

LAW AND PUBLIC SAFETY

DIVISION ON CIVIL RIGHTS

Housing for Older Persons

Proposed Readoption: N.J.A.C. 13:15

Authorized By: Chinh Q. Le, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-8 and 10:5-12.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-274.

Submit comments by January 14, 2011 to:

Gary LoCassio, Deputy Director

Division on Civil Rights

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The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (Division), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq. Pursuant to N.J.S.A. 52:14B-5.1c, the Division's rules governing housing for older persons, N.J.A.C. 13:15, expire on April 2, 2011. The Division has reviewed these rules and has

determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Consequently, the Division proposes to readopt N.J.A.C. 13:15.

The LAD prohibits discrimination by housing providers on the basis of familial status, which is defined as being the natural, adoptive or foster parent of a child, having visitation or guardianship rights with respect to a child, being pregnant or being in the process of securing custody of an individual under the age of 18. N.J.S.A. 10:5-5ll. The LAD also provides that sections of the LAD that prohibit familial status discrimination in housing do not apply to “housing for older persons” as that term is defined in the LAD. N.J.S.A. 10:5-5mm. The rules proposed for readoption were originally adopted in 1995 to provide clarification on this exemption for housing for older persons. The rules were amended upon readoption in 2005 to be consistent with amendments to the LAD, as well as with the rules for housing for older persons promulgated by the Federal Department of Housing and Urban Development (HUD). The 2005 amendments were necessary for the Division’s rules to be “substantially equivalent” to those of HUD in order to allow the Division to enter into a work-sharing agreement with HUD, whereby the Division receives funding from HUD for case processing and other housing outreach activities.

The chapter to be readopted clarifies the types of housing for older persons that automatically qualify for the statutory exemption. Specifically, the rules proposed for readoption clarify that provisions regarding familial status do not apply to: (1) any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling; (2) housing provided under any State program that the Attorney General determines is specifically designed and operated to assist elderly persons, as defined in the State program; (3) housing provided under any Federal program that the Secretary of the United States Department of Housing and

Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the Federal program; (4) certain housing intended for, and solely occupied by, persons 62 years of age or older; and (5) housing intended and operated for occupancy by at least one person 55 years of age or older per unit.

Moreover, in addition to providing more detailed guidance on the LAD's exemption for housing for older persons, readoption of the rules is necessary for the Division to continue its work-sharing agreement with HUD.

A summary of N.J.A.C. 13:15 follows.

N.J.A.C. 13:15-1.1 sets forth the purpose of the chapter.

N.J.A.C. 13:15-1.2 provides that housing that satisfies the requirements of this chapter as housing for older persons is not subject to the prohibitions against discrimination in housing based on familial status.

N.J.A.C. 13:15-1.3 sets forth the requirements of elderly housing programs that are exempt from the prohibitions against discrimination in housing based on familial status.

N.J.A.C. 13:15-1.4 sets forth the requirements for housing intended for, and occupied by, persons 62 years of age or older in order to be exempt from the prohibitions against discrimination in housing based on familial status.

N.J.A.C. 13:15-1.5 sets forth the requirements for housing intended and operated for persons 55 years of age or older in order to be exempt from the prohibitions against discrimination in housing based on familial status.

As the Division has provided a 60-day comment period on the notice for this proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption will have a beneficial social impact on the residents of New Jersey, particularly persons who benefit from housing intended to address the needs of person 62 years of age and older and housing intended to address the needs of persons 55 years of age and over. The rules will continue to clarify the statutory exception to the LAD's prohibitions against housing discrimination based on familial status for housing intended for older persons.

Economic Impact

The rules proposed for readoption will not have a significant economic impact on businesses or the real estate industry since all legal obligations arising under the rules have been mandated by existing Federal or State law and, therefore, the rules proposed for readoption present no new legal obligations. The rules proposed for readoption will have a positive economic impact on the State, as the rules will permit the Division to maintain its work-sharing agreement with HUD, allowing the Division to continue to receive Federal funding for case processing and other outreach initiatives.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption do not exceed Federal standards. The rules proposed for readoption are intended to implement the LAD, and are not intended to implement any program under Federal law. The rules proposed for readoption are necessary for the Division to maintain substantial equivalency certification from HUD in order to continue its work-sharing relationship. To that end, the standards for housing for older persons in the rules proposed for readoption are the similar to Federal standards for housing for older persons set forth in the FHA.

Jobs Impact

The Division believes that the rules proposed for readoption will have no impact on the number of jobs in the State.

Agriculture Industry Impact

The Division believes that the rules proposed for readoption will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The costs of compliance with the rules proposed for readoption for any affected small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is unchanged from the existing rules, and is likely to be minimal or nonexistent. All legal obligations arising under the rules proposed for readoption have already been mandated by existing Federal or State laws. Moreover, the rules proposed for readoption will not impose new reporting, recordkeeping or other compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules merely clarify the provisions of the LAD that permit certain housing to be offered to and maintained exclusively for older persons. Accordingly, the rules proposed for readoption should have no impact on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No professional services are required for compliance.

Smart Growth Impact

The Division does not anticipate that the rules proposed for readoption will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules concern only the type of housing for older persons that is exempt from the prohibitions against discrimination based on familial status.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules concern only the type of housing for older persons that is exempt from the prohibitions against discrimination based on familial status.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:15.