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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 46 No. 1, January 6, 2014 ***

TITLE 5. COMMUNITY AFFAIRS
CHAPTER 41. HOMELESSNESS PREVENTION PROGRAM

N.J.A.C. 5:41 (2014)

Title 5, Chapter 41 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 52:27C-24 and *52:27D-280*.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2010 d.257, effective October 14, 2010.

See: *41 N.J.R. 4352(a)*, *42 N.J.R. 2753(b)*.

CHAPTER EXPIRATION DATE:

In accordance with *N.J.S.A. 52:14B-5.1b*, Chapter 41, Homelessness Prevention Program, expires on October 14, 2017.
See: *43 N.J.R. 1203(a)*.

CHAPTER HISTORICAL NOTE:

Chapter 41, Homelessness Prevention Program, was originally codified in Title 5 as Chapter 12, Homelessness Prevention Program. Chapter 12 was adopted as Emergency New Rules by R.1984 d.570, effective November 29, 1984, to expire January 28, 1985. See: *16 N.J.R. 3497(a)*. The provisions of R.1984 d.570 were readopted as R.1985 d.74, effective January 29, 1985. See: *16 N.J.R. 3497(a)*, *17 N.J.R. 577(b)*.

Pursuant to Executive Order No. 66(1978), Chapter 12, Homelessness Prevention Program, was readopted as R.1990 d.62, effective December 27, 1989. See: *21 N.J.R. 2845(a)*, *22 N.J.R. 336(b)*. Pursuant to Executive Order No. 66(1978), Chapter 12 expired on December 27, 1994.

Chapter 12, Homelessness Prevention Program, was adopted as new rules by R.1995 d.56, effective February 6, 1995. See: *26 N.J.R. 4248(a)*, *27 N.J.R. 483(a)*.

Pursuant to Reorganization Plan No. 002-1998, Chapter 12, Homelessness Prevention Program, was recodified as *N.J.A.C. 5:41*, effective July 1, 1998. See: *30 N.J.R. 1347(a)*, *30 N.J.R. 2644(a)*.

Pursuant to Executive Order No. 66(1978), Chapter 41, Homelessness Prevention Program, was readopted as R.2000 d.60, effective January 19, 2000. See: *31 N.J.R. 3943(a)*, *32 N.J.R. 689(a)*.

Chapter 41, Homelessness Prevention Program, was readopted as R.2005 d.246, effective June 28, 2005. See: *36 N.J.R. 3334(a)*, *37 N.J.R. 2859(d)*.

Chapter 41, Homelessness Prevention Program, was readopted as R.2010 d.257, effective October 14, 2010. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 5:41-1.1 (2014)

§ 5:41-1.1 Title; purpose

(a) The regulations in this chapter shall be known and may be cited as the "Homeless Prevention Program Regulations".

(b) The purpose of these regulations is to implement the "Prevention of Homelessness Act (1984)" and, in so doing, to provide temporary assistance to persons who are homeless, or face imminent loss of their homes by eviction or foreclosure, because they are without adequate funds for reasons beyond their control.

HISTORY:

Amended by R.1988 d.521, effective November 7, 1988.

See: 19 New Jersey Register 1777(a), 20 New Jersey Register 2752(a).

Added "temporary" to "assistance" in (b).

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SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 5:41-1.2 (2014)

§ 5:41-1.2 Administration

- (a) The Homelessness Prevention Program shall be administered by the Department of Community Affairs.
- (b) Funds awarded under the Homelessness Prevention Program may be jointly administered by the Department of Community Affairs with other departments and agencies of the State, or non-profit organizations.
- (c) In addition to the types of assistance provide herein, assistance may be provided to households via pilot programs administered in accordance with the Act, including, but not limited to, innovative projects or programs, and those that serve a unique population for limited period of time.

HISTORY:

Amended by R.2008 d.66, effective April 7, 2008.

See: *39 N.J.R. 4986(a)*, *40 N.J.R. 1827(b)*.

Inserted designation (a); in (a), substituted "Department of Community Affairs" for "Bureau of Housing Services of the Division of Housing and Development"; and added (b) and (c).

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N.J.A.C. 5:41-1.3 (2014)

§ 5:41-1.3 Waiver

Any party desiring a waiver or release from the express provisions of any of the rules in this chapter may submit a written request to the Homelessness Prevention Program. Waivers may be granted only by the Commissioner of the Department of Community Affairs under extraordinary circumstances, as long as such waiver would not contravene the provisions of the Act, and upon a finding that, in granting the waiver, the Commissioner will be promoting the statutory purposes of the Act.

HISTORY:

New Rule, R.2008 d.66, effective April 7, 2008.

See: *39 N.J.R. 4986(a)*, *40 N.J.R. 1827(b)*.

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TITLE 5. COMMUNITY AFFAIRS
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SUBCHAPTER 2. PROGRAM ELIGIBILITY

N.J.A.C. 5:41-2.1 (2014)

§ 5:41-2.1 Eligibility

(a) To be eligible for assistance under the Homelessness Prevention Program, a person or household must be either homeless or in imminent danger of losing their home as a result of eviction for non-payment of rent, or mortgage foreclosure, or some other cause which the Department of Community Affairs determines to be comparable.

1. A household shall be deemed homeless if the household involuntarily is without a place of residence for reasons beyond the household's control.

2. A household shall be deemed to be in imminent danger of homelessness if the household is unable to make rental or mortgage payments for reasons beyond the household's control and the household has been served with a summons and complaint for eviction or a notice of mortgage foreclosure, as the case may be.

3. "Mortgage foreclosure" shall include, without limitation, foreclosure for taxes or other municipal liens. In the case of a tax or other municipal lien foreclosure, a person shall be deemed to be in imminent danger of losing his home if he has been served in any legal manner with notice of foreclosure, including a notice of intent to foreclose in accordance with the Fair Foreclosure Act (*N.J.S.A. 2A:50-53*), the Tax Sale Law (*N.J.S.A. 54:5-97.1*), or any other notice that the Department determines to be comparable.

(b) No person or household shall be eligible for assistance if their annualized current income (that is, 52 times current weekly income) exceeds the upper limit of "moderate income" as defined in guidelines published annually by the United States Department of Housing and Urban Development.

(c) No person or household shall be eligible for assistance unless all other available financial resources have first been exhausted. Concealment or transfer of assets to become eligible for assistance shall result in immediate and permanent disqualification.

(d) No person or household having a delinquent loan with the Program or which has caused the Program to forfeit a security deposit shall be eligible for additional assistance unless the Department of Community Affairs finds that the delinquency or forfeiture was due to a cause that was either beyond the control of the person or household receiving assistance, or constituted a violation of the rights of that person or household by another person, and that the cause of the delinquency or forfeiture is not likely to recur.

(e) No person or household found in any administrative or legal proceeding, in which notice and an opportunity to be heard have been given, to have committed fraud or abuse in another governmental assistance program, including, without limitation, other programs providing rental subsidies, or to have made a false or misleading statement or a material omission in any submission to the Program, shall be eligible for assistance.

(f) No person or household already receiving an equivalent housing subsidy under any other program shall be eligible for assistance.

1. A housing subsidy shall be deemed to be "equivalent" for purposes of this subsection if it provides a level of compensation sufficient to ensure that the recipient is required to spend no more than 30 percent of gross household income on shelter costs.

(g) No person or household determined by the Program to be unlikely to pay shelter costs after the period of assistance has ended shall be eligible for assistance.

1. Program staff will work with each applicant in the preparation of a budget that will be of use in determining the applicant's ability to carry shelter costs.

2. No person or household shall be eligible for assistance with back rent unless they have resided in the housing unit for at least three months prior to falling into arrears.

(h) To be eligible for assistance, a person or household must have experienced an uncompensated loss of income or increase in expenses, for a limited period of time, that are necessarily incurred for the preservation of human life. Applicants must submit documentation verifying that one or more of the following caused the inability to pay housing costs:

1. Loss of employment;
2. Medical disability or emergency;
3. Loss or delay in receipt of other benefits;
4. Natural or man-made disaster;
5. Substantial and permanent change in household composition; or

6. Any other condition which, in the judgment of the Department of Community Affairs, constitutes a severe hardship comparable in its effect to the causes listed in (h)1 through (h)5 above.

(i) Assistance to any person or household facing foreclosure as a result of mortgage or property tax arrearages shall be in the form of a loan, which shall be secured by a recorded mortgage.

1. No person or household shall be eligible for a mortgage loan unless the home is an owner-occupied single family dwelling (which may be an attached or detached house or a condominium unit) that shall have been owned and occupied by the applicant for at least one year prior to falling into arrears on the mortgage loan or property taxes.

2. No person or household shall be eligible for a mortgage loan in the event of initiated or ongoing bankruptcy proceedings or in the event that the property is encumbered by more than one mortgage.

3. The total amount of any mortgage loan shall not exceed an amount equal to 600 percent (six times 100 percent) of the monthly applicable "Payment Standard" for the family size as defined for the Housing Choice Voucher Program for the region in which the property is located as determined in accordance with guidelines published annually by the United States Department of Housing and Urban Development.

HISTORY:

Amended by R.1988 d.521, effective November 7, 1988.

See: 19 N.J.R. 1777(a), 20 N.J.R. 2752(a).

Substantially amended.

Amended by R.1990 d.62, effective February 5, 1990.

See: 21 N.J.R. 2845(a), 22 N.J.R. 336(b).

Excluded from mortgage loan eligibility anyone who has filed for bankruptcy; clarified language regarding maximum loans.

Amended by R.1992 d.433, effective November 2, 1992.

See: 23 N.J.R. 3439(a), 24 N.J.R. 4035(a).

Eligibility provisions specified further.

Amended by R.1995 d.56, effective February 6, 1995.

See: 26 N.J.R. 4248(a), 27 N.J.R. 483(a).

Amended by R.2008 d.66, effective April 7, 2008.

See: 39 N.J.R. 4986(a), 40 N.J.R. 1827(b).

In the introductory paragraph of (a), substituted "Department of Community Affairs" for "Bureau of Housing Services"; in (a)1 and (a)2, substituted "household" for "person", "the household" for "he" and "the household's" for "his"; in (a)2, substituted "homelessness" for "losing his home" and "a notice of" for "for"; rewrote (a)3; in (d), substituted "Department of Community Affairs" for "Bureau of Housing Services"; in (h)5, inserted "or" at the end; in (h)6, substituted "Department of Community Affairs" for "Bureau of Housing Services"; and in (i)3, substituted "applicable 'Payment Standard' for the family size" for " 'Fair Market Rental' " and "Housing Choice Voucher" for "Section 8 Existing".

CASE NOTES:

Vacating judgment for possession in summary dispossess action for nonpayment of rent was warranted. *Housing Authority of Town of Morristown v. Little*, 135 N.J. 274, 639 A.2d 286 (1994).

Initial Decision (2010 N.J. AGEN LEXIS 29) adopted, which found that petitioner was properly denied assistance under the Homelessness Prevention Program because such assistance would not have resolved his housing situation; petitioner's predicament was not temporary where the record reflected that his documented monthly income was only \$ 800 and his rent was \$ 1,000. *Ukoza v. Homelessness Prevention Program, Dep't of Community Affairs, OAL Dkt. No. CAF 12577-09*, 2010 N.J. AGEN LEXIS 841, Final Decision (February 25, 2010).

Initial Decision (2008 N.J. AGEN LEXIS 475) adopted, which concluded that a tax title lien was not a mortgage, but was a separate and distinct entity that was statutorily created to protect the right of the municipality to collect real estate taxes. Thus, although it was a lien on the property, the regulation specifically required that the petitioners be disqualified if they have more than one mortgage on the property and a tax title lien did not fall into that category. *R.R. v. Division of Housing, OAL Dkt. No. CAF 4672-08*, 2008 N.J. AGEN LEXIS 1286, Final Decision (July 22, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 218) adopted, which concluded that the agency was correct in denying petitioner's application for assistance based on the fact that petitioner created her own homelessness; petitioner had ample time to secure a two-bedroom apartment after her son left the residence and she was notified that she had to downgrade from her three-bedroom apartment in order to continue Section 8 housing. *J.T. v. Homelessness Prevention Program, Dep't of Community Affairs, OAL Dkt. No. CAF 2157-07*, 2007 N.J. AGEN LEXIS 339, Final Decision (June 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 318) adopted, which concluded that where an applicant had been approved for relief under the Homelessness Prevention Program but the new landlord refused to sign the relocation agreement, the applicant was entitled to reimbursement of funds the applicant had to borrow to meet the landlord's deadline; despite the applicant's attempts to contact the agency for help, the agency did not attempt to resolve the impasse with the landlord or notify the applicant about finding another apartment or applying for emergency funds to meet the landlord's deadline. *R.S. v. Homelessness Prevention Program, Div. of Housing, OAL Dkt. No. CAF 03115-06*, 2006 N.J. AGEN LEXIS 513, Final Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 318) adopted, which concluded that the agency's notice of adverse action, sent more than four months after petitioner's application, was untimely and therefore of no consequence. *R.S. v. Homelessness Prevention Program, Div. of Housing, OAL Dkt. No. CAF 03115-06*, 2006 N.J. AGEN LEXIS 513, Final Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 149) adopted, which concluded that, although petitioner stated that he could not pay his rent because his room had been broken into while he was incarcerated and \$ 800 in cash was missing, peti-

tioner's budget demonstrated that he did have sufficient funds to pay his rent; he received Social Security in the amount of \$ 851 per month, and after deducting his expenses, including his rent, he had \$ 221 per month remaining. Therefore, since his failure to exhaust his resources rendered him ineligible under *N.J.A.C. 5:41-2.1(c)*, there was no need to determine whether petitioner's incarceration constituted a reason beyond his control. *Prioleau v. Dep't of Community Affairs, Div. of Housing, OAL Dkt. No. CAF 708-06, 2006 N.J. AGEN LEXIS 521*, Final Decision (April 12, 2006).

Applicant was ineligible for Homelessness Prevention Act assistance because her shelter costs were so great as to be unaffordable after assistance period ended. *T.O. v. Department of Community Affairs, 96 N.J.A.R.2d (CAF) 63*.

Excess income defeated applicant's request for housing benefits under *Homeless Prevention Act*. *M.R. v. Bureau of Housing Services, 96 N.J.A.R.2d (CAF) 39*.

Homelessness prevention assistance was not available absent a failure of resources beyond applicant's control. *C.N. v. Bureau of Housing Services, 95 N.J.A.R.2d (CAF) 49*.

Assistance under Homelessness Prevention Program was not available absent a failure of resources beyond applicant's control. *Cardiello v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 42*.

Application for assistance properly denied; petitioner already received assistance and did not demonstrate substantial change that would warrant further assistance. *K.N. v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 8*.

Petitioner failed to demonstrate that he was without adequate funds; no eligibility for Homelessness Prevention Program assistance. *S.W. v. Homelessness Prevention Program, Housing Div., 94 N.J.A.R.2d (CAF) 119*.

Assistance under the Homelessness Prevention Program; alleged governmental assistance abuse. *S.P. v. Bureau of Housing Services, 94 N.J.A.R.2d (CAF) 65*.

Single adult male sharing a three bedroom apartment was not eligible for rental assistance pursuant to the *Homelessness Prevention Program*. *B.T. v. Department of Community Affairs, 93 N.J.A.R.2d (CAF) 29*.

Homeless woman was not eligible for emergency assistance. *A.M. v. Essex County Welfare Div., 93 N.J.A.R.2d (DEA) 21*.

Failure to pay rent made tenant ineligible for the homeless prevention program. *Lemar v. Department of Community Affairs, 93 N.J.A.R.2d (CAF) 7*.

Absence of imminent danger of losing home precluded temporary housing assistance. *Groux v. New Jersey Dept. of Community Affairs, 92 N.J.A.R.2d (CAF) 70*.

Eligibility for mortgage assistance under *Prevention of Homelessness Act*. *Hahin v. Bureau of Housing Services, Department of Community Affairs, 92 N.J.A.R.2d (CAF) 29*.

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N.J.A.C. 5:41-2.2 (2014)

§ 5:41-2.2 Distribution of funding

(a) Funds available to the Homelessness Prevention Program shall be so allocated that funding is available for those now homeless, for those facing homelessness as a result of eviction and for those facing homelessness as a result of foreclosure.

(b) Funds shall be so distributed so that applicants in all regions of the State have equal access to assistance.

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N.J.A.C. 5:41-2.3 (2014)

§ 5:41-2.3 Levels of assistance

(a) The Homelessness Prevention Program shall apply available funds so as to provide assistance to as many people in need of such assistance as possible. Assistance to any one person or household shall not exceed the minimum amount necessary to obtain habitable lodging or to avoid imminent eviction or foreclosure.

(b) Where there is any reasonable prospect of repayment, funds shall be advanced as a loan rather than as a grant, upon such terms as the Department of Community Affairs shall consider reasonable and appropriate in light of prevailing interest rates and the applicant's present and future ability to repay.

1. Loans shall be evidenced by a note and, if the applicant owns real property, secured by a mortgage. The form and content of the note and mortgage shall be prescribed by the Department of Community Affairs.

HISTORY:

Amended by R.2008 d.66, effective April 7, 2008.

See: 39 *N.J.R.* 4986(a), 40 *N.J.R.* 1827(b).

In the introductory paragraph of (b) and in (b)1, substituted "Department of Community Affairs" for "Bureau of Housing Services".

CASE NOTES

Rental assistance; apartment larger than applicant needed. *N.J.S.A. 52:27D-280 et seq. B.T. v. Department of Community Affairs*, 93 *N.J.A.R.2d (CAF)* 29.

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N.J.A.C. 5:41-2.4 (2014)

§ 5:41-2.4 Period of assistance

(a) No person who has become eligible for permanent rental assistance under the Housing Choice Voucher Program of the United States Housing Act of 1937, 42 U.S.C. § 1437(f) (24 CFR §§ 982.01 et seq.) or for any subsidized housing, which the household can afford shall continue to receive assistance under the Homelessness Prevention Program once the permanent rental assistance or subsidized housing becomes available.

(b) No person shall continue to receive assistance under the Homelessness Prevention Program for more than six months, nor shall any person receive assistance to pay more than three months' rental arrears, unless the Department of Community Affairs finds there to be sufficient extenuating circumstances to justify an extension.

(c) A household shall be eligible for assistance under the Homelessness Prevention Program more than once only if the problem causing the situation is not chronic or repetitive in nature. Any assistance given after the first award shall be in the form of a loan.

HISTORY:

Amended by R.1986 d.296, effective July 21, 1986.

See: 17 N.J.R. 2939(a), 18 N.J.R. 1453(c).

(c) added.

Amended by R.1988 d.521, effective November 7, 1988.

See: 19 N.J.R. 1777(a), 20 N.J.R. 2752(a).

Added text in (b) ", nor shall any months' rental arrears".

Amended by R.2008 d.66, effective April 7, 2008.

See: 39 N.J.R. 4986(a), 40 N.J.R. 1827(b).

In (a), substituted "Housing Choice Voucher Program" for "section 8 program", "§ 1437(f) (24 CFR §§ 982.01" for "§ 1437(f) (24 C.F.R. § 882.101" and "the household" for "he", and inserted a comma following the first occurrence of "housing"; in (b), substituted "Department of Community Affairs" for "Bureau of Housing Services"; and in (c), inserted the last sentence.

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N.J.A.C. 5:41-2.5 (2014)

§ 5:41-2.5 Priorities

(a) Inasmuch as all households that apply and are found eligible may not be able to receive assistance due to lack of funds, first consideration shall be given to those most vulnerable in the event of homelessness. Priorities for consideration for assistance among otherwise qualified applicants in the same applicant pool shall be assigned in the following order. However, no person shall be deemed to be entitled to assistance solely by virtue of being in one of the following categories.

1. Households with a person who is found to be disabled or handicapped by a government agency physician or other health professional at time of application;
 2. Households with a person who is at least 62 years of age;
 3. Victims of domestic violence (A referral from the Department of Children and Families, emergency shelter agency, county welfare agency, or other social agency shall be required.);
 4. Households with children, which have broken up or face imminent breakup due to homelessness. (A recommendation from the Department of Children and Families, emergency shelter agency, county welfare agency or other social agency shall be required.);
 5. Single parent households;
 6. Other households with children;
 7. All other households.
- (b) Preference will be given to households already in sustainable housing.

HISTORY:

Amended by R.1986 d.296, effective July 21, 1986.

See: 17 N.J.R. 2939(a), 18 N.J.R. 1453(c).

(a)1 amended; (a)2 through 6 deleted; new (a)3.-7.

Amended by R.1990 d.62, effective February 5, 1990.

See: 21 N.J.R. 2845(a), 22 N.J.R. 336(b).

Clarified that inclusion in a priority category does not confer automatic entitlement to assistance; required handicap or disability to be determined by a health professional at the time of application; made clear a preference for households already in sustainable housing and deleted the preference category of families in which children are to be placed elsewhere because of homelessness.

Amended by R.2008 d.66, effective April 7, 2008.

See: *39 N.J.R. 4986(a)*, *40 N.J.R. 1827(b)*.

In (a)3 and (a)4, substituted "Department of Children and Families" for "Division of Youth and Family Services".

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N.J.A.C. 5:41-2.6 (2014)

§ 5:41-2.6 Administrative hearings

(a) Any person aggrieved by any notice, order, action or decision of the Department of Community Affairs under this chapter may appeal that notice order, action or decision to the Office of Administrative Law for a hearing pursuant to the Administration Procedure Act, pursuant to *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Rules of Practice, *N.J.A.C. 1:1*.

(b) A request for a hearing must be made in writing within 15 days of the applicant's receipt of the notice or order complained of and must be sent to the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, New Jersey 08625-0802.

HISTORY:

New Rule, R.1985 d.74, effective March 4, 1985.

See: 16 N.J.R. 3497(a), 17 N.J.R. 577(b).

Amended by R.1990 d.62, effective February 5, 1990.

See: 21 N.J.R. 2845(a), 22 N.J.R. 336(b).

Corrected CN number in address.

Amended by R.2008 d.66, effective April 7, 2008.

See: 39 *N.J.R.* 4986(a), 40 *N.J.R.* 1827(b).

In (a), substituted "Department of Community Affairs" for "Bureau of Housing Services" and updated the N.J.A.C. reference; and in (b), substituted "Department of Community Affairs" for "Division of Housing and Development".

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SUBCHAPTER 3. HABITABILITY STANDARDS

N.J.A.C. 5:41-3.1 (2014)

§ 5:41-3.1 Compliance with H.U.D. Housing Quality Standards

(a) Any rental housing unit, the rental for which is paid, in whole or in part, with rental assistance received under the Homelessness Prevention Program, shall be in compliance with the Housing Quality Standards of the United States Department of Housing and Urban Development.

(b) The Department of Community Affairs may allow payment of rental assistance for a unit if the unit can be occupied without any imminent hazard to health or safety and the owner of the unit is proceeding in a reasonable manner to abate any violation of the H.U.D. Housing Quality Standards.

HISTORY:

Amended by R.2008 d.66, effective April 7, 2008.

See: 39 *N.J.R.* 4986(a), 40 *N.J.R.* 1827(b).

In (b), substituted "Department of Community Affairs" for "Bureau of Housing Services".