

1. Tangible property which is situated on the real property vacated or to be vacated by a displaced person and which is considered personal property and is non-compensable (other than for moving expenses) under the state law of eminent domain; and

2. In the case of a tenant, fixtures and equipment and other property which may be characterized as real property under state or local law, but which the tenant may lawfully, and at his election determines to move and for which the tenant is not compensated in the real property acquisition. In the case of an owner of real property, the determination as to whether an item of property is personal or real shall depend upon how it is identified in the acquisition appraisals and the closing or settlement statement with respect to the real property acquisitions: provided, that no item of property which is compensable under state law to the owner of real property in the real property acquisition may be treated as tangible personal property in computing actual direct losses of tangible personal property.

“Publicly funded entity” means a private entity that receives public funds from any municipal, county, state or federal program for use in a project that causes displacement.

“State Agency” means any department, division, office, agency or bureau of this state or any authority or instrumentality created or chartered thereby.

“Temporary relocation” means when a lawful tenant is required to move from a dwelling that is undergoing rehabilitation and, upon completion of the rehabilitation, may return.

“Unit of local government” means any political subdivision of this State, or any two or more such political subdivisions acting jointly pursuant to law, and any department, division, office, agency or bureau thereof or any authority of instrumentality created or chartered thereby.

“WRAP” means the Workable Relocation Assistance Plan required to be submitted to the Department for approval prior to the undertaking of any relocation activities.

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

Definitions of “Commissioner” and “Displaced” modified; “WRAP” added.

Amended by R.1987 d.518, effective December 21, 1987.
See: 19 N.J.R. 1596(a), 19 N.J.R. 2388(c).

Added definition “lawful occupant”.
Amended by R.1990 d.113, effective February 5, 1990.
See: 21 N.J.R. 3694(a), 22 N.J.R. 336(a).

Added statutory references and amended “unit of local government”.
Amended by R.1994 d.174, effective April 4, 1994.
See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Law Review and Journal Commentaries

Relocation Assistance. Judith Nallin, 136 N.J.L.J. No. 10, 59 (1994).

Case Notes

Former N.J.A.C. 5:11-1.7 definition of displaced person valid; assistance award determination. *McNally v. Middletown Twp.*, 182 N.J.Super. 622, 442 A.2d 1075 (App.Div.1982).

Replacement housing must be open in accordance with Civil Rights Act of 1968 (citing former N.J.A.C. 5:11-2.3); no evidence of civil rights violation. *Rowe v. Pittsgrove Twp.*, 172 N.J.Super. 209, 411 A.2d 720 (App.Div.1980).

Tenant in resort-only zone ordered to vacate is displaced so as to qualify for relocation assistance; dwelling defined. *Moran v. Randolph Twp.*, 6 N.J.A.R. 58 (1980).

Tenant occupancy in single family residence zone not lawful occupancy to permit relocation assistance. *Hickey v. Park Ridge*, 5 N.J.A.R. 291 (1983).

No relocation benefits due fire displaces under former regulation. *Wright v. City of Hoboken*, 1 N.J.A.R. 203 (1980).

SUBCHAPTER 2. ELIGIBILITY

5:11-2.1 Building, housing and health code enforcement

(a) Whenever a State Agency or unit of local government undertakes a program of building code enforcement, housing code enforcement or health code enforcement that causes the displacement of any person, the said State Agency or unit of local government shall provide relocation payments and assistance to all lawful occupants who are displaced, as provided in N.J.A.C. 5:11-3 and 4. The date of eligibility shall be the date occupants received formal written notice to vacate from the State Agency or unit of local government. Said written notice shall include the information required pursuant to N.J.A.C. 5:11-4.2.

(b) An order to vacate issued by a State Agency or unit of local government, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and N.J.A.C. 5:23-2.32(b)1, because a building has become unsafe or uninhabitable as a direct result of a natural disaster, soil subsidence, fire, a latent defect or other sudden and unforeseeable occurrence is not displacement within the meaning of these rules and no relocation benefits shall be due any occupants or former occupants of such a building. However, a municipality may, pursuant to N.J.S.A. 20:4-3.1, voluntarily provide relocation benefits to such displacees but shall receive no reimbursement through any State grant-in-aid for the cost of doing so.

(c) An owner-occupant who is displaced by health, building or housing code enforcement shall not be entitled to relocation benefits if the code violation which resulted in displacement was caused by factors for which the owner is liable. Any such owner-occupant who is entitled to benefits shall be entitled to the benefits applicable to tenants only.

(d) No tenant displaced by code enforcement shall be eligible for benefits if the code violation which resulted in displacement was primarily caused by that tenant's own

conduct and not by factors for which the owner is liable under N.J.S.A. 20:4-4.1.

1. In the event that there has been no prosecution of the owner under N.J.S.A. 20:4-4.1, a displaced lawful occupant shall be presumed to be eligible for relocation benefits unless it is established by agreement or by administrative hearing that the code violation was primarily attributable to conduct of the displaced person.

Amended by R.1983 d.59, effective March 7, 1983.

See: 15 N.J.R. 6(b), 15 N.J.R. 330(b).

Added "municipality may provide benefits but shall not be reimbursed by the State".

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

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

(b) "Act of God" deleted; disaster and imminent hazard substituted.

Amended by R.1987 d.518, effective December 21, 1987.

See: 19 N.J.R. 1596(a), 19 N.J.R. 2388(c).

Added (d).

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

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

In (d), cite to "N.J.A.C." changed to "N.J.S.A.".

Amended by R.1994 d.174, effective April 4, 1994.

See: 26 N.J.R. 289(a), 26 N.J.R. 1493(b).

Amended by R.1995 d.386, effective July 17, 1995.

See: 27 N.J.R. 1844(a), 27 N.J.R. 2714(a).

Law Review and Journal Commentaries

Relocation Assistance. Judith Nallin, 136 N.J.L.J. No. 10, 59 (1994).

Case Notes

Tenant waived any entitlement to relocation assistance by entering into settlement in dispossess action. *Herrera v. Township of South Orange Village*, 270 N.J.Super. 417, 637 A.2d 526 (A.D.1993), certification denied 136 N.J. 28, 641 A.2d 1039.

Landlord may enforce occupancy limits in renewal leases even if tenants would then be in violation of those limits; landlord through lease renewal, which will force the tenant to relocate, may be liable for relocation assistance comparable to what the tenant would have received under N.J.S.A. 2A:18-61.1(g)(3). *M.C. Associates v. Shab*, 226 N.J.Super. 173, 543 A.2d 1006 (App.Div.1988).

Relocation assistance benefits available to tenants whose occupancy was lawful under N.J.S.A. 20:4-4.1 unless it is established by agreement or by administrative hearing that the code violation was primarily attributable to conduct of the tenant. *Haddock v. Passaic, Community Development Dep't, City of Passaic*, 217 N.J.Super. 592, 526 A.2d 725 (App.Div.1987) certification denied 108 N.J. 645, 532 A.2d 228 (1987).

Petitioners, tenants displaced by building code enforcement activities, entitled to relocation assistance. *Haddock v. Passaic*, 10 N.J.A.R. 52 (1985) adopted—Dep't of Community Affairs, affirmed in part, reversed on other grounds and remanded 217 N.J.Super. 592, 526 A.2d 725 (App.Div.1987) certification denied 108 N.J. 645, 532 A.2d 228.

Loss of housing which occurred when premises was evacuated for safety of tenants upon broken water main was a natural disaster that precluded payment of relocation benefits. *Union Gardens' v. Township of Montclair*, 95 N.J.A.R.2d (CAF) 85.

Tenants constructively discharged due to health hazards; relocation assistance. *Travers v. The Township of Old Bridge*, 94 N.J.A.R.2d (CAF) 96.

Eviction for nonpayment of rent; relocation assistance. *Varca v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 95.

Relocation assistance; illegal sublease. *Sanchez v. City of Paterson*, 94 N.J.A.R.2d (CAF) 51.

Termination of relocation assistance occurred on determination that repairs ordered by the Bureau of Local Construction Code Enforcement were completed. *Tilton v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 51.

Application for relocation assistance was denied for failure to comply with the rental agreement and by willful destruction of the rented property. *McCaskill v. Pennsauken Township*, 93 N.J.A.R.2d (CAF) 12.

Occupant of apartment who received improperly addressed violation notice and who immediately vacated was not entitled to relocation assistance. *Moore v. City of Camden*, 92 N.J.A.R.2d (CAF) 113.

Tenant displaced from premises as result of actions by the township to enforce its zoning ordinance was not entitled to relocation assistance. *Herrera v. Township of South Orange Village*, 92 N.J.A.R.2d (CAF) 85.

Tenant occupying premises in violation of resort-only zoning eligible for relocation assistance as a lawful occupant. *Moran v. Randolph Twp.*, 6 N.J.A.R. 58 (1980).

Determination of landlord-tenant relationship; relocation assistance denied to tenant as not lawful occupant in single family residence zone. *Hickey v. Park Ridge*, 5 N.J.A.R. 291 (1983).

5:11-2.2 Programs of acquisition

(a) Whenever any State Agency (except the New Jersey Department of Transportation), unit of local government or publicly funded entity acquires real property that causes the displacement of people, businesses, or farm operations, the said State Agency, unit of local government or publicly funded entity shall provide relocation payments and assistance as provided in N.J.A.C. 5:11-3 and 4; provided, however, that if any acquisition of real property is made using funds provided by any Federal agency, all relocation payments shall be made in accordance with any applicable Federal regulations that provide for a higher level of benefits.

(b) The State Agency, unit of local government or publicly funded entity shall not be relieved of its obligation of providing payments and benefits as provided hereinafter by requiring the owner of a building to cause it to be vacated prior to the acquisition.

(c) The eligibility date for this section shall be the date of the first written offer to purchase the property.

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

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

In (a), language added regarding acquisition of property and concomitant relocation payments with use of Federal funds and Federal benefit levels.

Case Notes

Condemnees whose land was taken for a new school were not entitled to relocation assistance. N.J.S.A. 20:4-1 et seq., 20:4-5. *Carlucci v. Jersey City Bd. of Educ.*, 92 N.J.A.R.2d (CAF) 1.

5:11-2.3 Evictions under N.J.S.A. 2A:18-61.1(g)

(a) Whenever an eviction is sought under the provisions of N.J.S.A. 2A:18-61.1(g) by an owner, whether said owner is a person, State Agency or unit of local government, the tenant shall be provided with the relocation payments and benefits as provided in subchapters 3 and 4 of this chapter. The date of eligibility shall be the date the tenant received a formal notice to vacate from the landlord as provided in N.J.S.A. 2A:18-61.2 and the displacing agency shall be deemed to be the State Agency or unit of local government that issues the notice of violation.