

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

7:1J-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that such diminution is attributable to the discharge of a hazardous substance. A diminution of property value may be deemed attributable to a discharge of a hazardous substance notwithstanding the lack of any physical intrusion of the hazardous substance onto the subject property. A diminution in the value of any improvements to the subject property made after the date of discovery of damages shall not be eligible for compensation from the Fund.

Case Notes

Spill Fund compensation; vandals caused spill. Ultramar Petroleum, Inc. v. DEPE, 94 N.J.A.R.2d (EPE) 163.

7:1J-4.2 Requirements for eligibility

(a) Except for claims settled under N.J.A.C. 7:1J-4.6 or 4.7, claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the subject property and the administrator determines that the claimant's sale of the subject property was in good faith, based upon the appraisals made pursuant to N.J.A.C. 7:1J-4.3 and the information submitted pursuant to N.J.A.C. 7:1J-4.5.

(b) Within 30 days after filing the claim, the claimant shall list the subject property for sale with one or more licensed real estate brokers who are members of a multiple listing service (or its commercial equivalent, for nonresidential property). The claimant shall so list the subject property for sale continuously, until entering into an agreement for the sale of the subject property; provided however, that discontinuities made necessary by the claimant's good faith choice to list the subject property with another broker shall not be deemed to violate this requirement. One discontinuity of less than 14 days shall be presumed to be in good faith.

7:1J-4.3 Appraisal of subject property

(a) After the claimant has elected under N.J.A.C. 7:1J-4.9 to pursue the claim, or in the case of a new claim filed after January 4, 1993, the administrator shall obtain appraisals of the value of the subject property. The appraisals shall be as of the time of the sale of the subject property (or, for claims under N.J.A.C. 7:1J-4.6 or 4.7, as of the date the administrator makes the settlement offer). One such appraisal shall state the value of the subject property as affected by the discharge (unless the administrator elects not to obtain such an appraisal, pursuant to (b) below), and one appraisal shall state the value of the subject property absent the effect of the discharge. The appraisals may, in the administrator's discretion, be based upon one or more of the following factors:

1. Sales of comparable properties in the immediate area;
2. Income generated by the subject property;
3. Replacement cost of the subject property; and/or
4. Such other factors as are ordinarily considered by real estate appraisers who are members of the Appraisal Institute or who are licensed or certified to perform real estate appraisals in New Jersey.

(b) The administrator may elect not to obtain an appraisal of the subject property as affected by the discharge if the administrator determines, in his or her discretion, that there is insufficient information to obtain a meaningful appraisal of the subject property reflecting the effect of the discharge. Without limiting the discretion of the administrator under this subsection, the administrator may determine that there is insufficient information if fewer than three comparable properties which have been affected by the discharge have been sold as of the date on which the claim is filed.

7:1J-4.4 Valuation of claim

(a) If the administrator has obtained appraisals pursuant to N.J.A.C. 7:1J-4.3(a), the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (a)1 and (a)2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and
2. The greater of:
 - i. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), reflecting the effect of the discharge on such value; or
 - ii. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(b) If, pursuant to N.J.A.C. 7:1J-4.3(b), the administrator has elected not to obtain an appraisal of the subject property as affected by the discharge, the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (b)1 and 2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and
2. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(c) The administrator may, in his or her discretion, adjust the amount determined pursuant to (a) or (b) above by considering other information available to the administrator which supports a conclusion that the amount determined

pursuant to (a) or (b) above does not accurately reflect the diminution in the value of the subject property resulting from the discharge. Such information may include, but is not limited to, any of the following:

1. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that factors other than the discharge affected the sale prices of such properties. Such information may include, without limitation, the prices of comparable properties within and outside the area in which the discharge may have affected real property values; the time elapsed between listing for sale and execution of an agreement of sale for comparable properties within and outside the area in which the discharge may have affected real property values; and specific terms of the agreements of sale (such as financing terms, personal property included in the sale, and apportionments of closing costs);

2. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that such properties have characteristics which distinguish them from the subject property, and which affect the values of such properties;

3. Information concerning the sale of the subject property, indicating that the difference between the sale price and the appraised value of the property reflected factors other than the discharge. Such information may include, but is not limited to, the time elapsed between listing of the subject property for sale and execution of an agreement of sale; the length of time the subject property was offered for sale; the nature and number of any offers to purchase the subject property; the difference between the initial listing price and the sale price; the number and extent of intermediate reductions in the listing price; specific terms of the agreement of sale for the subject property (such as financing terms, personal property included in the sale, and apportionments of closing costs); data concerning the real estate market generally at the time of the sale of the subject property; and other evidence of the good faith nature of the sale required to be submitted under N.J.A.C. 7:1J-4.5; and

4. The effect of the cleanup and removal of a discharged hazardous substance or of other amelioration of the damages resulting from a discharge.

7:1J-4.5 Evidence of good faith sale

(a) Except as provided in N.J.A.C. 7:1J-4.7 and 4.8, within 10 days after the closing of a sale of the subject property, the claimant shall submit the following documents to the Department:

1. Copies of all listing agreements for the sale of the subject property;

2. Copies of all written offers to purchase the subject property;

3. A copy of the contract of sale of the subject property;

4. Copies of all settlement statements, including without limitation the HUD-1 Uniform Settlement Statement form if required by 24 CFR 3500.8;

5. A copy of the deed conveying the subject property, together with a copy of the transmittal letter forwarding the deed to the county clerk or register of deeds and mortgages for recording;

6. An affidavit by the claimant, signed by the person required to sign the claim and certified in accordance with N.J.A.C. 7:1J-1.6, stating the following:
 - i. The sale price of the subject property without closing adjustments;

- ii. That neither the claimant nor any person not listed on the settlement statements has received any money or other compensation from any party in connection with the subject property, except as set forth on the settlement statements; and

- iii. That the documents submitted pursuant to (a)1 through 5 above are true copies of the original documents executed and delivered in connection with the sale of the subject property; and

7. An affidavit by the claimant's realtor, stating the following:
 - i. That the realtor is a member of the multiple listing service, and listed the property for sale with the multiple listing service (unless the subject property is of a type not normally sold through a multiple listing service);

- ii. The period of time the subject property was offered for sale, and the period of time the property was listed for sale with the multiple listing service;

- iii. The initial listing price;

- iv. All changes in the listing price, and the dates of such changes;

- v. A record of all inquiries received from potential purchasers regarding the subject property, and of all showings or open houses held in the course of offering the subject property for sale, including the names and addresses of all persons who inquired about the subject property, were shown the subject property, or attended open houses at the subject property, and a description of the responses of these persons to the subject property; and

- vi. A record of the amount and date of each offer made for the purchase of the subject property.

- (b) A determination by the administrator that the claimant arrived at the sale price in good faith shall not preclude the administrator from determining that any other aspect of the sale of the subject property was not in good faith.