application for registration submitted by the owner to the Division of Codes and Standards, submission of such affidavit or certification with respect to all applications filed within the statutory 60 day period being a precondition to the issuance by the Division of Codes and Standards of a notice of filing for registration.

(c) Within two business days of having mailed notices of determination of eligibility to all applicants who filed during the statutory 60 day period, such determinations being required by the Act to be made in each case within 30 days of application, the administrative agency or officer shall provide to the owner a list of such determinations and an affidavit or certification by the person who mailed notices of such determination to the applicants. A duplicate of such list of determinations and affidavit or certification shall be forwarded by the administrative agency or officer to the Division of Codes and Standards at CN 805, Trenton, New Jersey 08625, receipt thereof being a precondition of registration.

(d) In the event that any determination is made after the statutory 60 day period upon application of any disabled person pursuant to N.J.A.C. 5:24-2.3(a)1, the administrative agency or officer shall make a determination as to eligibility and provide notice of such determination to the applicant and the owner not later than 30 days after receipt of a completed application.

Amended by R.1985 d.529, effective October 21, 1985.
See: 17 N.J.R. 1706(a), 17 N.J.R. 2536(a).
Added text "and development".
Amended by R.1995 d.366, effective July 3, 1995.
See: 27 N.J.R. 1718(a), 27 N.J.R. 2578(a).
Substituted "Division of Codes and Standards" for "Division of Housing and Development" throughout; and corrected an address.

5:24-2.11 Administrative agency fees

(a) The municipality or county having responsibility for the administrative agency or officer may establish a fee schedule, which may vary according to the size of the building or project to be converted, to be paid by the owners

upon submission of tenant lists, forms and stamped envelopes to the administrative agency or officer.

(b) Any fee schedule established pursuant to this section, shall be designed to fully or partially cover the cost of discharging the responsibilities imposed by the Act upon the administrative agency or officer and not to provide revenue in excess of such cost. A separate administrative hearing fee may be established.

(c) The failure of a municipality or county to establish a fee schedule shall in no way relieve the administrative agency or officer of any obligation imposed by the Act.

SUBCHAPTER 3. PROTECTED TENANCY IN QUALIFIED COUNTIES

Subchapter Historical Note

Subchapter 3 was adopted as R.1992 d.287, effective July 6, 1992.
See: 24 N.J.R. 1453(a), 24 N.J.R. 2429(a).

5:24-3.1 Introduction

(a) This subchapter is adopted pursuant to the Tenant Protection Act of 1992, P.L. 1991, c.509 (N.J.S.A. 2A:18-61.40 et seq.), hereinafter referred to as "the Act."

(b) All terms defined in the Act shall have the same definitions as in the Act when used in this subchapter.

5:24-3.2 Applicability

(a) This subchapter is applicable to persons domiciled in a "qualified county," which means any county with a population in excess of 500,000 and a population density in excess of 8,500 per square mile, according to the most recent Federal decennial census, or any other county for which the Commissioner of Community Affairs finds that there has occurred a significant decline in the availability of rental dwelling units due to conversions and that, during the immediate preceding 10 year period, the aggregate number of rental units subject to registration of conversion exceeded 10,000 during any three consecutive years and exceeded 5,000 during at least one of those years.

(b) The following county is a qualified county:

1. Hudson.

5:24-3.3 Application forms and procedure

(a) Application for protected tenancy under this subchapter shall be made on the form prescribed in N.J.A.C. 5:24-2.2 for applications for Senior Citizens and Disabled

Protected Tenancy. A single form shall be sufficient for both applications.

1. Forms used in municipalities in a qualified county shall be entitled "Application for Protected Tenancy" and shall include a question as to whether the applicant is seeking to qualify for Senior Citizens and Disabled Protected Tenancy.

(b) The application procedure for protected tenancy under this subchapter shall be as set forth in N.J.A.C. 5:24-2.3, except that a person who is applying for protected tenancy only under this subchapter shall not be required to furnish proof of age.

1. If the applicant furnishes proof of being either at least 75 years of age or disabled, in the manner set forth in N.J.A.C. 5:24-2.3(b)1, proof of income shall not be required.

(c) Application forms used in qualified counties shall indicate that applications for protection under the Act must be filed on or before:

1. The date of registration of conversion by the Department, or

2. June 1, 1993, whichever is later.

(d) Notice of the date by which applications for protected tenancy under the Act must be filed shall be in addition to notice of the time requirements for filing applications for Senior Citizens and Disabled Protected Tenancy set forth in N.J.A.C. 5:24-2.3(a).

5:24-3.4 Administration

(a) Unless the municipality provides otherwise by ordinance, the agency or officer administering the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c.226, and the implementing rules set forth in subchapter 2, of this chapter, shall administer this subchapter.

(b) Principal residence shall be determined in accordance with N.J.A.C. 5:24-2.4.

(c) Eligibility shall be determined in accordance with N.J.A.C. 5:24-2.5, except that all references to conditional eligibility shall be inapplicable.

(d) Subsequent ineligibility shall be determined in accordance with N.J.A.C. 5:24-2.6.

(e) Administrative hearings shall be provided and conducted in accordance with N.J.A.C. 5:24-2.7.

(f) Procedural requirements for owners shall be as set forth in N.J.A.C. 5:24-2.9.

1. No separate filing or issuance of notices under both N.J.A.C. 5:24-2.9 and under this section shall be required if the forms and information provided to tenants make appropriate references both to Senior Citizens and Disabled Protected Tenancy and to protected tenancy under this subchapter and the Act.

2. An owner of a building in a qualified county who has previously complied with N.J.A.C. 5:24-2.9 shall comply with the procedural requirements of N.J.A.C. 5:24-2.9(a)-(c) again, in order to provide appropriate notice to persons who have not received Senior Citizens and Disabled Protected Tenancy.

(g) The administrative agency shall comply with subsections (a)-(c) of N.J.A.C. 5:24-2.10 and shall, additionally, inform each tenant who is denied protected tenancy under the Act and this subchapter of his right to remain in his dwelling unit until the owner shall have complied with the requirements of P.L. 1975, c.311 and of N.J.A.C. 5:24-1.6. The notice to the tenant shall include an explanation of the meaning of "comparable housing," as defined in P.L. 1975, c.311 and in N.J.A.C. 5:24-1.2(b)6.

1. Separate certifications or lists for purposes of the Act and for purposes of the Senior Citizens and Disabled Protected Tenancy Act shall not be required, except that, in a municipality in a qualified county, the list of determinations shall indicate the statute under which an applicant has qualified for protected tenancy.

(h) The fee schedule established in accordance with N.J.A.C. 5:24-2.11 shall apply to submissions of tenant lists and to hearings under the Act and this subchapter.

(i) In the event that any person in a qualified county who has applied for, or has previously been determined to be eligible for, protected tenancy as a senior citizen or disabled person, is found to be ineligible or no longer eligible for such protected tenancy, the person's application, as modified by the facts set forth in any determination, shall be treated as an application for protected tenancy under the Act and this subchapter.