

## CHAPTER 13

LIMITED DIVIDEND AND NONPROFIT HOUSING  
CORPORATIONS AND ASSOCIATIONS

## Authority

N.J.S.A. 52:27D-22 and 40A:20-20.

## Source and Effective Date

R.1997 d.253, effective May 21, 1997.  
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 13, Limited Dividend and Nonprofit Housing Corporations and Associations, expires on May 21, 2002.

## Chapter Historical Note

Chapter 13, Limited Dividend and Nonprofit Housing Corporations and Associations, was adopted as R.1971 d.15, January 22, 1971. See: 2 N.J.R. 70(b), 3 N.J.R. 20(a).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1988 d.49, effective December 24, 1987. See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1992 d.290, effective June 22, 1992. See: 24 N.J.R. 1668(a), 24 N.J.R. 2556(b).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1997 d.253, effective May 21, 1997. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 5:13-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Limited Dividend Nonprofit Housing Corporations or Associations Law, P.L. 1949, c.184, which was repealed by P.L. 1991, c.431, but the requirements of which, and of this chapter, continue to be applicable to housing projects organized and operating under it on or before April 17, 1992.

“Affordable” means capable of being afforded without undue burden by a household at any given level of income. A rental unit shall be considered to be affordable if the monthly rent, together with any utility charges paid by the tenant, does not exceed 30 percent of monthly household income.

“Authority” means the Public Housing and Development Authority within the Department of Community Affairs.

“Blighted area” means any area or part of any area, together with building or buildings thereon, which is blighted, as defined by any law of the State of New Jersey.

“Cooperative” means any corporation herein defined, the projects of which have been financed under Section 213 of the National Housing Act or any other Federal law, or under any State law or any incorporated or unincorporated association of three or more persons, not for pecuniary profit, organized pursuant to any law of the State or the Federal government for the primary purpose of providing housing accommodations for its members, stockholders and others, and for the operation, management and maintenance of same.

“Equity,” when used with reference to the return payable to an investor in a limited dividend housing corporation or association, means the value of the cash and/or property, including without limitation intangible property such as services, contributed by or on behalf of the investor in exchange for a proprietary interest in the corporation or association.

“Family” means the definition of family determining eligibility for occupancy in a housing project as prescribed by a Federal or State agency or any other public source, which is primarily responsible for financing, or insurance of the financing of such project.

“Federal Administrator” means the Administrator of Federal Housing Administration, his successors, officials, employees or agents.

"FHA" means the Federal Housing Administration in the United States Department of Housing and Urban Development.

"Gross shelter rent" means the gross rent or carrying charges less the cost of utilities furnished by the project; utilities shall include gas and electricity if supplied by the project; cost of heating fuel, cost of water supplied and sewage charges, if any.

"HMFA" means the New Jersey Housing and Mortgage Finance Agency in, but not of the Department of Community Affairs.

"Housing association" means any limited distribution or non-profit partnership, limited partnership, limited partnership association, trust, single proprietorship or other unincorporated association organized in accordance with the provisions of the Act.

"Housing corporation" means any private, limited-dividend or nonprofit housing corporation organized in accordance with the provisions of the Act.

"Housing sponsor" means any housing corporation or association as defined in this Section.

"Income limits" means the income limits determining eligibility for occupancy in a housing project as prescribed by a Federal or State agency or any other public source which is primarily responsible for the financing or the insurance of the financing of the project.

"Lease" means any agreement made by and between a corporation or association formed under the Act and any person or persons in connection with the right of occupancy to any unit in a project of such corporation or association and shall include for the purpose hereof any occupancy agreement between a member or stockholder of a corporation formed under the Act as a cooperative, entitling such member or stockholder to the right to occupy a particular unit in a project constructed by such corporation.

"Mortgage" shall include "Deed of Trust".

"Mortgaged property" includes all property, real or personal, covered by a mortgage and all personal property belonging to the project and used in connection with the furnishing of a project constructed under Section 202 of the Housing Act of 1959.

"Principal wage earner" means only the actual family head and for the purpose hereof shall include, in addition to said actual family head, his or her husband or wife, if any; provided however, this definition shall apply only to cooperative type projects financed under an FHA insured (Section 213) mortgage.

"Project" means any work or undertaking whether new construction or rehabilitation to provide decent; safe and sanitary dwelling units for families in need of housing; including any buildings, land (including demolition, clearance or removal of buildings from land), equipment, facilities or other real or personal properties which are necessary, convenient or desirable appurtenances, such as, but not limited to, streets, sewers, water, utilities, parks, site preparation, landscaping and administrative, community health, recreational, educational, welfare, commercial or other facilities, or to provide any part or combination of the foregoing.

"Range of affordability" means the household income, expressed as a percentage of the median income as adjusted by geographical region and family size in accordance with HUD Section 8 Income Guidelines or N.J.A.C. 5:92, at which a given unit is affordable. The lower the percentage of median income, the greater is the range of affordability.

"Regulatory agreement" means any agreement entered into by a housing sponsor and the Authority, or with any State or Federal agency with the approval of the Authority, setting forth terms and conditions under which the development and operation of a project may function, which terms and conditions may expressly supersede provisions of this chapter that would otherwise be applicable.

"Rent" means the amount paid under a lease or occupancy agreement by a tenant for the purpose of entitling such tenant to occupy a particular unit in a project and shall include, for the purposes hereof, the carrying charges assessed by a corporation as a cooperative against any member or stockholder thereof for occupancy of a particular unit in the project.

"Service charge" means moneys paid by a housing corporation or housing association to a municipality in which the project of such housing corporation or housing association is located, in lieu of taxes, where the housing corporation or housing association is entitled to tax exemption under Section 18 of the Act.

"State" means the State of New Jersey.

"State Administrator" means the administrator of the Public Housing and Development authority who is also the Commissioner of the Department of Community Affairs, State of New Jersey.

"State Deputy Administrator" means the Deputy Administrator of the Public Housing and Development Authority, who is also the Director of the Division of Codes and Standards, Department of Community Affairs, State of New Jersey.

"Tenant" means any person having a lease or entitled to occupancy under an occupancy agreement and shall include any member or stockholder of a corporation as a cooperative entitled to occupancy in any unit in a project built under the Act.

Amended by R.1974 d.166, effective June 26, 1974.

See: 6 N.J.R. 221(a), 6 N.J.R. 256(b).

Condominium definition added.

Amended by R.1983 d.145, effective May 16, 1983.

See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

Deleted definition of "Council".

Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA" to "HMFA".

Amended by R.1992 d.290, effective July 20, 1992.

See: 24 N.J.R. 1668(a), 24 N.J.R. 2556(b).

Definition for condominium, exception for gross shelter rent, deleted; N.J.S.A. citation updated.

Amended by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Amended "State Deputy Administrator".

Amended by R.1997 d.265, effective July 7, 1997.

See: 28 N.J.R. 3852(a), 29 N.J.R. 2813(b).

Added "Affordable", "Equity", and "Range of affordability"; and amended "Regulatory agreement", and "State Deputy Administrator".

### 5:13-1.2 Scope

(a) These rules shall apply to and control all housing sponsors formed under the provisions of the Limited Dividend Nonprofit Housing Corporations or Associations Law, P.L. 1949, c.184, as amended (N.J.S.A. 55:16-1 et seq.) and remaining subject to the jurisdiction established under that act in accordance with the "Long Term Tax Exemption Law," P.L. 1991, c.431; provided, however, that the provisions of N.J.A.C. 5:13-2 (Limited Dividend Housing Corporations and Associations as Cooperatives) shall apply only to housing sponsors organized as cooperatives financed under a FHA insured (Section 213) mortgage, and provided further that nothing herein shall be construed to abrogate or set aside such regulatory agreements as have been approved by the Authority prior to the date of these regulations insofar as the provisions thereof are not inconsistent with the regulations.

(b) For the purpose of encouraging development of housing projects under these regulations and to enable housing sponsors to obtain the necessary financing through FHA or HMFA, the State Administrator may waive any regulations herein where such waiver is in the public interest and there is a conflict between these regulations and either FHA or HMFA requirements.

(c) The Authority may approve or adopt by reference, in whole or in part, any regulatory agreement between a housing sponsor and a State or Federal financing or insuring agency in which the terms and conditions of construction, operation and maintenance of the project are specified which substantially conform with the purposes and intent of the Act and this Chapter; provided however, that nothing herein shall be construed to prevent the Authority from inspecting and investigating any project under such regulatory agreement to assure compliance with the Act and this Chapter.

(d) The Authority may delegate to any State or Federal financing or insuring agency such responsibilities and duties imposed upon the Authority by the Act or this Chapter as may be consistent with the intent and purpose of the

regulations and consistent with public policy and the protection of rights and remedies provided for thereunder; provided however, nothing herein shall be construed to prohibit the Authority from rescinding such delegation in the event such State or Federal agency fails to perform such delegated duties and responsibilities in a responsible manner; nor to prohibit the Authority from conducting such investigations and inspections it deems necessary and appropriate to assure compliance with the requirements of the Act and this Chapter.

(e) Approval by the Authority of any regulatory agreement as specified in subsection (c) of this Section or delegation of responsibilities and duties as provided for in subsection (d) of this Section shall be in writing and a copy of each such regulatory agreement and delegation shall be maintained on file by the State Deputy Administrator.

(f) In all matters pertaining to implementation and enforcement of this Chapter, the Deputy Administrator shall act as the duly authorized delegate of the State Administrator. Whenever this Chapter refers to the State Administrator it shall be construed to include the Deputy Administrator unless specifically provided otherwise.

Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA" to "HMFA".

Amended by R.1992 d.290, effective July 20, 1992.

See: 24 N.J.R. 1668(a), 24 N.J.R. 2556(b).

Reference to condominium deleted; N.J.S.A. citation updated.

### 5:13-1.3 Operation of corporation or association

(a) The following acts of the housing sponsor, to be valid and effective shall be subject to the prior approval of the Authority in writing:

1. All bylaws of the housing sponsor and amendments to those bylaws, and to the certificate of incorporation or partnership or association agreement, which shall be filed with the Authority;
2. All advertisement or prospectus;
3. All rent schedules to be fixed or amended which shall be filed with the Authority;
4. Selection or approval of any application for occupancy or entering into any leasehold agreement.
5. Sale, transfer, encumbrance or assignment of the property of the housing sponsor or of any stock or other ownership interest in the housing sponsor, provided, however, that this paragraph shall not apply to transfers by or to individuals of stock in a nonprofit corporation which is held, or is to be held, in conjunction with a lease to a dwelling unit in a cooperative project which is occupied or is to be occupied by the holder of the stock.

(b) If the mortgage on the project is insured by the FHA or financed by the HMFA, the housing sponsor shall comply with the requirements of such agency in connection with

reserves. On termination of the jurisdiction of the FHA or HMFA, the reserves of the corporation shall be established and maintained in an account approved by the Authority.

(c) As provided by the Act, as amended, the housing sponsor shall pay an annual service charge for municipal services in an amount not more than the tax on the property on which the project in which the undertaking of said project is commenced or 15 percent of the annual gross shelter rents obtained from the project, whichever is the greater.

(d) The rental or use of apartments in a housing project by an employee of the housing sponsor shall be subject to the same regulations as are applicable to other tenants unless the Authority shall waive certain requirements.

As amended, R.1983 d.145, eff. May 16, 1983.  
See: 15 N.J.R. 193(a), 15 N.J.R. 803(b).

In (a)1 added "to the certificate of incorporation or partnership or association agreement". Also added 5 to (a).  
Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA" to "HMFA".  
Recodified from 5:13-1.5 by R.1997 d.253, effective June 16, 1997.  
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

#### 5:13-1.4 Meetings of stockholders and directors

(a) Each housing sponsor shall hold a directors' meeting at least once a year and at such times as any director may request; excepting however, a corporation as a cooperative shall hold such meetings at least quarterly.

(b) The presence of a quorum at such meetings is required.

(c) A copy of the minutes of each meeting of directors shall be filed with the Authority within 10 days after the meeting is held.

Recodified from 5:13-1.6 by R.1997 d.253, effective June 16, 1997.  
See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

#### 5:13-1.5 Tenant application, selection and priorities

(a) It is the purpose and intent of the Act and this chapter that tenants whose housing need is greatest receive priority for occupancy in any project under the Act; provided that the applicant's household size must be suitable to the apartment to be occupied and that the applicant's household income must be sufficient to be able to afford the rent charged; and provided that any regulations of the HMFA implementing priority categories specified by the New Jersey Housing and Mortgage Finance Agency law (N.J.S.A. 55:14K-1 et seq.), as amended, shall prevail in those projects financed by said agency.

(b) Vacant apartments with rentals affordable to households of low income shall be rented to such households.

(c) Vacant apartments with rentals affordable to households of moderate income, but not affordable to households of low income, shall be rented to households of moderate income.

Amended by R.1988 d.49, effective February 1, 1988.  
See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Changed "HFA" to "HMFA".

Recodified from 5:13-1.7 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.5, Operation of corporation or association, recodified to 5:13-1.3.

Amended by R.1997 d.507, effective December 1, 1997.

See: 29 N.J.R. 3760(a), 29 N.J.R. 5061(b).

Added (b) and (c).

#### 5:13-1.6 Tenant priorities

(a) Applications for eligible persons and families for occupancy shall receive priority over all others in the following order:

1. Persons and families which are or are about to be displaced from a blighted area or areas by reason of clearance, replanning, development or redevelopment; and
2. Persons and families living in a blighted area or areas as designated by the governing body of any municipality by resolution for the purpose of clearance, replanning, development or redevelopment;

(b) Persons who have moved to standard housing under an approved Workable Relocation Assistance Program pursuant to the Relocation Assistance Law of 1967 (N.J.S.A. 52:31B-1 et seq.) and the Relocation Assistance Act (N.J.S.A. 20:4-1 et seq.) and regulations promulgated thereunder (N.J.A.C. 5:11), as a permanent move outside of a priority area, shall not have priority status under this Section.

Amended by R.1988 d.49, effective February 1, 1988.

See: 19 N.J.R. 1861(a), 20 N.J.R. 256(a).

Renumbered (a)3 to (b) and added the Relocation Assistance Act.

Recodified from 5:13-1.8 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.6, Meetings of stockholders and directors, recodified to 5:13-1.4.

#### 5:13-1.7 Procedures for priority applications

(a) Where there is a project either in a phase of initial occupancy or fully occupied, and there exists a waiting list of eligible persons and families, a person or family qualifying for a priority status and consideration shall be placed at the head of the list.

(b) The first available dwelling unit for which the person or family is otherwise eligible shall be offered for occupancy.

(c) Where there is more than one person or family who have equal priority status, they shall be placed at the head of the waiting list in the order of their applications for tenancy.

Recodified from 5:13-1.9 by R.1997 d.253, effective June 16, 1997.

See: 29 N.J.R. 965(b), 29 N.J.R. 2653(a).

Former N.J.A.C. 5:13-1.7, Tenant application, selection and priorities, recodified to 5:13-1.5.

**5:13-1.8 Public notice to applicants on rights**

(a) There shall be posted, in a prominent place, in each office where prospective applicants come to make application for tenancy, a sign notifying the applicants of their rights with reference to nondiscrimination; priority preferences in accordance with these or HMFA regulations if applicable; eligibility to file where income is derived from welfare and public assistance funds; rights of any person to request and file application for tenancy; and the right to file complaints with the State Administrator.

(b) The sign will be in accord with a sample copy supplied by the Authority with instructions on size and wording to be denoted thereon.

(c) The responsibility for the public display of this sign will be with the office of the project sponsor or owner.

(d) All informational bulletins, advertising brochures, and application forms shall, in bold type, be printed with a statement indicating to applicants or prospective applicants their rights with reference to nondiscrimination, priority preferences as provided for in these or HMFA regulations, and eligibility to file where income is derived from welfare or public assistance funds.