

Understanding UHAC

A Guide to the Uniform Housing
Affordability Controls for Administrators
of Affordable Housing



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101 South Broad Street
PO Box 813
Trenton, NJ 08625-0813
(609) 292-3000
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Lucy Vandenberg, Executive Director

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Sharon Clark

Arlyne DeSena

Tom O'Keefe

Frank Piazza

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Foreword

This manual provides guidance on the administrative tasks required to place and maintain households in affordable housing units throughout New Jersey. This manual serves as a guide to implementation of UHAC, adopted on December 20, 2004, and applies to units created under the New Jersey Fair Housing Act, also known as the “Mount Laurel” doctrine, the rules of the New Jersey Council on Affordable Housing (COAH) and those units created under certain New Jersey Department of Community Affairs (DCA) and New Jersey Housing and Mortgage Finance Agency (HMFA) programs.

Although Understanding UHAC often explains UHAC procedures by separating the different policies and procedures between ownership and rental units, there are many universal policies and procedures for creating and maintaining affordable housing that are common among all types of restricted units:

- **Determining Sales Prices and Rents.** The Chapter on setting sales prices and rents is applicable to all types of restricted units, including buy-downs, accessory apartments, ECHO units, etc.
- **Affirmative Marketing.** Municipalities must affirmatively market all types of affordable housing, unless specifically exempted (such as occupied units to be rehabilitated under a COAH-approved rehabilitation program).
- **Certifying Households.** The explanation of policies and procedures for certifying households for the purchase or lease of affordable housing can be applied to all types of COAH-eligible affordable housing.

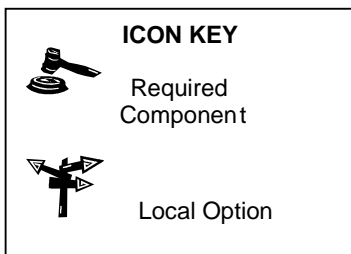
This manual was created with the assistance of a team of experienced affordable housing administrators from around the State, who provided many of the model documents referenced throughout this manual. The New Jersey Council on Affordable Housing, the New Jersey Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency would like to extend a special thanks to this team of dedicated and experienced professionals.

Introduction

Understanding UHAC is intended to supplement the Uniform Housing Affordability Controls (UHAC) (N.J.A.C. 5:80-26.1 et seq.) as published in December of 2004 by the New Jersey Housing and Mortgage Finance Agency (HMFA). This manual looks at the regulations from the perspective of implementation. Its objective is to help affordable housing providers, including municipalities, Municipal Housing Liaisons, Administrative Agents, developers, affordable housing sponsors, owners, property managers and landlords manage affordable housing units in accordance with UHAC more efficiently. This manual also references model documents for Administrative Agents, which includes documents compiled from experienced affordable housing administrators as well as all UHAC appendices. All model documents referred to in this manual are available on the Council of Affordable Housing's (COAH) website for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml. Please visit this website often for up-to-date information on implementing the Uniform Housing Affordability Controls.

Options and Requirements

While the vast majority of the roles, responsibilities and procedures described in this manual are based strictly on the regulations of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) and therefore mandatory in order to maintain compliance with the COAH, there are many areas of flexibility. Whenever the Uniform Housing Affordability Controls present the municipality with options for local



implementation, the corresponding text in this manual is marked with the Local Option icon (see Icon Key). In some cases, the municipality will wish to decide how a Local Option will be handled. In others, the municipality may leave it to an Administrative Agent to write their own procedures within applicable UHAC regulations. In either case, procedures should be formalized in the municipality's Operating Manual and made part of the

agreement between a municipality and an Administrative Agent.

For example, UHAC requires Administrative Agents to use a random selection process for filling a vacant unit. However, there is great flexibility in how that can be accomplished while still complying with UHAC regulations. A municipality may wish to

standardize the random selection process across all of its restricted housing projects by writing a series of procedures into the municipality's Operating Manual. Alternatively, the municipality may wish to allow Administrative Agents to develop their own procedures.

The Required Component icon is used in Sections of this manual to highlight roles, responsibilities and procedures that must be strictly followed. For instance, it is the responsibility of the Municipal Housing Liaison to compile reporting data from each local Administrative Agent and submit it to COAH. This responsibility is marked with a Required Component icon to signify that this responsibility cannot be delegated and must be performed by the Municipal Housing Liaison.

Applicability of UHAC Regulations

Units Seeking COAH Credit

It is vital for anyone involved in the administration of restricted units to have a clear understanding of when the UHAC regulations apply. The first consideration is whether the units are receiving COAH credit in a municipal Fair Share Plan. As a general rule of thumb, all units receiving COAH credit, or intended to receive COAH credit, must meet UHAC requirements, regardless of the funding source for the units. The exception to this rule is for those units that are specifically exempted by COAH's Third Round rules (N.J.A.C. 5:94) from certain provisions of UHAC.

Except for the control periods, UHAC regulations apply to affordable housing units "regardless of the date on which the units were created." (N.J.A.C. 5:80-26.1) Therefore, UHAC procedures relating to affirmative marketing, random selection of applicants, and household certification, for instance, all apply regardless of the date the units came into service.

Any units in a Plan that, prior to October 1, 2001, received substantive certification from COAH (N.J.A.C. 5:93-9.17), a Court judgment of compliance, or were governed by a grant agreement or contract will have its control period governed by the applicable substantive certification (N.J.A.C. 5:93), judgment or grant agreement or contract.

For all other units, including units in a certified Plan amended on or after October 1, 2001, Administrative Agents should utilize the controls periods and documents provided in the current UHAC.

Units Not Seeking COAH Credit

If units are not seeking COAH credit, then it is important to identify the project's financing sources to determine whether UHAC applies. Specifically, before any prices are set, rents established or marketing begun, it should be determined if the project was financed by any State, Federal or private subsidies. The presence of these funds may affect several aspects of the administration of these units, including but not limited to:

- Selection of households for placement into restricted units.
- Income limits and calculation of income.

- Annual recertification of tenant households.

In addition, a project's use of some State or Federal funds may also exempt the units from various UHAC regulations governing bedroom distribution, and setting sales prices and rents.

In addition to units seeking COAH credit under the Fair Housing Act (including units funded through Regional Contribution Agreements), UHAC also applies to the following types of units:

- Units receiving financing from the New Jersey Department of Community Affairs' (DCA) Balanced Housing Program, unless financed through HMFA's Home Express Program; and
- Units receiving financing from HMFA's MONI or UHORP Programs.

UHAC exempts units under the following programs:

- Federal LIHTC Program;
- Federal HOME Program;
- HUD 202 Program;
- HUD 811 Program;
- HUD HOPE VI Program; and
- Federal Home Loan Bank, Affordable Housing Program.

Items of Note for the Experienced Administrator

Readers already familiar with the administration of affordability controls under COAH, DCA or HMFA programs may find this Section of interest. This Section highlights changes to UHAC since it was first adopted on October 1, 2001.

Operating Manual

The new UHAC requires that "the Administrative Agent shall create and publish in plain English... a written Operating Manual...setting forth procedures for administering" affordable housing units. This Operating Manual may be written by the municipality for all of its Administrative Agents, or the municipality may elect to have each of its Administrative Agents create an Operating Manual. All Operating Manuals must be approved by COAH (N.J.A.C. 5:80-26.14(b)). See Chapter 1 of this manual.

Bedroom Distribution

New developments are no longer required to include one-bedroom units (N.J.A.C. 5:80-26.3). See Chapter 2 of this manual.

Very Low-income

The new UHAC rules specify that “at least 10 percent of all low- and moderate-income [rental] units shall be affordable to households earning no more than 35 percent of [the regional] median income.” (N.J.A.C. 5:80-26.3) See Chapter 2 of this manual.

Random Selection

The random selection process has been more clearly defined (N.J.A.C. 5:80-26.2). See Chapter 4 of this manual.

Asset Test

The new UHAC requires an asset limit test for eligibility for an applicant that owns a home with no mortgage. (N.J.A.C. 5:80-26.16(b)3). See Chapter 5 of this manual.

Length of Control Periods

The new UHAC rules specify that “[e]ach restricted unit shall remain subject to the requirements of this subchapter until the municipality...elects to release the unit from such requirements. Prior to...[this, the unit] must remain subject to the requirements...for a period of at least 30 years...” Units located in high-poverty census tracts must remain Deed Restricted until the municipality elects to release the units from the affordability controls, but for a period of at least 10 years (N.J.A.C. 5:80-26.5(a)). In the past, location in an Urban Aid municipality was the criteria that defined whether Deed Restrictions lasted minimally 10 or 30 years. See Chapter 6 of this manual.

Preservation of Affordable Units

In the event that a municipality elects to end the Deed Restriction on a unit after the minimum control period expires, the proceeds from the unit must be used to create one new affordable unit for every unit released from affordability controls (N.J.A.C. 5:80-26.5(g)). See Chapter 6 of this manual.

Recapture Provisions

At the time of initial occupancy and upon each successive sale, a Recapture Mortgage is issued reflecting the difference between the restricted sales price and the market-rate sales price, with the proceeds to go to either the municipality or the State, as applicable, to create new affordable housing opportunities at the termination of the affordability control period (N.J.A.C. 5:80-26.5(c)). See Chapter 6 of this manual.

Enforcement Provisions

Clarification has been provided on the roles of the Municipal Housing Liaison and Administrative Agent and specific enforcement mechanisms have been provided (N.J.A.C. 5:80-26.18). See Chapter 6 of this manual.

Foreclosure Provisions

While not a new provision, the latest UHAC clearly specifies that affordability controls remain in effect despite the entry and enforcement of any judgment of foreclosure (N.J.A.C. 5:80-26.5(e)). See Chapter 6 of this manual.

Overview of the Affordable Housing Process

In order to better understand the functions and responsibilities of the municipality, Municipal Housing Liaison, and Administrative Agent, it is helpful to first review the basic steps in administering affordable units. This Section describes the different ways in which COAH, DCA, and HMFA units are created and then provides a general overview of the housing administration process for all units.

The Creation of Affordable Units

COAH units

The local Planning Board adopts a Housing Element as part of the Municipal Master Plan as required by the New Jersey Municipal Land Use Law (MLUL). The local Planning Board also adopts a Fair Share Plan in which the municipality outlines how it will address its constitutionally mandated obligation to provide its fair share of affordable housing units.

The governing body endorses the Housing Element and Fair Share Plan and proposes ordinances that enable affordable housing development. The governing body, if it so chooses, may adopt a development fee ordinance to cover the costs of implementation of its affordable housing obligation, including allowable administrative costs to administer the affordable units.

The municipality petitions COAH for substantive certification of its Housing Element and Fair Share Plan and upon being granted certification, is protected until 2015 from a builder's remedy lawsuit alleging exclusionary zoning practices.

The municipality adopts its Fair Share Ordinance, which includes affirmative marketing provisions, within 45 days of the grant of certification. The ordinance incorporates by reference the Affirmative Marketing Plan, which must be approved by COAH. The municipality also creates the position of Municipal Housing Liaison by ordinance and appoints a municipal employee who has been approved by COAH. COAH also approves any Administrative Agent and Operating Manual.

DCA Balanced Housing units or HMFA MONI/UHORP units

Municipal representatives meet to plan the municipality's strategy for providing affordable housing within the community. An application is submitted for DCA Balanced Housing funds or HMFA MONI/UHORP funds. A contract is executed, designating an Administrative Agent approved by DCA or HMFA, as applicable, to oversee the administration of affordability controls on the restricted units. DCA or HMFA must approve the Administrative Agent.

The municipality adopts an Affirmative Marketing Ordinance consistent with UHAC affirmative marketing requirements. The ordinance incorporates by reference the Affirmative Marketing Plan, which must be approved by DCA or HMFA, as applicable.

The Administration of Affordable Units

The administration process is the same regardless of the type of unit. The municipality hires or appoints a Municipal Housing Liaison to serve as the contact person for the users of affordable housing, the contracting Administrative Agent, if any, the developers and affordable housing sponsors who create affordable housing in the community, owners, property managers and landlords, and COAH. This liaison attends State-sponsored training on the administrative processes for creating and maintaining affordable housing units.

The Municipal Housing Liaison may perform all administrative functions for affordable housing throughout the municipality, or may oversee a contract with an Administrative Agent approved by COAH, DCA or HMFA, as applicable, to perform these functions.

For new projects, it is important for the Municipal Housing Liaison and the Administrative Agent to meet with the developers and affordable housing sponsors to review applicable regulations at the earliest point of contact in the processing of the project (for example, when application is made to the local Planning Board or after a Zoning Board approval) and to secure written acknowledgement of the requirement that no restricted unit may be offered to any person other than a household certified by the Administrative Agent. At this time, it should be determined which parties are responsible for which tasks. The initial sales prices, bedroom distribution, affordability average, low- and moderate-income split of units, and the very low-income set-aside (rental projects) should also be reviewed, unless already determined by an affordable housing financing source. It is recommended that the Municipal Housing Liaison review the affordable housing provisions of any Master Deed and Public Offering, for consistency with COAH and UHAC regulations, before they are recorded and submitted to DCA for approval.

The Municipal Housing Liaison serves as an initial point of contact for unsolicited calls to the municipality about affordable housing and refers the caller to the Administrative Agent.

Subject to the approval of COAH and the municipality, the Administrative Agent creates and publishes an Operating Manual pursuant to UHAC. It is recommended that a uniform Operating Manual be developed for all affordable units within the municipality.

The Administrative Agent implements the Affirmative Marketing Plan. If provided by ordinance and specified as part of the project approval by the Planning Board or Zoning Board, the municipality may delegate to the developer or affordable housing sponsor the responsibility for placing an advertisement in the newspaper, placing a broadcast ad on radio or television and implementing the other marketing strategies.

The Administrative Agent serves as the initial point of contact for all inquiries

generated by the affirmative marketing efforts and sends out pre-applications to interested callers.

The Administrative Agent, the developer or the affordable housing sponsor will accept these returned pre-applications for a specific period of time, for example, 30 to 90 days. At the end of this time period, all applications will go to the Administrative Agent where these applications will be randomly selected, through a lottery, to create a pool of applicants.

The Administrative Agent pre-qualifies applicants in the applicant pool for income eligibility and sends either a rejection letter to those over income or a preliminary approval letter to those who appear income-eligible.

When a unit becomes available, the Administrative Agent will interview the applicant households and proceed with the income qualification process. Applicant households seeking for-sale units must obtain a mortgage pre-approval. The Administrative Agent must notify applicant households in writing of certification or denial within 20 days of the determination. Once certified, households are further screened to match household size to bedroom size and whether they are interested in for-sale or rental units.

Certified households that are approved for a for-sale affordable housing unit will work with the Administrative Agent to secure a mortgage in a timely fashion and obtain homeownership counseling if required or desired. The Administrative Agent will prepare a Deed, the Recapture Mortgage and Note, and Appendix J and should attend the closing for each unit. The filing and recording of documents is the responsibility of the Buyer's attorney, but the Administrative Agent may also elect to file the documents. Once all documents are filed and recorded, and returned to the Administrative Agent for inclusion in the file, the Administrative Agent will process a release of the original documents.

Certified households that are approved for a rental affordable housing unit will sign Appendix K and any other applicable documents, which are held in the applicant file and obtain budget counseling if required or desired. Applicants will then make an appointment with the leasing agent. Applicant households seeking rental units proceed with a credit check, which is generally conducted by the developer, affordable housing sponsor or landlord. If approved, the applicant will sign the lease, pay the first month's rent and the security deposit and receive the keys.

The certified household moves in to the affordable ownership or rental unit.

Additional Background on the Council on Affordable Housing and the COAH Process

A brief history of the Council on Affordable Housing, the process of and requirements for certifying a municipality's Housing Element and Fair Share Plan and how the

Municipal Housing Liaison and Administrative Agents fit into this process can be found on COAH's website for Administrative Agents.

Roles & Responsibilities

Responsibilities of the Municipality and the Municipal Housing Liaison, the Administrative Agent and Owners

There are three roles that are critical to the success of each municipality's ongoing compliance and monitoring of affordable housing units: the municipality/Municipal Housing Liaison, Administrative Agent and Owners. The municipality has the flexibility to delegate certain responsibilities related to the administration of affordable units. While the municipality may delegate many tasks, the municipality is ultimately responsible for ensuring that all activities are completed in accordance with all applicable rules, and, if necessary, seeking legal enforcement of Declarations of Covenants, Conditions and Restrictions and Deed Restrictions. The Municipal Housing Liaison must be a paid employee or an appointed representative of the municipality. The duties of the Municipal Housing Liaison cannot be subcontracted or delegated to another individual or consultant. The municipality may subcontract the Administrative Agent's duties to an Administrative Agent, including a consultant, developer, affordable housing sponsor or owner providing administrative services, if approved by COAH or the applicable State Agency. These three critical roles, their responsibilities and inter-relationships are explained in more detail in the remainder of this Chapter.


The Municipality and Municipal Housing Liaison


UHAC makes a clear distinction between the roles and responsibilities of the municipality and those of the Municipal Housing Liaison. While the municipality is given the task of taking most legal actions and setting policies, the Municipal Housing Liaison is responsible for communicating with the Administrative Agents, developers, affordable housing sponsors, owners, property managers, landlords, COAH and the public.

Responsibilities of the Municipality

The municipality is ultimately responsible for ensuring that affordability controls are established and maintained on restricted units, and, if necessary, seeking legal


enforcement of Declarations of Covenants, Conditions and Restrictions and Deed Restrictions. Additional municipal responsibilities that relate to the administration of affordability controls include:

 Hire or appoint a local staff person to serve as the municipality's Municipal Housing Liaison. The Municipal Housing Liaison must be a paid or appointed employee of the municipality. The duties of the Municipal Housing Liaison cannot be contracted or delegated to another individual or consultant. COAH must approve the appointment of the Municipal Housing Liaison. Municipalities may share the services of a Municipal Housing Liaison.

 Hire or appoint one or several entity(ies) to serve as the Administrative Agent(s) of all restricted units. See the Section Who can serve as an Administrative Agent? later in this Chapter.

 Assume legal responsibility for all functions and duties of the Municipal Housing Liaison and Administrative Agent(s).

 Develop and distribute an Affirmative Marketing Plan. The creation and implementation of an Affirmative Marketing Plan is described in Chapter 3.

 Adopt ordinances necessary to facilitate various aspects of affordable housing administration. The use of a regional preference, delegation of administrative responsibilities, incorporation of affirmative marketing provisions and enforcement, all require the establishment of a local ordinance. The municipality must also ensure that no existing ordinances conflict with policies set forth in UHAC. Other ordinances include:

- Identical Heat Source Requirement. Affordable housing developments that combine market-rate and affordable units must all utilize the same type of heating source. It is suggested that language on this requirement be made part of each ordinance that is adopted to set maximum sales prices and rents for each affordable housing development.
- Maximum Sales Prices and Rents. The municipality must establish maximum sales prices and rent by local ordinance for each affordable housing project. Maximum sales prices and rents should be set according to the affordability to a hypothetical household earning a percentage of median regional income. In addition, each project must also meet affordability average requirements. More information on how to determine sales prices and rents is provided in Chapter 2.
- Affordability Control Periods. A municipality may elect to release the affordability controls on all units in a specific area, but only after the minimum control periods set forth in UHAC have passed and the municipal Master Plan reflects the decision to release the units.

- Continuing Certificate of Occupancy. A continuing certificate of occupancy or a certified statement from the local Building Inspector is required upon the first transfer of title of an affordable unit following the expiration of the applicable minimum control period (N.J.S.A. 5:80-26.10).
- Affirmative Marketing. A municipality may elect to delegate to the developer, affordable housing sponsor or owner the responsibility for placing an advertisement in the newspaper, placing a broadcast ad on radio or television and implementing the other marketing strategies. Such delegation must be part of the project approval by the Planning Board or Zoning Board.
- Enforcement. A municipality should consider providing enforcement mechanisms by ordinance, for example, fines for the illegal rental of units.



Retain or designate legal counsel. Legal counsel will assist the municipality with developing, administering, and enforcing affordability controls.



With the assistance of the Municipal Housing Liaison, and any Administrative Agent(s), prepare and submit an Operating Manual to COAH for approval. More information on the Operating Manual can be found later in this Chapter.



Develop a system to prevent unauthorized rental of for-sale affordable units. The municipality will establish a system to prevent Owners of for-sale units from utilizing these units as rental property.



Provide all reasonable and necessary assistance in support of the Administrative Agent's efforts to ensure compliance with the housing affordability controls.

Responsibilities of the Municipal Housing Liaison

All municipalities with substantive certification from COAH, and those that are actively seeking substantive certification, are required to hire or appoint a Municipal Housing Liaison. Municipalities that receive financing from the DCA's Balanced Housing Program or the HMFEA's MONI or UHORP Programs must also hire or appoint a Municipal Housing Liaison. The Municipal Housing Liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units. The role of the Municipal Housing Liaison is, therefore, critical to continued success in administering affordable housing units.

The primary purpose of the Municipal Housing Liaison is to ensure that all affordable housing projects are established and administered according to COAH and UHAC regulations as outlined in an Operating Manual. It is important for the municipality to dedicate an individual to this position who has adequate resources, skills and experience to effectively manage all applicable activities of Administrative

Agents, developers, affordable housing sponsors, owners, property managers, and landlords. The duties of the Municipal Housing Liaison shall include the following duties, and may include the responsibilities for providing administrative services as described in the next Section under, Responsibilities of the Administrative Agent. The following duties that may not be contracted out include:



Monitor the status of all restricted units in the municipality's Fair Share Plan. Regardless of any arrangements the municipality may have with one or more Administrative Agents, it is the Municipal Housing Liaison's responsibility to know the status of all restricted units in their community. The Municipal Housing Liaison should develop a system to be notified by the Administrative Agent about foreclosures, resales and any threats to the affordability controls of the units in the municipality.



Serve as the municipality's primary point of contact for all inquiries from the State, Administrative Agents, developers, affordable housing sponsors, owners, property managers, landlords and interested households. The Municipal Housing Liaison will serve as the municipality's primary point of contact on affordable housing issues. Interested applicants should be provided with information on the types of affordable units within the municipality and, where applicable, the name of the Administrative Agent that manages the units and the contact information for the Administrative Agent

Once a municipality selects their Municipal Housing Liaison, contact information for that person must be provided to COAH, along with a certified copy of the ordinance creating the position of Municipal Housing Liaison, if not already on file with COAH, and a certified copy of the governing body's resolution appointing the Municipal Housing Liaison.¹ For municipalities with units financed by DCA's Balanced Housing Program or HMFAs' MONI or UHORP Programs, the contact information of the Municipal Housing Liaison must also be provided to DCA and/or HMFA.



Compile, verify and submit annual reporting. Administrative Agents are responsible for collecting much of the data that is ultimately included in an annual COAH monitoring report. However, it is the Municipal Housing Liaison's responsibility to collect and verify this data and consolidate it into the annual report to COAH. Any requests from COAH for additional information or corrections will be directed to the Municipal Housing Liaison.



Coordinate meetings with Administrative Agents and Developers/Affordable Housing Sponsors/Owners. When a new affordable unit or series of units is in the planning process, the Municipal Housing Liaison should coordinate and attend a meeting between the Administrative Agent and the developer/affordable housing sponsor/owner. The developer, affordable housing sponsor or owner may serve as their own Administrative Agent, if they meet the applicable requirements and are approved by the municipality and COAH or the applicable State Agency. The purpose of

¹ Under some forms of government, the Chief Executive has the authority to make appointments and in that case a letter will suffice.

this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.



Provide Administrative Services, unless those services are contracted out. The responsibilities for providing administrative services are described in the next Section under, Responsibilities of the Administrative Agent. If the Municipal Housing Liaison provides administrative services, in addition to submitting an ordinance creating the position of Municipal Housing Liaison and a resolution appointing the Municipal Housing Liaison for approval, COAH also requires submission of a resume, statement of qualifications and a statement of intent to attend any continuing education opportunities provided by COAH, as well as indication of the types of units/programs that will be administered.

Administrative Agents

Who can serve as an Administrative Agent?




The UHAC provides municipalities with much flexibility in how it fills the role of Administrative Agent. One or more of the following approaches can be used to distribute the Administrative Agent's responsibilities:


- The municipality (through a designated employee, department, board or committee, etc.) may serve as the Administrative Agent for some, or all, of the restricted units. The Municipal Housing Liaison can also serve as an Administrative Agent.
- The Fair Housing Act grants the HMFA the authority to act as an Administrative Agent for willing municipalities; it is also the designated default Administrative Agent where no appropriate Administrative Agent exists. To achieve this statutory directive, HMFA created the Housing Affordability Service (HAS), the state “Administrative Agent” that is operated and managed by HMFA. The municipality can contract with the HAS to administer restricted units. Under HAS, many of the administrative duties are performed by the developer, owner, property manager or landlord as delineated in a contract between HAS and the developer, owner, property manager or landlord. HAS provides final certification of applicants as well as enforcement and oversight. HAS also markets available units on New Jersey Housing Resource Center at www.njhousing.gov
- The municipality can directly contract with a consultant to administer all or some of the restricted units in their municipality. There are several requirements regarding the use of consultants. See Contracting with an Administrative Agent in this Chapter.
- The municipality is also permitted to contract with the developer, affordable housing sponsor or owner of restricted units to perform the Administrative Agent functions. As mentioned above, there are several requirements regarding the use of consultants, developers, affordable housing sponsors or


owners for Administrative Agent services. See Contracting with an Administrative Agent in this Chapter.


Responsibilities of the Administrative Agent


The primary responsibility of the Administrative Agent is to establish and enforce affordability controls and ensure that units in their portfolio are sold or rented, as applicable, to eligible households. Administrative Agents must:

 Secure written acknowledgement from all developers, affordable housing sponsors, owners and tenants that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent. It is recommended that the Municipal Housing Liaison review the affordable housing provisions of any Master Deed and Public Offering, for consistency with COAH and UHAC regulations, before they are recorded and submitted to DCA for approval.

 Create and adhere to an Operating Manual. All Administrative Agents are required to follow the policies and procedures of an Operating Manual, as applicable to the scope of services they have been contracted to perform. As appropriate, the Operating Manual should also be available in other languages. See The Operating Manual at the end of this Chapter for more information on the requirements of this important document.

 Implement the municipality's Affirmative Marketing Plan. The Administrative Agent, the developer, affordable housing sponsor or owner could be responsible for implementing the Affirmative Marketing Plan adopted by the municipality. At the first meeting with the Municipal Housing Liaison, Administrative Agent, and developer/affordable housing sponsor/owner this responsibility should be discussed. Affirmative marketing includes conducting regional outreach and advertising for available affordable units. Advertising costs may also be delegated to the developer, but this must be established by ordinance and a condition of approval of the Planning Board or Zoning Board.

 Accept applications from interested households. In response to marketing initiatives or by referral from the Municipal Housing Liaison, interested households will contact the Administrative Agent. The Administrative Agent will supply applicants with applications, provide additional information on available units and accept completed applications.

 Conduct random selection of applicants for resale or rental of restricted units. The Administrative Agent is responsible for conducting the random selection in accordance with the Affirmative Marketing Plan and any related local ordinances, and as described in the Operating Manual. In order to maintain an open and fair process, all households eligible for inclusion in the random selection should be informed of the date and time that the selection will take place. Refer to Chapter 4 for a complete explanation of random selection.



Create and maintain a pool of applicant households. This includes reaching out to households in the applicant pool to determine continued interest and/or changes in household size and income. Creation and maintenance of an applicant pool is described further in Chapter 4.



Determine eligibility of households. The task of collecting application materials and documentation from applicant households and analyzing it for eligibility is the responsibility of the Administrative Agent. A written determination on a household's eligibility must be provided within twenty (20) days of the Administrative Agent's determination of eligibility or non-eligibility. Whether or not the household is determined to be eligible for a unit, it is the Administrative Agent's responsibility to secure all information provided by the household in individual files and to maintain strict confidentiality of all information regarding that household. The Administrative Agent is required to ensure that all certified applicants execute a certificate acknowledging the rights and requirements of owning or renting an affordable unit, in the form of Appendix J or K of UHAC, as applicable. Refer to Chapter 5 for a complete description on certifying households.



Establish and maintain effective communication with owners, property managers and landlords. Owners, property managers and landlords of restricted units should be instructed and regularly reminded that the Administrative Agent is their primary point of contact. The Administrative Agent shall immediately inform all owners, property managers and landlords of any changes to the Administrative Agent's contact information or business hours. The Administrative Agent must create and distribute annual mailings to all Owners of affordable units reminding them of the rights and requirements of owning an affordable unit (N.J.A.C. 5:80-26.18(d)4). Landlords and property managers must place a notice in all rental properties annually informing residents of the rent increase for the year and the contact information for the Administrative Agent (N.J.A.C. 5:80-26.18(d)3).

Owners should be instructed to immediately contact the Administrative Agent in the following circumstances:

- If they are considering or have decided to sell their home.
 - In the event they wish to refinance their mortgage or take out a home equity loan and, consequently, will be seeking a subordination of their mortgage.
 - If they are seeking an increase in the sales price of their unit due to capital improvements.
 - If they are seeking a hardship waiver to allow them to rent their unit.
- Property managers and landlords should be instructed to immediately contact the Administrative Agent

- Immediately upon learning that an affordable rental unit will be vacated.
- For review and approval of annual rental increases.



Preserve affordability controls during the sale of restricted units. Immediately upon being notified of an Owner's intent to sell their property, the Administrative Agent should inform the Owner of their role in the marketing and sale of the home. The Administrative Agent is responsible for extinguishing the affordability controls with the Seller and re-establishing them with the Buyer. The Administrative Agent shall be responsible for providing closing attorneys/agents with the appropriate legal instruments. Refer to Chapter 6 for more information on enforcement.



Ensure cancellations of Recapture Mortgages are effectuated. It is the Administrative Agent's responsibility to ensure that Recapture Mortgages are cancelled at the conclusion of the control period when the Recapture Mortgage is satisfied. If the Recapture Mortgage is being cancelled due to a sale of the property during the control period, then the Administrative Agent may wish to cancel the original Recapture Mortgage only after the Recapture Mortgage with the new Owner has been recorded.



Send out annual mailings about restrictions. Administrative Agents must annually mail to all Owners of affordable housing units a reminder of their rights and responsibilities as Owners of an affordable unit.



Provide annual notification of maximum rents. Each year when COAH releases its low- and moderate-income limits, rental households must be notified of the new maximum rent that may be charged for their unit. The Administrative Agent's contact information must be included on such notification in case the tenant is being overcharged.



Ensure unit has Continuing Certificate of Occupancy at transfer. To help ensure a healthy and safe living environment for all families, the Administrative Agent is responsible for requesting an inspection or a certified statement from the local Building Inspector at the first sale after the expiration of the minimum affordability control period.





Serve as the custodian of all legal documents. The Administrative Agent is responsible for maintaining originals of all legal instruments for the units in their portfolio. Throughout the duration of a unit's control period, the Administrative Agent shall maintain a file containing its affordability control documents. This includes, but is not limited to, the recorded Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds and Recapture Mortgages, as well as Recapture Mortgage Notes and Appendices J and K.



Serve as point of contact on all matters relating to affordability controls. It is recommended that the Administrative Agent develop a system to be notified by lenders when a unit is at risk of foreclosure. In the event of a foreclosure, the Administrative Agent should work with the foreclosing institution to


ensure that the affordability controls are maintained. The Administrative Agent should seek the counsel of the municipality's attorney on legal matters that threaten the durability of the affordability controls.

 Provide annual activity reports to Municipal Housing Liaison for use in the annual COAH monitoring report. The Administrative Agent is responsible for collecting the reporting data on each unit in their portfolio. To minimize the impact of this task, it is strongly suggested that the Administrative Agent familiarize themselves with the latest reporting forms and ensure that each data element is collected sometime during the initial processing of the applicant. Please visit COAH's website for the latest reporting forms.

 Maintain and distribute information on HUD-approved Housing Counseling Programs. More information on housing counseling requirements is provided in Chapter 4.

The Operating Manual

While UHAC includes many mandatory provisions, there are a number of discretionary policies and procedures that may be established by each municipality. An Operating Manual should set forth the standards that will be used by all Administrative Agents of affordable units within a municipality. Municipalities have the option to write all or some of the Operating Manual and allow the Administrative Agent(s) to complete the balance. By standardizing many of the minimum criteria at a municipal level, the municipality will be able to effectively regiment the experience of a household in its pursuit of affordable housing. This may prove to be especially valuable to municipalities that have multiple Administrative Agents representing a variety of affordable housing choices. All local COAH-related ordinances must be provided to the Administrative Agent in order to ensure their compliance with choices, such as regional preference, when creating their Operating Manual.

 At a minimum, the Operating Manual must clearly describe the procedures and policies for the following:

- Affirmative marketing.
- Random selection of interested applicants for available units. What level of verification will be completed on applicants before the lottery process -- pre-applications or only full applications? Will the pool of applicants be re-randomized each time a unit is available?
- Standards for reviewing applicant household eligibility and certifying applicant households.
- Procedures for establishing and maintaining long-term controls of restricted units.
- Enforcement of restrictions placed on affordable units.

- Releasing restricted units promptly at the conclusion of their control period.
- Approach to determining fair market value to determine the Recapture Mortgage Note amount.

Contracting with an Administrative Agent[5:80-26.14c-e]

As described earlier in this Section, the Administrative Agent's responsibilities can be achieved through several different approaches. However, unless the Administrative Agent is an employee of the municipality, an agreement must be written to formalize the relationship. UHAC establishes several new requirements for contracting with Administrative Agents.



All contracts and subcontracts regarding the Administrative Agent's duties are subject to the review and approval of COAH for units receiving COAH credit, to DCA's Division of Housing for Balanced Housing financed units or to HMEFA for MONI or UHORP financed units. A change in Administrative Agents must similarly receive approval from the applicable State Agency.

The following documents must be submitted for review prior to municipal approval of each Administrative Agent:

- Documentation which demonstrates that the private entity's purposes include the provision of housing services and housing counseling and the promotion of the principles underlying the Federal Fair Housing laws, and that the private entity has knowledge of and familiarity with the New Jersey Fair Housing Act and its implementing rules.
- Evidence of history of successful management of restricted affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a Mount Laurel Court settlement.
- Representations and warranties from the private entity that, if the entity serves as Administrative Agent with respect to restricted units in which it has a pecuniary interest, the entity shall not allow the pecuniary interest to compromise in any way its administration of the controls set forth in UHAC.
 - A locally-approved, but unsigned, draft of a services agreement, which must:
 - Clearly define the responsibilities of the Administrative Agent;
 - Require that the Administrative Agent prepare an Operating Manual in accordance with UHAC and/or follow all applicable locally-written policies, procedures and ordinances;
 - Grant the Administrative Agent the power to discharge and release legal instruments on behalf of the municipality;

- Affirm that the Administrative Agent will comply with Federal Fair Housing laws and the NJ Fair Housing Act and;
- Require all persons handling the day-to-day Administrative Agent responsibilities to attend all applicable training opportunities offered by COAH; and
- Warrant that an Administrative Agent's pecuniary interest in a project will not compromise their administrative duties (N.J.A.C. 5:80-26.14(e)3).
- Documentation of the private entity's capacity to undertake the duties of an Administrative Agent.
- A statement of intent to attend any continuing education opportunities provided by COAH.
- Indication of the types of units/programs to be administered under the contract for services.
- Such other relevant documents from a specific applicant as required by the municipality to justify approval as an Administrative Agent.

Owners

Owners of For-sale Units. Once affordability controls are in place and measures have been taken by the Municipal Housing Liaison to prevent the illegal sale or rental of the unit, there are no reporting responsibilities required of the Owner. Owners should, however, read annual mailings from the Administrative Agent, and cooperate with any and all requests for information from either the Municipal Housing Liaison or the Administrative Agent.

Owners of Rental Developments. Open and direct communication between the Owners of rental developments, the Municipal Housing Liaison and the Administrative Agent is essential to ongoing administration of affordability controls. Although the Administrative Agent is required to serve as the primary point of contact with households, the Owner must provide the Municipal Housing Liaison and Administrative Agent with information on vacancies. Owners of rental developments are also responsible for working with the Administrative Agent to ensure that the Municipal Housing Liaison has all necessary information to complete the annual COAH reporting.

As described earlier in this Chapter, Owners of rental developments also may serve as the Administrative Agent for their units if approved by the appropriate State Agency.

FAQs

Question: **Who can serve as the Administrative Agent?**

Answer: The Administrative Agent position can be filled several ways. The municipality can designate a municipal employee such as the Municipal Housing Liaison to perform

this function for all or some of the restricted units in their municipality or directly contract with the HMFA's Housing Affordability Service a consultant. The municipality is also permitted to contract directly with a developer, affordable housing sponsor, or owner of restricted rental units to perform the Administrative Agent functions. Developers, affordable housing sponsors and owners that have been contracted to perform these functions are further permitted to subcontract all or part of these services to a consultant, property manager or landlord. COAH must approve each entity providing administrative services for the municipality.

Question: My municipality is still protected by its Round II certification and continues to administer and monitor its restricted units; however, we do not have an Operating Manual. Are we still required to prepare one? When is it due?

Answer: Yes, all municipalities maintaining compliance with, or seeking, substantive certification from COAH are required to comply with UHAC, including preparation of an Operating Manual. Municipalities currently working on Round III Plans should submit an Operating Manual along with their petition for Round III substantive certification or with COAH monitoring.

Question: Our municipality is already working with consultants, property managers and landlords that are serving as Administrative Agents. Is there any guidance for bringing these relationships into compliance with UHAC?

Answer: COAH encourages municipalities to bring its existing relationships with Administrative Agents into compliance with UHAC as soon as possible. It is suggested that an Operating Manual be written to ensure that the allocation of responsibilities between the municipality and the Administrative Agent(s) covers all necessary duties and is fully compliant with UHAC.

Question: Is there any guidance or advice from COAH on determining when an Operating Manual and/or application should be available in other languages?

Answer: Review the municipality's Affirmative Marketing Plan to determine which populations are least likely to participate in your affordable housing program(s)? If these households are non English speaking, then, certainly, whenever feasible, translation of relevant documents into the applicable language(s) should be done. Another alternative to translating all documents into one or more additional languages is to advertise in those languages in periodicals catering to those population groups, and explain that assistance during the application process may be provided upon their request. Both the translation of documents and the services of an interpreter may sometimes be provided at minimal or no cost by various social service non-profit organizations focusing on providing services to these various population groups.

Question: Who pays for the Municipal Housing Liaison's salary?

Answer: Payment of the salary and fringe benefits of the Municipal Housing Liaison is the responsibility of the municipality. However, municipalities that collect development fees may pay the Municipal Housing Liaison's salary out of the Affordable Housing Trust Fund as an administrative expense, subject to COAH's rules at N.J.A.C. 5:94-6 and a COAH-approved Spending Plan.

Question: Does UHAC or COAH provide any cap on charges for Administrative Agent services?

Answer: No. COAH suggests that municipalities solicit multiple bids to help ensure that pricing is competitive and compare the services to be provided.

Question: How long must the Administrative Agent keep files on applications for affordable housing units and certified Owners/tenants of affordable housing units?

Answer: Pursuant to N.J.A.C. 5:80-26.14(a)8, N.J.A.C. 5:80-26.15(c) and N.J.A.C. 5:80-26.17 current records must be maintained by the Administrative Agent and outdated records must be given to the municipality for safe-keeping. A file must be created and maintained on each restricted unit for its control period.

Relevant Model Documents

Checklist for Approval of Municipal Housing Liaison

Ordinance Creating Position of Municipal Housing Liaison

Resolution Appointing a Municipal Housing Liaison

Checklist for Approval of Administrative Agent

Resolution Authorizing Contract with Administrative Agent

Contract for the Provision of Administrative Agent Services

Unit Inventory Form

All model documents referred to in this manual are available on COAH's for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml. Please visit this website often for up-to-date information on implementation of the Uniform Housing Affordability Controls.

Determining Affordable Sales Prices and Rent

Development Considerations and Compliance Issues

There are several regulations in UHAC that must be considered from the development perspective before the sales prices and rents of individual units can be calculated. These requirements should be discussed at the first meeting between the Municipal Housing Liaison, Administrative Agent and developer/affordable housing sponsor. The following is a summary of the requirements for ownership and rental projects. It is important to note that assisted living residences as well as units constructed with HMFA's MONI or UHORP Programs are not subject to the bedroom distribution and affordability average requirements. Instead they must maintain compliance with applicable Agency policies, guidelines and regulations. However, UHAC regulations must be followed in order for the units to be eligible for COAH credit in a certified Fair Share Plan.



Bedroom Distribution. UHAC includes several regulations on the distribution of unit sizes for affordable ownership and rental developments.

- The combined number of efficiency and one-bedroom units may be no greater than 20 percent of the total low- and moderate-income units;
- At least 30 percent of all low- and moderate-income units must be two-bedroom units;
- At least 20 percent of all low- and moderate-income units are three-bedroom units; and
- The remainder, if any, may be allocated at the discretion of the developer.

This regulation does not apply to units built with HMFA's MONI or UHORP funds, unless also seeking COAH credit. Assisted living facilities and affordable age-restricted units are not held to these bedroom distribution standards. For affordable age-restricted units, the number of age-restricted low- and moderate-income bedrooms must be equal to or greater than the number of affordable age-restricted units within the development.

In other words, the average bedroom size in an age-restricted development must be equal to or greater than one bedroom per unit. For example, if the overall age-restricted development is 25 percent efficiencies, and 50 percent one-bedroom units, and 25 percent two-bedroom units, that equals an overall development bedroom size of exactly one bedroom per unit. The age-restricted development can meet this standard by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit, or any other combination that will equal a minimum of one bedroom per unit.

Failure to properly calculate, or otherwise comply with the bedroom distribution requirement may result in the loss of COAH credits.



Pricing by Household Size. Initial sales prices and rents are based on targeted “model” household sizes for each size home as determined by the number of bedrooms. With the exception of assisted living facilities, initial sales prices and rents must adhere to the following rules. These maximum sales prices and rents are based on COAH’s Annual Regional Income Limits Chart at the time of occupancy:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a one- and one-half person household;
- A two-bedroom unit shall be affordable to a three-person household;
- A three-bedroom unit shall be affordable to a four- and one-half person household; and
- A four-bedroom unit shall be affordable to a six-person household.

Size of Unit	Household Size Used to Determine Max Sales/Rent
Studio/Efficiency	1
1 Bedroom	1.5
2 Bedrooms	3
3 Bedrooms	4.5
4 Bedrooms	6

The above rules are only to be used for setting initial sales prices and rents. They are not guidelines for matching household sizes with unit sizes. See Chapter 4 for information on matching household sizes with unit sizes. For assisted living facilities, a two-bedroom unit shall be affordable to a two-person household or to two one-person households. Additionally, the pricing of age-restricted units may not exceed affordability based on a two-person household.

Determining Maximum Initial Sales Price

The maximum sales price for an ownership unit is determined by first calculating the amount that an appropriately sized household can afford for housing expenses at various income ranges. Several related expenses (homeowner insurance, private mortgage insurance (PMI), association fees and taxes) must then be subtracted from the household’s maximum monthly contribution toward housing expenses to arrive at the maximum monthly mortgage payment. The calculated mortgage amount, a five percent down payment, and the current lending rate must be used to arrive at the maximum sales price.

COAH has developed two MS Excel® spreadsheets, the General Sales Price Calculator and the Age-Restricted Sales Price Calculator, to assist Administrative Agents, developers, and affordable housing sponsors with the task of calculating initial maximum sales prices for ownership units. Guidance on using these spreadsheets is included later in this Section.

Additional Regulations for an Ownership Development

In addition to UHAC regulations in the previous Section entitled Development Considerations and Compliance Issues, ownership developments must also comply with the following UHAC regulations:



Division of Units: Low- and Moderate-income. In each affordable ownership development, at least 50 percent of all affordable units must be affordable to low-income households. The remaining affordable units must be affordable to moderate-income households. This regulation does not apply to units built with or HMFA's MONI or UHORP funds, unless also seeking COAH credit.



Affordability Average. Each affordable development must achieve an affordability average of no more than 55 percent of the regional median income for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type. This regulation does not apply to units built with HMFA's MONI or UHORP funds unless also seeking COAH credit. Calculation of the affordability average is explained in the next Section entitled Using the COAH Sales Price Calculators and is also available on COAH's website for Administrative Agents.



Maximum Initial Sales Price. The maximum initial sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of the regional median income.



Condominium/Homeowner Association Fees. UHAC requires that Owners of affordable units and Owners of market-rate units be charged identical condominium or homeowner association fees and/or special assessments. However, affordable housing developments subject to a municipal ordinance adopted before October 1, 2001 may be exempt from this regulation if the ordinance establishes differing association fees or special assessments for market-rate and affordable unit Owners. Condominium or homeowner association fees and increases must be considered when determining the maximum sales price and applicant's eligibility. Municipalities that collect development fees are also permitted to use funds for an Affordability Assistance Program that subsidizes condominium and homeowner association fees and/or special assessments.

Using the COAH Sales Price Calculators

Given the annual changes in COAH income limits, it is imperative that Administrative Agents use the latest version of the spreadsheets from COAH's webpage (<http://www.nj.gov/dfa/coah/administrators/administrators.shtml>).

Whether the Administrative Agent calculates the number by hand or uses a Sales Price Calculator, the following data must be collected and accurately reported:

- Annual mortgage rate. The current year-to-date average Federal Reserve H.15 conventional mortgages rate of interest must be used when generating the maximum sales price. This information is available on the Federal Reserve website at <http://www.federalreserve.gov/releases/h15/> . The correct figure to use is located in the rightmost column of the last row on the table found on the above website.
- Monthly Condominium or Homeowner Association fees, if applicable.
- Property tax rate and equalization ratio. Both can be obtained from the Municipal Tax Assessor or website links pointing to data maintained by the Divisions of Taxation and Local Government Services. However, it is best to check with the Municipal Tax Assessor for the most current information.

The Sales Price Calculators for Age-Restricted and Non Age-Restricted developments are already programmed with values for several other components of the calculation. These values include a rate for private mortgage insurance (PMI), mortgage term, and down payment. The pre-defined figures included in the spreadsheet will be updated periodically to reflect changes in lending trends and market conditions.

19					
20		FINANCIAL INFORMATION			
21					
22	ANNUAL MORT RATE	7.00%			
23	ASSOCIATION DUES	\$100	(Monthly)		
24	PROPERTY TAX RATE	\$3.00			
25	EQUALIZATION RATIO	1			
26	PROPERTY INSURANCE	\$35	(Monthly)		
27	MORTGAGE TERM	30	Years	(0 Points)	
28	DOWN PAYMENT	5%	(Maximum expected)		
29	PRIVATE MORT INS (PMI)	\$7.80	Annual Rate Per \$1,000 of Mortgage Amount		
30					

Figure 1. Screenshot from the General Sales Price Calculator. Values in non-shaded cells must be used to determine an accurate maximum sales price. Shaded cells can be edited by the user.

The next section of the General Sales Price Calculator helps confirm compliance with the affordability average and breakdown of units into income categories.

31							
32	PROJECT DATA						
33				AFFORDABLE UNIT PRICING STRATEGY			
34	TOTAL UNITS	100					
35	AFFORDABLE UNITS	50		# UNITS		AT %	
36	PERCENT SETASIDE	50.0%					
37	NUMBER OF LOW	25		LOW	6		35.0%
38	NUMBER OF MOD	25		LOW	19		45.0%
39							
40	No. OF 1 BEDROOMS	10	20% Max	MOD	2		50.0%
41	No. OF 2 BEDROOMS	18	30% Min	MOD	6		65.0%
42	No. OF 3 BEDROOMS	16	Combined	MOD	17		70.0%
43	No. OF 4 BEDROOMS	6	20% Min				
44		50	<---Total Affordable Units--->		50	AVG =	54.9%

Figure 2. Screenshot from the General Sales Price Calculator. Complete the shaded cells. Note that the percentage of affordability can be adjusted. However, the development must not exceed the required affordability average of 55 percent.

Once the Pricing Strategy section is complete, the spreadsheet will generate the affordability average, maximum sales prices and maximum mortgage amounts for each unit type.

The initial sales price for an ownership unit must be approved by the responsible Administrative Agent before marketing of the unit may begin. In the cases where a developer, affordable housing sponsor or owner is serving as their own Administrative Agent, it is strongly suggested that the pricing calculations be reviewed with the Municipal Housing Liaison, as the municipality is ultimately responsible for COAH compliance of all affordable units.

Determining Resale Prices

Calculating the maximum resale price (MRP) for an ownership unit involves applying the annual percentage increase corresponding with each calendar year since the Seller bought the house. No increase is permitted during the balance of the calendar year immediately after the sale. A Resale Price Calculator has been created by COAH to assist with this calculation and is available on COAH's website for Administrative Agents. By selecting the proper county and inputting the year the home was purchased, along with the price the current Owner paid for the home, the calculator will determine the MRP for the home. The spreadsheet also includes a calculation to determine the maximum amount a homeowner may refinance, which requires the approval of the Administrative Agent.

1	COAH Re-Sale Price Calculator			
2	Enter County, Year Purchased by current owner, and Purchase Price paid by current owner below to calculate the maximum allowable sale price for any year after purchase.			
3				
4	Required Information:		Optional Information:	
5	Select County:	Mercer	Enter Street Address:	101 S. Broad Street
6				
7	Enter Year Current Owner Purchased Unit:	1990	Enter City:	Trenton
8				
9	Enter Price Current Owner Paid:	\$85,000	Enter Zip Code:	08625

Figure 3. Screenshot from the Resale Price Calculator. Complete the required shaded cells. The year and purchase price of the current Owner should be used to calculate the resale price.

Upon entry of the required information, the Resale Calculator will generate the maximum sale price and maximum refinance amount. Annual percentage increases permitted by COAH will also be displayed. Depending on the size of the user's computer monitor, it may be necessary to "scroll down" to view this information. Upon determining a maximum resale or refinance amount, the calculator sheet should be printed and placed in the appropriate property file(s).

11	Year	Maximum Sale Price:	% Increase From Previous Year	Maximum Refinance Amount
12				
13	2005	\$161,625	4.00%	\$153,544
14	2004	\$155,409	6.37%	\$147,639
15	2003	\$146,102	5.44%	\$138,797
16	2002	\$138,564	5.87%	\$131,636
17	2001	\$130,882	3.76%	\$124,338
18	2000	\$126,139	5.64%	\$119,832
19	1999	\$119,404	3.52%	\$113,434
20	1998	\$115,344	2.24%	\$109,577
21	1997	\$112,817	3.02%	\$107,176
22	1996	\$109,510	5.31%	\$104,034
23	1995	\$103,988	0.00%	\$98,789
24	1994	\$103,988	0.00%	\$98,789
25	1993	\$103,988	6.52%	\$98,789
26	1992	\$97,623	4.60%	\$92,742
27	1991	\$93,330	9.80%	\$88,664
28	1990	\$85,000	N/A	\$80,750
29	1989	N/A	N/A	N/A
30	1988	N/A	N/A	N/A
31	1987	N/A	N/A	N/A

Figure 4. Screenshot from the Resale Price Calculator. The calculator will generate the maximum sale price as well as the maximum refinance amount (up to 95 percent of the maximum resale price).

Requests for Increases in Maximum Sales Price. The Seller of an ownership unit may ask the Administrative Agent to increase the sales price of their home beyond the maximum sales price under limited circumstances. UHAC states that only those improvements “that render the unit suitable for a larger household or that add an additional bathroom” can increase the calculated maximum sales price. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger households. Additionally, the purchase of a central air conditioning system installed subsequent to the initial sale and not included in the initial sales price may be made a condition of the resale provided the price, subject to a 10-year straight-line depreciation. For example, a 10 percent reduction in value each year since installation, may be approved by the Administrative Agent. In this instance, the approved value of the central air conditioning does not increase the resale price, but is listed as a separate item on the HUD 1 form.

Options or upgrades purchased at the time of the initial sale are not considered part of the initial sales price and therefore do not affect the value or sales price at the time of resale. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale.

Determining Initial Rents

Determining the initial rent on a new affordable housing project is very similar to the process of determining a maximum sales price with one exception -- a utility allowance for renter-paid utilities is subtracted from the household's maximum monthly contribution toward housing expenses. Several MS Excel® spreadsheets have been created by COAH to calculate initial rents and are available on COAH's website for Administrative Agents. An explanation of how to use the calculators is included later in this Section.

Additional Regulations for a Rental Development

In addition to UHAC regulations covered earlier in this Chapter in the Section Development Considerations and Compliance Issues, rental projects must also comply with the following UHAC regulations:



Split Between Low- and Moderate-Income Rental Units. At least 50 percent (of the affordable units within each bedroom distribution (unit size) must be low-income units and at least 10 percent of the affordable units within each bedroom distribution must be affordable to households earning no more than 35 percent of the regional median income. The remainder of the affordable units must be affordable to moderate-income households. This regulation does not apply to assisted living residences or units built with HMFA's MONI or UHORP funds, unless also seeking COAH credit. COAH regulations exempt Low-Income Housing Tax Credit projects from this regulation.



Affordability Average. The average rent for all affordable units cannot exceed 52 percent of the regional median income. At least one rent for each bedroom type must be offered for both low-income and moderate-income units. This regulation does not apply to assisted living residences or units built with HMFA’s MONI or UHORP funds, unless also seeking COAH credit. The COAH Initial Rent Calculator, discussed below, includes a feature for determining the affordability average.



Maximum Rent. The maximum rent of restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of the regional median income. This regulation does not apply to assisted living residences or units built with HMFA’s MONI or UHORP funds, unless also seeking COAH credit.

Using the COAH Rent Calculators

Before starting to use the COAH Rent Calculators, it is important to verify that you are using the correct type and most recent version of the spreadsheet with the latest COAH income limits and HUD utility allowances. Rent calculators are available for general rental developments and age-restricted rental developments. Visit COAH’s webpage at <http://www.nj.gov/dca/coah/administrators/administrators.shtml> to access the calculators.

The Project Data section of the Rent Calculators includes some features that will help determine the bedroom and income distribution of an affordable housing project.

20				
21		PROJECT DATA		
22				
23		TOTAL UNITS	100	
24		AFFORDABLE UNITS	50	SETASIDE = 50.00%
25				
26				
27				
28			PROPOSED	REQUIRED
29		NUMBER OF LOW	25	25 MINIMUM
30		NUMBER OF MOD	25	25 MAXIMUM
31				
32		No. OF EFFICIENCIES	6	10 MAXIMUM
33		No. OF 1 BEDROOMS	4	
34		No. OF 2 BEDROOMS	18	15 MINIMUM
35		No. OF 3 BEDROOMS	16	10 MINIMUM
36		No. OF 4 BEDROOMS	6	NONE
37		TOTAL	50	50
38				

Figure 5. Screenshot from COAH General Rental Calculator. After inputting in the total units and the number of affordable units, the spreadsheet guides you through the proper distributions for income and bedroom sizes.

Another useful section of the Rental Calculator allows the user to set and allocate units in different affordability ranges in order to ensure that the average does not exceed 52 percent. The spreadsheet will remind the user of the need to provide 10 percent of affordable units to households earning 35 percent or less of the regional median income as well as the need to provide a different rent for each bedroom type for low-income and

moderate- income units. The COAH calculator provides more spaces for rental affordability percentages to allow for flexibility, but they are not required.

RANGE OF AFFORDABILITY			
TIER	# UNITS		AT %
LOW	5		35.0%
LOW	20		50.0%
MOD	12		55.4%
MOD	6		57.0%
MOD	7		60.0%
TOTAL	50	AVG =	52.0%

After determining a pricing strategy, information on utilities must be entered. This includes the type of utility, that is, whether the heat is gas, oil or electric, and whether the utility is included in the tenant's rent or paid for separately by the tenant.

UTILITY INFORMATION						
UTILITY OR SERVICE	INCLUDED (Y/N)	TYPE				
HEAT	n	g	(G=Gas, O=Oil, E=ELECTRIC)			
COOKING	n	g	(G=Gas, E=ELECTRIC)			
ELECTRIC	n					
HOT WATER	n	g	(G=Gas, O=Oil, E=ELECTRIC)			
WATER	y					
SEWER	y					
TRASH	y					
CALCULATION OF MAXIMUM NET RENT						
PRICE TIER	EFFICIENCY	1 BR	2 BR	3 BR	4 BR	
35.0%	\$449	\$467	\$556	\$639	\$696	
49.9%	\$664	\$698	\$834	\$959	\$1,054	
55.4%	\$744	\$783	\$936	\$1,077	\$1,186	
57.0%	\$767	\$808	\$966	\$1,112	\$1,224	
60.0%	\$810	\$854	\$1,021	\$1,176	\$1,296	

After all development-level data is entered into the calculator and the table for utilities is completed, the spreadsheet will generate a series of initial rents for each unit size that is adjusted with the proper utility allowances.

Determining Rent Increases

Annual rent increases are permitted in affordable units governed by UHAC². Rent increases are permitted at the anniversary of tenancy according to COAH's Annual Regional Income Limits Chart, available on COAH's website for Administrative Agents. For example, in 2006, Owners of rental property were permitted to increase rents by four percent. These increases must be filed with and approved by the Administrative Agent. Property managers or landlords who have charged less than the permissible increase may use the maximum allowable rent with the next tenant with permission of the Administrative Agent. The maximum allowable rent would be calculated by starting with the rent schedule approved as part of initial lease-up of the development, and calculating the annual COAH-approved increase from the initial lease-up year to the present. Rents may not be increased more than once a year, may not be increased by more than one COAH-approved increment at a time, and may not be increased at the time of new occupancy if this occurs less than one year from the last rental. No additional fees may be added to the approved rent without the express written approval of the Administrative Agent.

FAQs

Question: What should homeowner insurance be based on?

Answer: Homeowner insurance should be based on replacement value, not the maximum resale price.

Question: Does COAH require design standards for affordable housing units?

Answer: COAH does not require any additional design standards above what is required by municipal zoning. COAH does recommend, however, that the affordable housing units be identical to the market-rate units within the same development and that affordable units be integrated with market-rate units in a development. Certain financing sources, such as DCA's Balanced Housing Program, the Low-Income Housing Tax Credit Program, and the Federal Home Loan Bank, Affordable Housing Program do require specific design standards.

Question: Is there a cap on fees related to parking, pets, and amenities?

Answer: There is no cap on fees related to parking, pets, and amenities as they are outside the maximum sales price or rent calculations and are considered optional services. However, the fees for optional services must be the same for affordable units as for market-rate units. For example, pool privileges cannot be free to market-rate unit households and an extra expense for affordable unit households. Affordable unit Owners must have the same access to amenities as market-rate Owners. Additionally, the fees for optional services cannot be part of the monthly rent and cannot be charged once the tenant has decided not to use the service.

Question: Do the utility allowances associated with rental units need to be adjusted annually in the same way that rent increases are adjusted according to the COAH income limits?

² LIHTC projects are exempt from UHAC regulations governing rent increases (N.J.A.C.5:94-7.2(B)2. LIHTC rent increases are governed by applicable Federal regulations.

Answer: The Utility Allowance Chart published annually with COAH's Regional Income Limits Chart is only used when determining the initial rent. COAH units that are not financed with Federal funds need only to apply the annual rent increase permitted by COAH or local rent control, whichever is less. Units financed with Federal sources need to apply the Utility Allowance annually plus the percent increase in the PMSA median income as the basis of the rent increase.

Question: If a landlord has previously charged less than the maximum allowable rent, may the landlord charge the full rent to a new tenant?

Answer: With the approval of the Administrative Agent, when a new tenant leases a unit the landlord may use the maximum allowable rent, not the previously charged rent, to calculate the annual increase.

Relevant Model Documents

Family Sales Calculator

Age-Restricted Sales Calculator

Family Rental Calculator

Age-Restricted Rental Calculator

LIHTC Rental Calculator

Resale Calculator

HUD Monthly Utility Allowances

COAH Annual Regional Income Limits Chart

Illustrative Sale Prices

Illustrative Rents

All model documents referred to in this manual are available on COAH's website for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml. Please visit this website often for up-to-date information on implementation of the Uniform Housing Affordability Controls.

Affirmative Marketing



All affordable units that are governed by UHAC are required to be affirmatively marketed using an Affirmative Marketing Plan. To ensure that affirmative marketing is conducted properly, an Affirmative Marketing Plan, adopted by resolution of the governing body and referenced by ordinance, requires COAH's approval during the substantive certification process for those units receiving COAH credit. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an Administrative Agent or a developer, sponsor, owner, property manager or landlord of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing and to target households throughout the entire housing region in which the units are located.



The Affirmative Marketing Plan must be developed at the municipal level and approved by COAH before it is implemented by the Administrative Agent. Municipalities have the option of designating an employee, such as the Municipal Housing Liaison or another staff person, to serve as the Administrative Agent responsible for implementing the Affirmative Marketing Plan. Conducting affirmative marketing at the municipal level ensures that all households seeking affordable housing within the municipality will have a uniform experience and equal opportunity to apply for affordable housing.

Creating a Plan

The first step in creating an Affirmative Marketing Plan is to attempt to identify those populations within the housing region that traditionally have not applied or are anticipated to be least likely to apply for affordable housing. A municipality may wish to consult with other municipalities in their housing region to share ideas and experiences in identifying and reaching these populations. Once the underserved populations and their respective obstacles to affordable housing have been identified, the municipality should attempt to tailor specific marketing efforts to those populations and attempt to remove those obstacles preventing them from applying for affordable housing.

For example, an Administrative Agent reviews the 2000 Census and determines that a large concentration of Polish-speaking people live and work in a municipality's housing region. The Administrative Agent notices that there have been few applications for affordable housing submitted by Polish-speaking people in the past. In this instance, the municipality should learn what might be preventing Polish-speaking people from seeking out affordable housing opportunities. In some cases, the obstacle may be something as simple as a language barrier that prevents them from reading marketing materials, or maybe the majority of Polish-speaking people do not subscribe to the newspaper used to advertise affordable housing opportunities. Therefore, the Affirmative Marketing Plan should provide for the publication of affordable housing advertisements in the community publication read by many Polish-speaking people. The municipality could also consider translating and printing affordable housing applications and marketing materials in Polish. UHAC requires municipalities to make a good faith effort to identify the underserved populations in the housing region and to implement marketing initiatives to reach them.

The marketing initiatives tailored to underserved populations, combined with region-wide initiatives to the general public are at the heart of the Affirmative Marketing Plan. When developing an Affirmative Marketing Plan, the municipality must consider the media distribution requirements outlined in UHAC.



Affirmative Marketing Plans must include all of the following:

- Publication of at least one advertisement in a newspaper of general circulation within the housing region.
- Broadcast of at least one advertisement by radio or television throughout the housing region. This new requirement intends to leverage the requirement of radio and TV broadcasters to provide free public service announcements (PSAs). A list of regional television and radio outlets is available on COAH's website for Administrative Agents.
- At least one additional regional marketing strategy such as a neighborhood newspaper, religious publication, organizational newsletter, advertisement(s) with major employer(s), or notification through community and regional organizations such as non-profit, religious and civic organizations.
 - Although not a requirement of UHAC, COAH encourages municipalities to list all affordable housing units in their community on the New Jersey Housing Resource Center at www.njhousing.gov. The New Jersey Housing Resource Center is a free service to both Owners and administrators of affordable housing and households seeking affordable housing opportunities.

Additional details about each marketing initiative should be written into the Affirmative Marketing Plan and should include:

- Contact information for the entity that accepts submissions and any submission requirements, for example, digital file, paper original only, etc.
- If the media is a periodical, how often it is published and the number of days before publication a submission is due.
- The planned frequency at which the municipality or Administrative Agent will follow through with this marketing opportunity. For instance, advertising in a daily newspaper may be cost prohibitive; an ad once a month may provide the desired results.

Once all initiatives have been written into the Affirmative Marketing Plan in sufficient detail, the municipality should verify that the Affirmative Marketing Plan is in compliance with the requirements of UHAC.

To complete the Affirmative Marketing Plan, the following information must be added for each affordable housing opportunity within the municipality:

- The address of the project and development name, if any.
- The number of units, including number of sale and/or rental units.
- The price ranges of the sale and/or rental units.
- The name and contact information of the Municipal Housing Liaison, Administrative Agent, property manager or landlord.
- A description of the random selection method that will be used to select applicants for affordable housing. Random selection is discussed in greater detail in Chapter 4.
- Disclosure of required application fees, if any

A form to help municipalities set up an Affirmative Marketing Plan is available on COAH's website for Administrative Agents.

Once the Affirmative Marketing Plan has been completed and adopted by resolution of the governing body, the Affirmative Marketing Plan must then be approved by COAH before it can be implemented by reference in an ordinance. Municipalities seeking substantive certification should include a copy of their Affirmative Marketing Plan as part of their petition to COAH. As a municipality proceeds with implementing their Fair Share Plan, new affordable housing projects may come on line that were not originally anticipated. In those cases, the Affirmative Marketing Plan adopted at the municipal level will need to be revised. For instance, if the Affirmative Marketing Plan does not contain any specific initiatives directed towards senior citizens, the Affirmative Marketing Plan will need to be revised before marketing can begin on a new age-restricted development.

Regional Preference



Municipalities that wish to give preference to applicant households that live or work in their COAH housing region must state this preference in the form of an ordinance. This preference cannot be limited to families that live or work in the host municipality – if preference is given, it must be given to all households that live or work in their COAH housing region. COAH divides New Jersey’s 21 counties into six housing regions as outlined on COAH’s Annual Regional Income Limits Chart.

Developing an Advertisement



UHAC includes several requirements for the actual advertisements that are published under an Affirmative Marketing Plan. A sample advertisement is available on COAH’s website for Administrative Agents. Specifically, advertisements must contain the following data on each affordable housing opportunity:

- The location of and directions to the units.
- A range of prices for the housing units.
- The bedroom size(s) of the units.
- The maximum income permitted to qualify for the housing units.
- The locations of applications for the housing units.
- The business hours when interested households may obtain an application for a housing unit.
- Application and/or credit check fees, if any.

It is also recommended that the following information be included in the advertisements:

- Last date applications will be accepted.
- Contact number of the Municipal Housing Liaison, Administrative Agent, property manager or landlord.
- A statement concerning the availability of credit, budget and/or homeownership counseling services.
- If already adopted by ordinance, a statement concerning regional preference.
- COAH recommends including the following statement on all advertisements. “Visit www.njhousing.gov for more affordable housing opportunities.”

Implementing an Affirmative Marketing Plan

As described in the beginning of this Chapter, a municipality has some flexibility in how its Affirmative Marketing Plan is implemented. Whatever approach is chosen, UHAC states that the municipality is ultimately responsible for ensuring that its COAH-approved Affirmative Marketing Plan is implemented properly. Therefore, it is strongly recommended that Administrative Agents maintain detailed records on all marketing initiatives.

Affirmative marketing for initial occupancy of ownership and rental units must begin at least four (4) months before the planned completion of the project. COAH suggests that Administrative Agents strive to maintain a pool of certified applicants sufficient for at least two years worth of resales or vacancies. It is reasonable to assume that between 5 and 10 percent of an affordable housing portfolio will be resold or re-rented annually.

To help analyze the impact and success of various marketing initiatives, it is recommended that the Administrative Agent ask the applicants where they learned of the housing opportunity.



Throughout the duration of the Affirmative Marketing Plan, applications for affordable housing must be available in several locations, including, but not limited to:

- The county administration buildings and/or libraries for each county within the housing region
- The municipal administration building and library in the municipality in which the units are located
- The developer's sales or rental office and/or the Administrative Agent's offices.
- Via mail by requests from prospective applicants

FAQS

Question: Who is responsible for making sure applications are available at the county administration building and libraries?

Answer: Whatever entity the municipality designates to implement the Affirmative Marketing Plan is responsible for ensuring that an adequate supply of applications exists at these locations. Besides periodically contacting those locations to take stock, the designated entity may wish to place a note near the last few copies of the application alerting the reader of where to call for additional copies. A strong, congenial working relationship with contact people within the administration buildings and libraries is another excellent way to have an "extra" pair of eyes on all of your handouts, alerting you when supplies are low or out. Finally, an electronic copy of the application and other key forms (PDF, MS Word, etc.) posted on the web or available for e-mail can also help prevent delays in getting applications to interested applicants.

Question: How often should we advertise?

Answer: Administrative Agents responsible for new developments, or newly hired Administrative Agents, must advertise initially to create an applicant pool. For new developments, advertising should begin four months prior to the anticipated occupancy of the units. Advertising should continue monthly until all units are sold or rented. Once all vacant units are filled with eligible households, the Administrative Agent can either close the applicant pool or keep it open. If the applicant pool has sufficient eligible households for approximately two years worth of turnover, COAH recommends that the applicant pool be closed and applications no longer be accepted. In this case, advertising does not need to be conducted until four months before the applicant pool is to be reopened. If the Administrative Agent wishes to keep the applicant pool open, they must conduct some form of advertising on a monthly basis. However, all the components of the Affirmative Marketing Plan do not need to be implemented every month. One strategy can be implemented each month on a rotating basis. Chapter 4 provides more information on random selection and applicant pool maintenance to help determine how often advertising should be conducted.

Question: My county doesn't have a library. How do I comply with the application availability rule?

Answer: Only 11 of New Jersey's 21 counties have a county library (a list is included on COAH's website for Administrative Agents). If one or more of the counties in a housing region do not have county libraries, applications must be made available at the county administration building.

Question: Our affordable housing development is very small. It is unnecessary for us to conduct monthly marketing initiatives and the number of applicants in our existing pool already exceeds the two-year rule of thumb. Is there any way for us to maintain compliance without conducting monthly outreach initiatives?

Answer: COAH suggests that you attempt to partner with other municipalities in your housing region to help defray time and cost or close the applicant pool and do not accept applications until the applicant pool contains fewer applicants and affirmative marketing is implemented.

Question: We have moderate-income units available, but not low-income units. Can we keep only the moderate portion of the applicant pool open?

Answer: Yes. In fact, if you regularly have a type of unit that is hard to fill, you may tailor marketing initiatives to fill that type of unit. However, households that submit applications and are not interested or eligible for the targeted unit type must be notified that they will not be placed in the applicant pool until it is reopened for their unit type.

Question: Are all developments required to conduct affirmative marketing or just those with a certain number of units, for example, more than five units?

Answer: All affordable units governed by UHAC are required to be affirmatively marketed. If it is burdensome for a small development to conduct its own affirmative marketing, the municipality and Administrative Agent(s) should consider conducting the affirmative marketing for all the units within the municipality at the municipal level, not at the development level. An alternative is to contract with an Administrative Agent who will do the affirmative marketing for your units as well as other units they manage.

Question: Is a regional preference permitted in UHAC?

Answer: Although not explicitly stated in the most recent version of UHAC, the regional preference remains an option that is consistent with COAH's methodology, which determines the municipal fair share on a State and regional basis. For the same reason, a municipal preference is not permitted.

Question: As the Administrative Agent, may I charge an application fee to a potential tenant? If so, how much can this fee be?

Answer: N.J.A.C. 5:80-26.12 is applicable only to the fee charge by the Administrative Agent to the Affordable Housing Applicant for filing an application. This interpretation is supported by N.J.A.C. 5:80-26.15(h)8. This requires that the ads for Affordable Housing, both sale and rental, include the application fee, if any. Obviously, there is no application fee that a developer/seller may charge to an individual or family interested in purchasing a unit, but there will be an unknown and unregulated mortgage application fee. Therefore, the "fee" noted in 26.15 must be that of the Administrative Agent. Since the Administrative Agent is ultimately the Agent of the Municipality's interests and would normally be the recipient of the application, the Application Fee should be a reflection of the Administrative Agent's costs associated with placing an applicant name on an affordable housing list and not their eligibility for a particular unit. An Administrative Agent who pre-screens or pre-qualifies Applicants will have significantly higher costs associated with taking an application than an Administrative Agent who takes all applications for either addition to a list or random selection without significant concern for eligibility until a unit is available. Although COAH allows up to 5% of the rent for a unit to be charged for a fee, it is COAH's expectation that Application Fees charged by Administrative Agents reflect their costs associated with their procedures. Administrative Agents are discouraged from taking by the regulatory allowance charge of 5% of rent when it is not necessary to meet their expenses. Applications fees required by landlords to candidates for affordable housing units may not exceed the fees charged to market candidates in the same project. If there are Administrative Agent application fees and/or Landlord application fees they should be separately noted in all paid and unpaid literature seeking applications for affordable housing.

Relevant Model Documents

Affirmative Marketing Plan

Resolution Adopting Affirmative Marketing Plan

Administrative and Affirmative Marketing Provisions in the Fair Share Ordinance

List of Regional Television and Radio Broadcasters

Sample Advertisements

List of County Libraries

All model documents referred to in this manual are available on COAH's website for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml.

Establishing and Managing an Applicant Pool

The Initial Application Process

In order for households to be part of the selection process for a vacant unit, they must – at a minimum – be preliminarily determined as income-eligible. This process can be accomplished through a short preliminary application (pre-application) that asks applicants about their income and household size. A preliminary application should only request information such as: the applicant's current contact information, age, gender, and relationship of all household members, annual income of all household members, and any other information necessary for categorizing the household in the pool of applicants. Examples include desired number of bedrooms, whether or not the household currently lives or works in the housing region, and the type(s) of housing in which the household is interested (sale or rental). A sample preliminary application is available on COAH's website for Administrative Agents.

As an alternative, Administrative Agents may wish to bypass the pre-application entirely and require that a household submit a complete application and supporting documentation which is evaluated for eligibility for certification before the household is placed into the pool of applicants for available units. A full application must meet the requirements listed in Chapter 5 – Household Certification.

All applications for affordable housing should include a front page narrative describing the application process and income qualification requirements, and list the income limits for the housing region in which the units are located. Applications may need to be available in other languages based on the population of the housing region.

A letter must be sent to all applicants once the application is received, stating that:

- The application is complete and the household has been placed into the applicant pool, or
- The application is incomplete and the applicant must complete it before the Administrative Agent can review the household's income

- eligibility (a policy must be established as to how many times an application will be returned for incompleteness), or
- The application is complete, but the household is over the income limit for the housing region, and re-application is permitted if the income changes, or
- The application is complete, but the household does not earn sufficient income for the units administered by the Administrative Agent; such a letter should include a statement that re-application is permitted if the income changes and provide a listing of referral agencies for counseling services.

Sample letters are included on COAH's website for Administrative Agents.

Referral for Counseling Services



The Administrative Agent is responsible for providing housing counseling, or providing referrals for counseling, as a part of the Affirmative Marketing Plan and during the application process. A household is only required to attend counseling if their monthly housing expense exceeds UHAC standards. A HUD-approved housing counseling agency, or a counseling agency approved by the NJ Department of Banking and Insurance, meets UHAC's requirements for an experienced Housing Counseling Agency. If the Administrative Agent is not approved by HUD or by the NJ Department of Banking and Insurance, the Agent may make referrals to one of the HUD-approved housing counseling agencies in New Jersey. This counseling to low- and moderate-income housing applicants will focus on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law and is free of charge. A list of non-profit counselors approved by HUD and/or the New Jersey Department of Banking and Insurance is included on COAH's website for Administrative Agents.

Random Selection



UHAC requires the random selection of applicants for placement in affordable units. Random selection is a process by which households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit. The random selection process shall be used in the following situations:

- When a new for-sale or rental development is initially occupied
- When an Administrative Agent establishes an applicant pool to fill resales or re-rentals

UHAC provides some flexibility regarding the structure of the random selection process. However, the process must be clearly defined in the Affirmative Marketing Plan approved by COAH and documented in the Administrative Agent's Operating Manual. Below are two examples of random selection procedures.

Initial Randomization

In initial randomization, applicants are selected at random before income-eligibility is determined, regardless of household size or desired number of bedrooms. The process may be as follows:

- After advertising is implemented, the Administrative Agent accepts applications for a set period of time, for example, 30-90 days.
- At the end of the period, sealed applications are selected one-by-one through a lottery. If fewer applications are received than the number of available units, then all eligible households will be placed in a unit. [The Administrative Agent may also pre-qualify applicants as soon as applications are received, and only place preliminarily income-eligible applications in the lottery, provided that applicants are notified in writing of eligibility and non-eligibility in advance of the lottery.]
- Households are informed of the date, time and location of the lottery and invited to attend.
- A municipal representative should also be invited to attend the lottery.
- An applicant pool is created by listing applicants in the order selected.
- Applications are reviewed for income-eligibility. Ineligible households are informed that they are being removed from the applicant pool or given the opportunity to correct and/or update income and household information.
- Eligible households are matched to available units based upon the type of unit in which they are interested (for-sale or rental) and the number of bedrooms needed (and any other special requirements, such as regional preference or need for an accessible unit).
- If there are sufficient names remaining in the pool to fill future resales and re-rentals, the applicant pool should be closed. Two years of turnover is a recommended standard.
- When the applicant pool is close to being depleted, the Administrative Agent will re-open the pool and conduct a new random selection process after fulfilling the affirmative marketing requirements. The new applicant pool may be added to the remaining list of applicants.
- Alternatively, for future resales and re-rentals only, the Administrative Agent can keep the applicant pool open after the initial lottery. This procedure may only be followed if the Administrative Agent engages in ongoing monthly affirmative marketing efforts according to the approved Affirmative Marketing Plan to ensure outreach to the housing region.

Randomization After Certification

In a randomization after certification process, random selection is conducted when a unit is available, and only certified households seeking the type and bedroom size of the available unit are placed in the lottery. The process may be as follows:

- After advertising is implemented, the Administrative Agent accepts applications for a set period of time, for example, 30-90 days.
- All applications are reviewed and households are either certified or informed of non-eligibility. (The certification is valid for 180 days, and may be renewed by updating income-verification information.)
- Eligible households are placed in applicant pools based upon the type of unit in which they are interested (for-sale or rental) and the number of bedrooms needed (and any other special requirements, such as regional preference or need for an accessible unit).
- When a unit is available, only the certified households in need of that type of unit are selected for a lottery.
- Households are informed of the date, time, and location of the lottery and invited to attend.
- After the lottery is conducted, the first household selected is given an established number of days to express interest or disinterest in the unit. (If the first household is not interested in the unit, this process continues until a certified household selects the unit.)
- Applications are accepted on an ongoing basis, certified households are added to the pool for the appropriate household income and size categories, and advertising and outreach is ongoing, according to the Affirmative Marketing Plan.

The Applicant Pool



Administrative Agents must maintain an applicant pool pursuant to UHAC rules. The applicant pool must include sufficient information about each applicant to enable the Administrative Agent to process applicants when vacancies arise. The following information must be collected about each applicant:

- Date and time the applicant submitted an application. (Note: In cases of random selection, the applicant pool will not be sorted in a first come, first served basis and date and time is only used for record keeping purposes, not selection purposes.)
- Name of the head of household.

- Number of persons in household. If the local random selection process only includes those household sizes that are appropriate for the available units, the Administrative Agent may wish to collect the age and sex of each household member.

- Unit or bedroom size(s) for which the household is eligible.
- Annual income level as reported by the applicant (low- or moderate- income). It is not required that income be verified at this time.
- The need for an accessible unit or any accessible features.
- If a regional preference is permitted, whether or not the household currently lives or works in the host municipality's COAH housing region..

Regional Preference



COAH allows municipalities to give preference to applicants that live or work in their COAH housing region. There are six COAH housing regions, each of which consists of three or four counties. This preference must be adopted by local ordinance before it may be used by Administrative Agents in the selection process. This preference permits an Administrative Agent to fill units with applicants that live or work in the host municipality's COAH housing region before selecting households that do not live or work in the host municipality's COAH housing region. Administrative Agents that use regional preference should maintain two separate pools of applicants. All applicants for affordable housing with regional preference must be informed of the preference at the time of application distribution.

Updating the Applicant Pool

An applicant pool must be regularly updated. Regularly confirming the interest and preliminary eligibility of those in the applicant pool keeps the applicant pool current and will expedite the filling of vacancies. For example, an applicant's household composition may change, which may make the household eligible for a different unit size. Such updates increase the likelihood that households selected from the applicant pool will be eligible for and interested in occupancy and will be of the appropriate income and household size for a vacant unit. Periodic updating will also help ensure that the Administrative Agent has the correct information to contact the applicant should an appropriate unit become available.

COAH recommends that Administrative Agents periodically send verification letters to everyone in the applicant pool, keeping copies of the letter in each applicant's file. Such letters generally request that the applicant send back a confirmation card or call the office to indicate their continued interest in being in the applicant pool. Mailings to verify interest may also state that the applicant will be removed from the applicant pool if there is no response within a certain period of time, for example, 60 days. Letters that come back as "return to sender" or "addressee unknown" will result in the applicant being removed from the applicant pool. Likewise, if the Administrative Agent receives no

confirmation from the applicant, the Administrative Agent should note this in the applicant's file and may remove the applicant from the pool.

Record keeping is critical to maintaining the integrity of an applicant pool and ensuring that there is compliance with all applicable fair housing and nondiscrimination laws.

Administrative Agents must maintain documentation of:

- Any changes to the applicant pool;
- Any action taken with regard to the applicant pool; and
- Any activity that occurs that affects a particular applicant.

The applicant pool should be maintained in such a way that someone reviewing it could find an applicant on the list and determine the applicant's precise and current status.

In addition to the documentation described above, Administrative Agents must retain the following:

- Current applications for all applicants whose status is active in the applicant pool; and
- The application, the initial rejection notice, the applicant's reply to the notice, a copy of the Administrative Agent's final response to the applicant, and all documentation of the reason the applicant's name was removed from the applicant pool.

Matching Households to Available Units

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

- Provide an occupant for each unit bedroom;
- Provide children of different sex with separate bedrooms; and
- Prevent more than two persons from occupying a single bedroom.

CORRECT EXAMPLE:

A four-person household consisting of two adults and two children, a boy and a girl, would be appropriately placed in a three-bedroom unit. Four occupants are provided for three bedrooms, children of a different sex are provided with separate bedrooms, and no more than two persons occupy a single

INCORRECT EXAMPLE:

A two-person household consisting of two adults should not be placed in a three-bedroom unit because an occupant has not been provided for each unit bedroom.

In order to deviate from these standards, the Administrative Agent must obtain written approval from COAH. The Administrative

bedroom.

A four-person household consisting of two adults and two children, both girls, could appropriately be placed in a two-bedroom unit. An occupant is provided for each unit bedroom, the two girls may share one bedroom, and no more than two persons occupy a single bedroom.

Agent must demonstrate that every effort has been made to find a household of the appropriate size and composition and that a hardship exists that would justify deviating from the established standard.

It is important to remember that the Administrative Agent cannot require an applicant household to take an affordable unit with a greater number of bedrooms, as long as overcrowding is not a factor. For example, if a single mother with a son and a daughter requests a two-bedroom unit, the Administrative Agent should place the household in the applicant pool for the two-bedroom unit. A household could be eligible for more than one unit category, and should be placed in the applicant pool for all categories for which it is eligible.

Determining Income Eligibility by Affordable Unit Category

Using COAH's Annual Regional Income Limits Chart, household eligibility for an affordable unit category is determined using the household's income for the appropriate housing region and the housing category as follows:

Available to Households with a Gross Annual:	Category of Restricted Unit
Income 80 percent or less of median	Moderate-Income Unit
Income 50 percent or less of median	Low-Income Unit
Income 35 percent or less of median [for rental units only]	Very Low-Income Unit

More detailed information on how to match a household's income to the appropriately priced affordable unit is described in the next Chapter.

Contacting Applicants



After a unit becomes available and the Administrative Agent has selected an applicant from the applicant pool based on the established random selection procedures, the Administrative Agent must contact the household in writing, inform the

household that a unit is available, and attempt to schedule an interview with the household. If the applicant does not respond to the notification of an available unit within a specified period or time, or is not interested in the unit, the Administrative Agent may move to the next randomly selected applicant.

The Resale Process

When an Owner of a restricted unit wishes to sell, the sale must be processed through the Administrative Agent. At the initial date of purchase, the Owner must make a certification regarding his or her understanding of this requirement.

Typically, the resale process begins when an Owner inquires about the maximum resale price (MRP) of their unit. At that time the Administrative Agent should provide the Seller with a “Notice of Intent to Sell” form and the written “Resale Procedures for Owners Wishing to Sell an Affordable Unit”. The Owner/Seller should return the completed “Notice of Intent to Sell” form to the Administrative Agent. The Administrative Agent reviews the unit and any eligible capital improvements, and calculates the MRP. The MRP is calculated by using COAH’s Resale Price Calculator, which is based on COAH’s Annual Regional Income Limits Chart. The Administrative Agent uses their current applicant pool, which is based on a previous affirmative marketing process, or affirmatively markets the unit and conducts random selection if there is no current applicant pool. If the Administrative Agent maintains a pool of certified households, the first randomly selected eligible household whose household size matches the bedroom size of the available unit is sent a “Housing Opportunity Letter” inviting them to contact the Buyer to view the unit. If the Administrative Agent maintains a pool of preliminarily eligible households, the first series (five is a recommended standard) of eligible households that match the bedroom size of the available unit are sent a “Housing Opportunity Letter” and “Application for Certification” (including a list of required documentation) to complete.

Interested households should complete the application and generally contact the Administrative Agent for an interview. Interested eligible households are certified, and ineligible households are noticed in writing and removed from the applicant pool. Certified households should obtain a mortgage pre-approval based on the MRP. The first randomly selected interested certified household from the applicant pool is invited to view the unit and has a limited period of time in which to make an offer (three days is a recommended timeframe). A certified interested household makes an offer. The Owner and the certified interested household (now Buyer) execute a “Contract of Sale.” The Administrative Agent ensures that the Deed, Recapture Mortgage, Recapture Mortgage Note and Appendix J form are submitted as part of the closing package to the attorney responsible for the closing or other closing agent. See Chapter 6 for a further discussion of Legal Instruments, Control Periods and Enforcement.

The Administrative Agent generally attends the closing to ensure that all necessary documentation is executed and subsequently recorded in the County Clerk’s Office in the county in which the unit is located. Annually, the Administrative Agent shall send a

mailing to the Owner of the affordable unit reminding them of the rights and requirements of owning an affordable unit (N.J.A.C. 5:80-26.18(d)4).

FAQs

Question: What happens if a moderate-income household “walks in” (when the applicant pool is closed and no affirmative marketing is being conducted) and I have a moderate unit available with no eligible moderate-income households in the applicant pool?

Answer: If the Administrative Agent notices that a specific unit type is hard to fill and few eligible households are in the applicant pool, the Administrative Agent should conduct ongoing affirmative marketing for that unit type to ensure a steady stream of certified households and keep the list open for that unit type. The walk-in can be added to the list.

Question: Does COAH have any guidance for Administrative Agents that are transitioning from a first-come, first-served waiting list system to random selection?

Answer: Once an Affirmative Marketing Plan is written and approved by COAH, the Administrative Agent should conduct random selection with the households currently on the waiting list. If there are not a sufficient number of applicants on the waiting list, affirmative marketing should be conducted. Applicants currently on the waiting list must be informed of the new procedures.

Question: Can a household living or working in the local community be given preference for occupancy or ownership of an affordable unit over other applicants within the region?

Answer: No, local preference is not permitted. COAH only allows preference to be given to households that live or work in the host municipality’s COAH housing region. A local ordinance must be adopted before an Administrative Agent can use regional preference in the selection process.

Question: I am working with an applicant household that requires an accessible unit. Do they skip ahead on the list when an accessible unit becomes available?

Answer: UHAC does not provide any guidance on this situation. However, COAH suggests that the Administrative Agent consider an accessible unit a unit type, just as a unit is defined by bedroom size. Therefore, if the Administrative Agent is using the initial randomization model, the first household on the randomized list that requires an accessible unit should be selected when an accessible unit becomes available. If the Administrative Agent is using the randomization after certification model, all households of the appropriate size who are in need of an accessible unit, would be selected, and randomized.

Question: An applicant household has a daughter that has room and board at her college. Can they request a unit that is large enough for her to have a bedroom when she is at home?

Answer: Yes. If the household has a student away at college who is still claimed as a dependent and maintains the parents’ address as a legal address, the student should be counted in the household size.

Question: If an Owner of an affordable unit receives a bid on their home from the first household selected from random selection and this offer is for less than the maximum resale price (MRP), must

the Seller accept this price or can they ask that the next household selected bid on the house in hopes of getting the maximum resale price?

Answer: The Seller of an affordable unit does not have to accept a bid that is less than the maximum resale price and may request that the next applicant household bid on their unit. However, if after a number of applicant households bid on the unit, the maximum resale price is not offered, the Seller could return to the highest bidding household or simply reject all offers and take the unit off the market. Sellers, however, should recognize that in some situations the resale market will not support holding out for maximum resale price, such as the condition of the unit or the unit in comparison to other units in the area.

Question: Do I have to place a one-person household in a two-bedroom unit if there is no one-bedroom units available or the applicant requests a two-bedroom unit?

Answer: A household should not be placed in a unit where there is more than one bedroom per household member. In order to deviate from these standards, the Administrative Agent must obtain written approval from COAH. If a development does not have any one-bedroom units, for example, the Administrative Agent should inform one-person households that they will not be offered a unit unless there are no eligible households with more than one person. The Administrative Agent should also refer one-bedroom households to other Administrative Agents within the municipality or region that offer one-bedroom units. The Administrative Agent must demonstrate that every effort has been made to find a household of the appropriate size and composition and that a hardship exists that would justify deviating from the established standard.

Question: I am working with an applicant household that consists of two parents and five children. This household is applying for a three-bedroom unit. Should this household only be offered a four-bedroom unit?

Answer: No. The administrator must strive to prevent more than two people from occupying one bedroom, as outlined in N.J.A.C. 5:80-26.4(c), but may not force a family to purchase or rent a larger unit as long as it does not violate municipal regulations for over-crowding.

Relevant Model Documents

Sample Preliminary Application & Cover Letter

Letter Responding to Incomplete Application

Letter of Preliminary Eligibility & Placement in the Applicant Pool

Letter of Preliminary Non-eligibility

Sample Applicant Pool

Annual Letter Updating the Applicant Pool

List of HUD-approved Housing Counseling Agencies

Notice of Intent to Sell

Housing Opportunity Letter

Purchase Agreement

Resale Procedures for Owners Wishing to Sell an Affordable Unit

All model documents referred to in this manual are available on COAH's website for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml.

Please visit this website often for up-to-date information on implementation of the Uniform Housing Affordability Controls.

Certifying Households

COAH requires that before any household can purchase or lease a restricted unit, the Administrative Agent certify the household as eligible. Certification of a household involves the verification of two critical pieces of data: 1) Household size and composition, including gender; and 2) The total income and assets for all household members over 18 years of age.

The Application for Certification

Whether the certification process begins after random selection and the availability of the desired unit type or takes place prior to the applicant being placed in the applicant pool and before units are available, it begins with the applicant completing an application in its entirety and providing the required backup documentation. A written application for certification should request the following information:

- The applicant's current contact information.
- Name, age, gender, and relationship to applicant for all household members.
- Social Security number
- Desired number of bedrooms.
- Need for an accessible unit.
- Amount(s) and source(s) of annual income for all household members age 18 or older (including income received by adults on behalf of minor children for their benefit).
- Amount(s) and source(s) of asset(s) for all household members age 18 or older.

Several model documents regarding the certification process are available on COAH's website for Administrative Agents. COAH recommends the following combination of documents be mailed to the applicant along with the Application for Affordable Housing:

- Transmittal letter explaining: eligibility criteria (including income limits); the certification process; the random selection process; and an explanation of all forms enclosed in the package.
- Checklist of required documentation to verify income and household composition.
- Disclosure of rights and responsibilities of affordable housing occupants (for for-sale and rental units as applicable).

If the Administrative Agent does not accept pre-applications, but only full applications, then these same documents should also comprise the application packages. Application packages shall be available at various public locations as part of the municipality's affirmative marketing program. See Chapter 3 for details on that requirement.

Following a review of the applicant's initial submission of his/her application materials, the Administrative Agent may need to use other certifications or release forms. For example, if a household member is not employed and not received any State or Federal benefits, then the "Certification of Zero Income" and "Certification of Employment Termination" forms should be completed by the household members. Such forms are available on COAH's website for Administrative Agents.

Once eligibility documents and data have been collected, the Administrative Agent can begin the process of calculating the household's income. Administrative Agents may find an Application Review Worksheet similar to the one available on COAH's website for Administrative Agents as a useful tool in completing this task.

The Applicant Interview



Ideally, the prospective applicant will be available to meet with the Administrative Agent to review the certification and random selection processes in detail and ask any questions they may have about the project or the process. However, scheduling time off from work may prove burdensome to the applicant. Applicants may also have mobility issues or special needs that also pose an obstacle to an interview. Therefore, the Administrative Agent should be prepared to complete the certification process via telephone and mail. Clear procedures should be outlined in the Operating Manual. However, if an interview is to be conducted, the Administrative Agent should achieve the following objectives:

- Confirm and update all information provided on the application.
- Explain program requirements, procedures used to verify information, and penalties for providing false information.
- Review the applicant's identification and financial information and documentation, ask any questions to clarify information on the application, and obtain any additional information needed to verify the household's income.

- Make sure the applicant has reported all sources for earned and benefit income and assets (including assets disposed of for less than fair market value in the past two years).
- Explain the requirement of obtaining a mortgage commitment in for-sale properties.
- Explain the property's screening procedures, such as credit checks in rental projects.

Determining Household Income



The Administrative Agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income. Income verification documentation should include, but is not limited to, the following for each and every member of a household who is 18 years of age or older:

- Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure.
- Copies of State and Federal income tax returns for each of the preceding three tax years.
- A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, welfare, disability or pension income (monthly or annually).
- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support.
- Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds.
- Evidence or reports of income from directly held assets such as real estate or businesses.

Administrative Agents typically use a spreadsheet or worksheet to help calculate an applicant's income, similar to the one available on COAH's website for Administrative Agents. This summarizing document will also prove useful in the event there is an appeal or question by the applicant concerning the calculation or during COAH monitoring visits.


What Counts as Income

The following is a list of various types of wages, payments, rebates and credits. Those that must be considered as part of the household's income are listed in the Income column. Those that are not to be considered as part of the household's income are listed in Not

Income. Restricted units constructed with Federal funds should consult the appropriate regulations, for example, HUD Section 42, to ensure compliance with applicable Federal regulations.

INCOME	NOT INCOME
<ul style="list-style-type: none"> ▪ Wages, salaries, tips, commissions ▪ Alimony ▪ Regularly scheduled overtime ▪ Pensions ▪ Social security ▪ Unemployment compensation (verify the remaining number of weeks they are eligible to receive) ▪ TANF ▪ Verified regular child support ▪ Disability ▪ Net income from business or real estate ▪ Interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds ▪ Imputed interest (using a current average annual rate of two percent) from non-income producing assets, such as equity in real estate ▪ Rent from real estate is considered income ▪ Any other forms of regular income reported to the Internal Revenue Service 	<ul style="list-style-type: none"> ▪ Rebates or credits received under low-income energy assistance programs ▪ Food stamps ▪ Payments received for foster care ▪ Relocation assistance benefits ▪ Income of live-in attendants ▪ Scholarships ▪ Student loans ▪ Personal property such as automobiles ▪ Lump-sum additions to assets such as inheritances, lottery winnings, gifts, and insurance settlements ▪ Part-time income of persons enrolled as full-time students ▪ Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income

The Asset Limit and Income from Real Estate

 UHAC has new requirements concerning the eligibility of an applicant that owns a home outright (with no mortgage or equity loan). If the applicant's primary residence, which is to be sold upon purchase of an affordable unit, has no mortgage debt and is valued at or above the regional asset limit as published annually by COAH with COAH's Annual Regional Income Limits Chart, the household must be determined ineligible for certification. However, if the applicant's existing monthly housing costs including taxes, homeowner insurance, and condominium or homeowner

association fees exceed 38 percent of the household's eligible monthly income, the household will be exempt from the asset limit.

An applicant must provide the Administrative Agent with a recent, certified appraisal on the home they own unless the applicant has mortgage debt on the home or can demonstrate that the existing monthly housing costs exceed 38 percent of the household's eligible monthly income, in which case the applicant is exempt from the asset limit. However, before an Administrative Agent requests an applicant to obtain a professional appraisal, the Administrative Agent should relay the asset limit to the applicant to avoid any unnecessary expenses to the applicant. For instance, if homes are commonly selling in the applicant's neighborhood for over \$250,000, it is unlikely that an appraisal will determine a value below the asset limit. The maximum asset limit for Region 1 in 2006, for example, is \$139,396.

Similarly, if an applicant owns real estate with mortgage debt, the Administrative Agent should determine the imputed interest from the value of the property. The Administrative Agent should deduct outstanding mortgage debt from documented market value (a certified appraisal). Based on current money market rates, interest should be imputed on the determined value of the real estate.

If the real estate is a rental property, the rent is considered income. The Administrative Agent should apply the above calculation to determine the value and imputed interest on the property, and perform a separate calculation to determine the income from rent. After deduction of any mortgage payments, real estate taxes, property owner insurance and reasonable property management expenses as reported to the Internal Revenue Service, the remaining amount shall be counted as income.

Determining the Percentage of Affordability



In order to place a household in an appropriately-priced affordable unit, the Administrative Agent must determine the maximum amount that the applicant household can afford toward housing payments each month. This figure can be determined by dividing the household's verified annual income by the regional median income for their appropriate household size. This percentage of affordability is necessary during initial sales of ownership units and during initial rent-up of rental units. This figure is then compared to the affordability ranges for which new units are being marketed (see Chapter 2 – Determining Sales Prices and Rents). The household's percentage of affordability dictates the type of unit in which they can be placed in. Households should be placed in an appropriately-sized unit that is at or below their percentage of affordability. For instance, if one unit is designated for households at 64 percent of the regional median income and another unit is designated for households at 60 percent of the regional median income, a household that happens to be at 62 percent should be offered the unit at 60 percent (at or below their range of affordability). As described in the next Section of this Chapter, there are some situations where a household may be offered a unit that is designated for an affordability percentage above their own.

Maximum Monthly Payments

UHAC limits the percentage of funds that a household can contribute toward housing expenses. However, there are exceptions to this rule. If an applicant qualifies for an exception from this rule based on the household's current housing cost (see below), the Administrative Agent should strive to place the applicant in a unit with a monthly housing cost equal to or less than the applicant's current housing cost.

For Ownership Units. UHAC states that a certified household is not permitted to purchase a unit that would require more than 33 percent of the verified household income to pay principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable. However, at the discretion of the Administrative Agent, this limit can be exceeded if the applicant:

- Obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.; and
- Submits a certification from a non-profit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the household has received counseling on the advisability of the loan transaction. A household is only required to obtain a certificate of mortgage counseling if their monthly housing expense exceeds UHAC standards.

For Rental Units. UHAC states that a certified household is not permitted to lease a restricted rental unit that would require more than 35 percent of the verified household income (40 percent for age-restricted units) to pay rent and utilities. However, at the discretion of the Administrative Agent, this limit may be exceeded if:

- The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce the household's housing costs;
- The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
- The household is currently in substandard or overcrowded living conditions;
- The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
- The household documents proposed third party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the Owner of the unit; and

- The household receives budget counseling.

Approving or Rejecting a Household



UHAC requires Administrative Agents to notify applicant households of their eligibility within twenty (20) days of the Administrative Agent's determination.

Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter, similar to the one available on COAH's website for Administrative Agents, rejecting the household's application should be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the Administrative Agent should be sent a letter rejecting the household's application, and/or referring them to housing counseling or the local Affordability Assistance Program, if available. A sample letter is available on COAH's website for Administrative Agents.

Households with a verified total household income of less than 80 percent should be issued a letter certifying eligibility similar to the one included on COAH's website for Administrative Agents. This certification is valid for 180 days. If the Administrative Agent is unable to place the household in a restricted unit at the conclusion of 180 days, an extension may be granted once the household's eligibility is verified.

Once the applicant is certified and matched to an available unit, the Administrative Agent must secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in purchasing or renting a restricted unit. As appropriate, UHAC's Appendix J (ownership) or Appendix K (rental) should be forwarded to the applicants.

In addition to non-eligibility based on income, the Administrative Agent may deny a certification because of the household's failure or inability to document household composition, income, assets, sufficient funds for down payment or security deposit purposes, or any other required facts and information. A household may also be denied certification if the Administrative Agent determines that there was a willful or material misstatement of fact made by the applicant.

Appeals

Appeals from all decisions of an Administrative Agent shall be made in writing to the Executive Director of HMFA. The Executive Director's written decision shall be a final administrative action of the HMFA.

Confidentiality and Protection against Identity Theft



All information supplied by an applicant toward their certification of eligibility must be kept in the strictest of confidence. Furthermore, at no time is the

municipality, Municipal Housing Liaison, Administrative Agent, developer, affordable housing provider, owner, property manager or landlord permitted to release any information concerning an applicant other than for the purpose of income qualification.

To protect against identity theft, it is suggested that Administrative Agents refrain from placing an applicant's social security number and/or birth date on any mailed or faxed documents unless absolutely necessary. All extra copies or drafts of documents should be shredded. Administrative Agents are also strongly encouraged to take necessary precautions to prevent any computer files with personal information from unauthorized access. At a minimum, workstations storing personal information should be password protected and securely firewall protected from the internet.

FAQs

Question: Is it a requirement of UHAC that Administrative Agents meet with applicants in person?

Answer: Because an applicant interview could prove to be burdensome to many households it is not a pre-requisite to purchase or occupancy, although it is encouraged. Administrative Agents should be prepared to conduct the household certification via mail.

Question: With households filing taxes through e-filing we are having trouble getting copies of tax returns. How can we get copies of e-filed tax returns?

Answer: According to the IRS website, transcripts of previously filed tax returns can be ordered by completing a [Form 4506-T](#) or calling (800) 829-1040 and following the prompts in the recorded message. There is no charge for the transcript and you should receive it in 10 business days from the time they receive your request. Tax return transcripts are generally available for the current and past three years³.

Question: How can child support payments that are made in cash be documented?

Answer: If the applicant is depositing the cash child support payments into a bank account, a series of statements from that account should be used to establish a trend of payments. If not, a notarized statement from the former spouse should be obtained to document the income.

Question: Is it a requirement that the Administrative Agent always obtain a written statement from the household's employer(s) confirming their income and job status?

Answer: No. However, when evaluating overtime and other income trends, such as bonuses, working directly with the employer is typically much more efficient and reliable than simply evaluating pay stubs.

Question: Are there any potential issues with selling or renting to a separated family that has a divorce pending?

Answer: Yes, until a divorce is finalized, a spouse can make claim on a residence purchased or rented by the other spouse. Until a divorce is finalized, it is suggested that Administrative Agents place these types of cases on hold.

³ <http://www.irs.gov/faqs/faq-kw31.html>

Question: How can income eligibility be established for someone that may have been out of work for two years, but had a job during the most recent tax year?

Answer: As long as the applicant is currently employed, a series of consecutive pay stubs (at least 3 months) should be used to establish the income of an applicant in this or similar situations.

Question: Can an applicant for a rental unit be rejected solely because they have Section 8 rental assistance?

Answer: No. A household receiving Section 8 assistance cannot be rejected based on this status. Discrimination such as this is illegal.

Question: Can an applicant be required to attend and graduate from a Housing Counseling Program in order to purchase or rent a restricted unit?

Answer: No. A household is only required to attend housing counseling if their monthly housing expense exceeds UHAC standards. Administrative Agents, however, are required to provide housing counseling or refer applicants to an approved Housing Counseling Program.

Question: Do households with Section 8 vouchers automatically qualify for affordable housing under UHAC?

Answer: Yes, a Section 8 voucher is acceptable for income qualification, provided the applicant meets the criteria of the property manager, landlord or lending institution. The Administrative Agent must still collect income verification documentation to match the household to an appropriately priced unit.

Question: Can an existing moderate-income tenant be moved to a low-income unit when they can substantiate that there has been a change in their income? If so, can they bypass the random selection process?

Answer: Yes, an existing tenant household may re-apply for a low-income unit within the same project if they can prove a change in their circumstances. If qualified, the tenant would be added to the applicant pool. The tenant should also be referred to the local Affordability Assistance Program, if available.

Question: Does the Administrative Agent need to impute the value of a household's stocks as an asset?

Answer: Only dividends from stock count towards a household's income. IRS Form-1099 from the previous year should be requested from the applicant if it was not part of their initial application.

Question: Is there a maximum cost for the credit check?

Answer: No, but the credit check is included in application fees.

Question: In order to overcome inadequate or poor credit, can an applicant have a cosigner on a mortgage or lease?

Answer: An applicant may have a cosigner on a lease if permitted by the property manager or landlord. However, no one outside the household, as certified by the Administrative Agent, may cosign or otherwise be party to any financing or legal instruments.

Question: Does UHAC set a minimum income for eligibility for affordable housing?

Answer: No, UHAC does not specify a minimum income for affordable housing units. However, an applicant household must be able to afford the unit and must not pay more than 33 percent for sale units or 35 percent for rental units of its monthly income (or 40 percent for age-restricted units), unless they meet the exemption criteria set forth in N.J.A.C. 5:80-26.7(b) or N.J.A.C. 5:80-26.13(b).

Question: After I certify an applicant, how long is that certification valid?

Answer: Pursuant to N.J.A.C. 5:80-26.16(b), an initial certification is valid for 180 days and may be extended for an additional 180 days once the household's eligibility is verified.

Question: How do I document third-party assistance from a guarantor? For example, a relative is providing funds toward the applicant's purchase.

Answer: Third-party funds should be placed into an applicant's bank account or in escrow prior to closing. In the case of a rental unit, the applicant should demonstrate regular deposits from third party assistance, or a notarized letter from the third party documenting future assistance. The Administrative Agent must receive a copy of the policy regarding guarantors from the developer, affordable housing provider, owner, property manager or landlord so as to assure the policy is applied consistently.

Question: If an applicant for affordable housing has a "reverse mortgage", how does an Administrative Agent count income from that mortgage?

Answer: An applicant for affordable housing with a "reverse mortgage" would not be eligible for affordable housing unless that mortgage was satisfied or, at a minimum, a contract for sale of the market unit was in place. "Reverse mortgages" require that the mortgaged property remain the principal place of residence of the person taking the mortgage. Since this is also a requirement of affordable housing only one such residence can be owned or leased at any given time.

Question: For the purpose of income-qualification, what is considered part-time income of full-time students?

- Answer: Under UHAC, part-time income of persons enrolled as full-time students, who are reported as dependents to the IRS, is not included in income calculations for determining eligibility. COAH recommends stipulating in the Operating Manual the following criteria in applying this rule:
 - A full-time student is a member of the household who is enrolled in a degree seeking program for more than 12 credit hours per semester; and
 - Part-time income is income earned on less than a 35-hour work week.

Please note that full-time income of full-time students is included in the income calculation.

Relevant Model Documents
Application for Affordable Housing

Certification of Zero Income
Certification of Employment Termination
Additional Documents Needed Letter
Application Review Worksheet (SCCOAH)
Application Review Worksheet (HAS)
Denial of Certification Letter
Certification of Eligibility letter
Guidelines for Homebuyers
Guidelines for Renters
IRS Form 4506-T
Appendix J of UHAC
Appendix K of UHAC
Source of Funds Letter for Down Payment and Settlement
Letter to Seller's Attorney
Letter to Buyer's Attorney

All model documents referred to in this manual are available on COAH's website for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml. Please visit this website often for up-to-date information on implementation of the Uniform Housing Affordability Controls.

Legal Instruments, Control

Periods and Enforcement

Declarations of Covenants, Conditions and

Restrictions, Deed Restrictions, Deeds, Recapture

Mortgages and Recapture Mortgage Notes

Five major legal instruments comprise the Uniform Housing Affordability Controls. They are a Declaration of Covenants, Conditions and Restrictions, Deed Restriction, Deed, Recapture Mortgage and Recapture Mortgage Note. It is important for Administrative Agents to have a clear understanding of each of these important tools and how they work independently and together to ensure that affordability controls are enforced and maintained throughout the control period.

A Restrictive Covenant is a provision in a deed limiting the use of the property or prohibiting certain uses. UHAC employs the Declaration of Covenants, Conditions and Restrictions (“Declaration”, Appendices C-1 and C-2) and a Deed Restriction (Appendices E-1 and E-2) to limit the use of the property in accordance with its provisions to provide affordable housing to New Jersey residents. UHAC requires the recordation of the Declaration for ownership projects and Deed Restriction for rental projects as further explained below.

A Deed is a legal instrument that transfers ownership from one party to another. A Deed can also incorporate Restrictive Covenants limiting the uses of the property.

The Recapture Mortgage is usually a second mortgage between the Buyer and an entity related to the creation of the affordable unit and creates a lien on the property. The Recapture Mortgage is always accompanied by a Recapture Mortgage Note, which sets forth the terms of payment if the affordable unit is released from its affordability controls.



In all cases, UHAC requires Administrative Agents to utilize documents substantially in the form of the model legal instruments included in UHAC (Appendices A, B, C-1, C-2, D, E-1, E-2, F, G, H, L, M, N, O, P, and Q) pursuant to N.J.A.C. 5:80-26.5(d) and N.J.A.C. 5:80-26.11(c). A discussion of each legal document is included in the appropriate Section of this Chapter.

Restrictive Covenants

Four model documents containing Restrictive Covenants are included in UHAC as Appendices C-1 and C-2, (Declaration of Covenants, Conditions and Restrictions), and Appendices E-1 and E-2 (Deed Restrictions to Rental Property).

The Declaration of Covenants, Conditions and Restrictions (“Declaration”) is an agreement by the developer of the project or the homeowner association that sets forth the Affordable Housing Covenants, thereby limiting the use of the property for the duration of the applicable control period. The Declaration is signed by the developer or homeowner association representative before a Notary and, just like a Deed, it is recorded in the County Clerk’s Office of the county in which the property is located. The Restrictive Covenants contained in a Declaration are often referred to as “running with the land” because any subsequent purchaser takes subject to them. Therefore, if the Restrictive Covenants are not released, their terms and conditions are passed on to subsequent Owners. Legally, a Declaration containing Restrictive Covenants need only be recorded once.

The Deed Restriction is an agreement by the Owner of a multi-family rental project that sets forth the Affordable Housing Covenants, thereby limiting the use of that rental property for the duration of the applicable control period. The Deed Restriction is signed by the Owner before a Notary, and, just like a Deed, it is recorded in the County Clerk’s Office of the county in which the property is located. The Restrictive Covenants contained in the Deed Restriction also “run with the land” and any subsequent purchaser of the rental project takes subject to them. Similar to the Declaration, if recorded properly, the Deed Restriction need only be recorded once.

- Ownership Units (Appendices C-1 or C-2: Mandatory Restrictive Covenant on Ownership Units - Declaration of Covenants, Conditions and Restrictions)
 - Projects with Multiple Ownership Units – Condominiums: A Declaration substantially in the form of Appendix C-1 or C-2 must be signed for each project containing multiple ownership units where a Master Deed has been recorded. Appendix C-1 or C-2 is typically attached to the Master Deed as an appendix, all of which are recorded in the County Clerk’s Office of the county in which the property lies. The Administrative Agent should ensure that the Schedule A attached to the Declaration includes an accurate description of the unit/project, such as location, address, whether each restricted unit is low or moderate, and indicate the number of bedrooms in each unit. See the chart on page 74 for all other required documents.

However, upon the sale of an ownership unit within the project, if an Administrative Agent determines that the condominium project was not properly restricted by C-1 or C-2, then one should be signed and recorded as soon as possible. If it is not possible to complete this correction before the closing date of a particular unit, the purchaser of the unit should sign a Deed in the form of Appendix A at closing. The Deed in Appendix A transfers title from the Seller to the Buyer and also contains the Affordable Housing Covenants.

- Two-Family Homes: The Restrictive Covenants governing the affordability of two-family homes are contained in the Deed between the Seller and Buyer for owner-occupied two-family homes. See the discussion below under “Deeds”. Additionally, a Deed Restriction is filed on the rental unit in the two-family home. See the discussion below under “Rental Units”.
- Single Family Home: The Restrictive Covenants governing the affordability of single-family homes are contained in the Deed between the Seller and Buyer. See the discussion below under “Deeds.”
- Rental Units (Appendices E-1 and E-2: Mandatory Deed Restriction on Rental Property - Deed Restrictions to Rental Property) The Deed Restrictions in the form of Appendix E-1 or E-2 must be signed and recorded for any new rental project. The Administrative Agent should ensure that the Schedule A attached to the Deed Restriction includes an accurate description of the unit/project, such as location, address, whether the unit is low or moderate, and indicate the number of bedrooms in each unit. See the chart on page 74 for all other required documents.

Deeds

A Deed (commonly referred to as Title to the property) is a signed legal document that transfers ownership from one to another and may contain Restrictive Covenants concerning the use of the property. The language in a Deed includes conveyance of title from Seller (grantor) to Buyer (grantee), as well as a description of the physical location and size of the property (metes and bounds description) and a recital of the property history. Model Deeds are included in UHAC as Appendices A, B, and D.

- Sale of Round III Ownership Unit (Appendices D and A: Mandatory Deed Forms for Ownership Units) – Applicable to all units built after December 20, 2004
 - Condominium Units: A Deed in the form of Appendix D should be used for sales of all Round III ownership units as long as the form of Declaration in Appendix C-1 has already been recorded. If a unit is not already properly restricted by C-1, then Appendix A is the Deed form with restrictions that should be used. Appendix A includes the Restrictive Covenants set forth in Appendix C-1. Similarly, units that were constructed with State or HMFA financed programs and subject to UHAC, but do not have Appendix C-1 recorded, should use the Deed form at Appendix A upon resale. See the chart on page 74 for all other required documents.
 - Two-Family Homes. A Deed in the form of Appendix A should be used for the sale of all Round III two-family homes with a restricted rental unit.
 - Single-Family Homes. A Deed in the form of Appendix A should be used for the sale of all Round III single-family home ownership units.

- Sale of Round I or II Ownership Unit (Appendices B and D: Mandatory Deed Form for Ownership 95/5 Units) A Deed in the form of Appendix B must be used for all COAH Round I and II units that received substantive certification from COAH pursuant to N.J.A.C. 5:93 before October 1, 2001 (COAH Round I & II units) and are sold or resold after December 20, 2004. This Deed applies to all condominium, two-family and single-family homes. Under UHAC, these units are referred to as 95/5 units. This Deed is for a 95/5 unit not Deed Restricted by Appendix C-2. If a unit/project has a Restrictive Covenant (Appendix C-2), then Appendix D should be the Deed form used on sale of the unit. For more information about 95/5 units, see the Frequently Asked Question regarding 95/5 units at the end of this Chapter. See the chart on page 74 for all other required documents.

Recapture Mortgages

A mortgage is an interest in land created by a written instrument providing security for the repayment of a debt or the performance of a duty. The Recapture Mortgage is between the Buyer and the municipality, DCA, HMFA or a non-profit corporation, depending on the specific financing circumstances regarding the creation of that unit.⁴The Recapture Mortgage contains a formula for repayment upon the first non-exempt sale of the unit and further reiterates the restrictions placed on the property by Appendices C-1, C-2, A, B, and D. Typically, all ownership units will have two mortgages: the Purchase Money Mortgage from a lender, the proceeds of which the Owner uses to purchase the unit and the Recapture Mortgage. The Recapture Mortgage is second, or subordinate to, the Purchase Money Mortgage.

- Round III Units in Favor of Municipality (Appendix O: Form of Recapture Mortgage for Securing Payment of Recapture Amount in Favor of the Municipality) If no DCA or HMFA funds were used to construct the restricted unit, the Recapture Mortgage for that unit will be in favor of the municipality. Therefore, a Recapture Mortgage in the form of Appendix O will be used at the sale and resale of these units during the control period. See the chart on page 74 for all other required documents.
- 95/5 Units (Appendix H: Form of Recapture Mortgage for Securing Payment of Recapture Amount for a 95/5 Unit) A Recapture Mortgage in the form of Appendix H will be used at the sale and at each resale of a 95/5 unit throughout its affordability controls, unless the unit is made subject to the new affordability controls in UHAC. See the chart on page 74 for all other required documents.
- Balanced Housing Units (Appendix M: Form of Recapture Mortgage for Securing Payment of Recapture Amount in Favor of the State) A Recapture Mortgage substantially in the form of Appendix M will be used at the sale or resale of any restricted units that utilized financing from DCA's Balanced Housing Program. See the chart on page 74 for all other required documents.

⁴ <http://dictionary.reference.com/search?q=mortgage>

- MONI or UHORP Units (Appendix Q: Form of Recapture Mortgage for Securing Payment of Recapture Amount in Favor of the Agency) A Recapture Mortgage substantially in the form of Appendix Q must be used at the initial sale and resale of any restricted units that utilized financing from HMFA's MONI or UHORP Programs. See the chart on page 74 for all other required documents.

Recapture Mortgage Note

A mortgage is typically coupled with a Mortgage Note, which identifies the amount of the debt. The Recapture Mortgage Note establishes the terms of repayment. The purpose of the Recapture Mortgage Note with regard to affordability controls is to establish the terms of payment to the mortgagee (the municipality, DCA or HMFA) upon the first non-exempt sale of the affordable unit. Recapture Mortgage Notes are not recorded.

For Round III units, the amount that the Recapture Mortgage Note recaptures is the difference between the fair market value and the maximum restricted sales price. Fair market value of the unit is based on either an appraisal or the unit's equalized assessed value at the time of purchase.

For 95/5 units, the amount recaptured is not determined until the first non-exempt sale after the control period ends. The recapture amount is 95 percent of the difference between the actual sales price and the maximum restricted sales price that would have been in place if the affordability controls were still in effect.

- Round III Units (Appendix N: Form of Recapture Mortgage Note in Favor of Municipality) A Recapture Mortgage Note in the form of Appendix N must be used at the initial sale and resale of all Round III units. This Recapture Mortgage Note is not intended for restricted units that utilized DCA or HMFA funds in their construction. See the chart on page 74 for all other required documents.
- 95/5 Units (Appendix G: Form of Recapture Mortgage Note for a 95/5 Unit) A Mortgage Note in the form of Appendix G must be used at the initial sale and at the resale of any restricted 95/5 units. See the chart on page 74 for all other required documents.
- Balanced Housing Units (Appendix L: Form of Recapture Mortgage Note in Favor of the State) A Recapture Mortgage Note in the form of Appendix L must be used at the sale and resale of any restricted units that utilized financing from DCA's Balanced Housing Program. See the chart on page 74 for all other required documents.
- MONI or UHORP Units (Appendix P: Form of Recapture Mortgage Note in Favor of the Agency) A Recapture Mortgage Note substantially in the form of Appendix P must be used at the initial sale and resale of any restricted units that utilized financing from HMFA's MONI or UHORP Programs. See the chart on page 74 for all other required documents.

Matrix for Legal Instruments

Type of Unit	Restrictive Covenant	Deed	Recapture Mortgage	Recapture Mortgage Note	Applicant Certificate
Sale of Round III Ownership (General) with Restrictive Covenant in place	Appendix C-1	Appendix D	Appendix O	Appendix N	Appendix J
Sale of Round III Ownership (General) without Restrictive Covenant in place		Appendix A	Appendix O	Appendix N	Appendix J
Sale of Round III Ownership Balanced Housing with Restrictive Covenant in place	Appendix C-1	Appendix D	Appendix M	Appendix L	Appendix J
Sale of Round III Ownership Balanced Housing without Restrictive Covenant in place		Appendix A	Appendix M	Appendix L	Appendix J
Sale of Round III Ownership MONI/ UHORP with Restrictive Covenant in place	Appendix C-1	Appendix D	Appendix Q	Appendix P	Appendix J
Sale of Round III Ownership MONI/ UHORP without Restrictive Covenant in		Appendix A	Appendix Q	Appendix P	Appendix J

Type of Unit	Restrictive Covenant	Deed	Recapture Mortgage	Recapture Mortgage Note	Applicant Certificate
place					
Sale of 95/5 Units with Restrictive Covenant in Place	Appendix C-2	Appendix D	Appendix H	Appendix G	Appendix J
Sale of 95/5 Units without Restrictive Covenant in Place		Appendix B	Appendix H	Appendix G	Appendix J
Multi-Unit Rental Projects with State or HMFA financing	Appendix E-1				Appendix K
Rental Units/Projects with no State or HMFA financing	Appendix E-2				Appendix K

Recording Legal Documents

The Declaration of Covenants, Conditions and Restrictions, Deed Restriction, Deed and Recapture Mortgage must be recorded. The Recapture Mortgage Note is not recorded. The Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds and Recapture Mortgages must be forwarded to the County Clerk's Office in the county in which the unit is located for recording. Any revisions to these documents require the documents to be amended and re-recorded.

The filing and recording of documents is generally the responsibility of the Buyer's attorney, but the Administrative Agent may also elect to take on this responsibility. Administrative Agents that are new to recording documents should contact their County Clerk's Office to inquire about local procedures and pricing. Municipalities are sometimes charged a rate for recording documents that is a fraction of the rate charged to private individuals or businesses. Administrative Agents have been successful in getting the lower rate by having the Municipal Clerk write to the County Clerk to alert that an Administrative Agent will be recording documents on their behalf. The time it takes to receive back a document submitted for recording varies greatly from county to county – from as little as two weeks to as long as 6 or 8 months. Get to know your County Clerk's procedures and usual timelines, and work with them to streamline and follow-up, when required.

Controls on Ownership Units

Minimum Control Periods on Ownership Units



All ownership units created as part of a COAH Round III Fair Share Plan will remain affordable until the municipality elects to release the units from the affordability controls. In addition, any 95/5 units that are sold during the control period that have a Declaration of Covenants, Conditions and Restrictions (Appendix C-1) placed on the units will also remain affordable until the municipality elects to release the units from affordability controls. Units may only be released as part of a comprehensive planning process and only if the units are located in an area identified in the Fair Share Plan of the municipality's Master Plan. The Fair Share Plan must also provide for replacement of the affordable unit elsewhere within the municipality.



If the municipality does elect to release affordable units from the affordability controls, it must do so by ordinance, and is subject to the following minimum time periods:

- Units in low-poverty census tracts have a minimum control period of thirty (30) years. A low-poverty census tract is a census-determined poverty rate of less than 25 percent. Census tract information can be found by using the HMFA's Smart Growth Locator, available on HMFA's website at http://sgl.state.nj.us/hmfa/hmfa_locator.htm.
- Units in high-poverty census tracts have a minimum control period of ten years. A high-poverty census tract is a census-determined poverty rate of equal to or greater than 25 percent. Census tract information can be found by using the HMFA's Smart Growth Locator, available on HMFA's website at http://sgl.state.nj.us/hmfa/hmfa_locator.htm.

Beginning of Controls on Ownership Units

The affordability control period for a restricted ownership unit begins on the date the initial certified household takes title to the unit.

Transferring Ownership of a Restricted Unit



The Administrative Agent's role in the transfer of ownership is critical to maintaining the unit's affordability controls. Once a certified household and the Seller sign a contract of sale, the Administrative Agent should personally contact the closing agents for both the Seller and Buyer. In addition to providing copies of the appropriate legal instruments, the Administrative Agent must also make themselves available to the closing agents to answer any questions that may arise in the days leading up to the closing of the real estate transaction.

Unless already in place, when a 95/5 unit is resold during the control period, the Administrative Agent must also execute a Declaration of Covenants, Conditions and Restrictions substantially in the form of Appendix C-1 if the unit is transferred to Round III controls or Appendix C-2 if 95/5 is to continue.

Although UHAC does not require the Administrative Agent to attend real estate closings of restricted units, many Administrative Agents do attend because it is much easier to make a correction before the transaction takes place than after. For instance, if the sales price for some reason exceeds the maximum restricted sales price as determined by the Administrative Agent, it can be corrected relatively easily at closing.

If a unit is sold during the control period, the Administrative Agent should release the Recapture Mortgage that identifies the Seller as the mortgagor. Many Administrative Agents issue the release after the new control documents have been recorded in the County Clerk's Office. This helps ensure that the restricted units is never without appropriate affordability controls. Upon the expiration of the control period the Administration Agent has sixty (60) days after the Recapture Mortgage has been satisfied to release the Seller from their affordability controls using a certificate substantially in the form of UHAC's Appendix F.

Release of Controls on Ownership Units



Once a municipality releases an ownership unit from its affordability controls, the Administrative Agent must execute a release in the form of UHAC's Appendix F. The municipality should record a release of Appendix C-1 or C-2 while the Owner of the unit is responsible for recording the release from Appendix A or B and returning the recorded original to the Administrative Agent promptly. See the Section Recording Legal Documents in this Chapter.

It is important to note that the release should not be executed until the original Mortgage Note is repaid. Upon the first non-exempt sale after the release of the unit from affordability controls, the Seller must satisfy the Recapture Mortgage Note by repaying the difference between their initial restricted purchase price and the fair market value at the time of the initial sale. Credit towards the Recapture Mortgage Note amount may be given for any capital improvements that were previously approved by the Administrative Agent. Any proceeds received by the Seller beyond the Recapture Mortgage Note amount is profit, free and clear of any affordability controls, restrictions or regulations.

Option to Buy Expiring Units



At the time of the first non-exempt sale of a 95/5 unit following the minimum control period, but before the municipality releases the unit from the affordability controls, the municipality has the right of first refusal to purchase the unit at the maximum resale price provided that the municipality enters into a contract of sale within sixty (60) days of the notification of intent to sell and the mortgage remains in full force and effect. Funds from a local Affordable Housing Trust Fund may be used to acquire and/or rehabilitate an ownership unit. Because of this option, it is critically important for the Administrative Agent to promptly inform the municipality of all notifications of intent to sell. The municipality should have a policy in place as to whether the municipality will purchase such units and a strategy in place to do so. The Administrative Agent should be made aware of the municipality's intentions and it should be articulated in the Operating Manual.

Subordination Requests



During the course of ownership, an Owner may wish to refinance their mortgage or incur some form of additional debt on their home, such as a home equity loan. Under this scenario, the new lender will usually require that their mortgage take a first or second position against the property which will require the COAH related mortgage to subordinate to the new mortgage.

Owners of restricted units are required to immediately notify the Administrative Agent of their intent to incur a new debt. As clearly stated in the Restrictive Covenant, the Owner is forbidden from refinancing, taking an equity loan, a secured letter of credit, or any other mortgage obligation or other debt without advanced, written approval from the Administrative Agent. The total debt may not exceed 95 percent of the current maximum restricted sales price.

Controls on Rental Units

Minimum Control Periods on Rental Units



All rental projects created as part of a COAH Round III Fair Share Plan will remain affordable until the municipality elects to release the rental project from its affordability controls. A project may only be released as part of a comprehensive planning process and only if the project is located in an area identified in the Fair Share Plan of the municipality's Master Plan. The Fair Share Plan must also provide for replacement of the affordable units elsewhere within the municipality.



If the municipality does elect to release the project from its affordability controls, it must do so by ordinance, and subject to the following minimum time periods:

- Units in low-poverty census tracts have a minimum control period of thirty (30) years. A low-poverty census tract is a census-determined poverty rate of less than 25 percent. Census tract information can be found by using the HMFA's Smart Growth Locator, available on HMFA's website at http://sgl.state.nj.us/hmfa/hmfa_locator.htm.
- Units in high-poverty census tracts have a minimum control period of ten years. A high-poverty census tract is a census-determined poverty rate of equal to or greater than 25 percent. Census tract information can be found by using the HMFA's Smart Growth Locator, available on HMFA's website at http://sgl.state.nj.us/hmfa/hmfa_locator.htm.

Beginning of Controls on Rental Units

The control period of a rental project begins with the date the first certified household occupies a unit. As mentioned above, the control period ends only when the municipality elects to release the units from the affordability controls.

Release of Controls on Rental Units



Once a municipality releases units from the affordability controls, the Administrative Agent must immediately execute a release in the form of Appendix F as soon as the project has completed its obligation to the last

affordable renter. The transfer of each rental unit from affordable rents to market is done either on the date the rental unit becomes vacant or at the later of either the next scheduled lease renewal or 60 days, depending on the income characteristics of the household occupying the unit. If the household occupying the unit continues to earn a gross income of less than or equal to 80 percent of the regional median income, that household may occupy the unit at the restricted price until the household voluntarily vacates the unit. If a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or 60 days. Appendix F is executed when there are no remaining affordable renters in the project. The Owner of the development is responsible for recording the release and returning the recorded originals to the Administrative Agent promptly.

Enforcement



UHAC states that the Administrative Agent is responsible for the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls. The municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with affordability controls. The UHAC goes on to say that the Administrative Agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor Administrative Agent. UHAC defines enforcement practices and procedures as follows:

- Securing from all developers and affordable housing sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit may be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent.
- Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K.
- Posting annually in all rental properties, including two-family homes, a notice as to the maximum allowable rent together with the telephone number of the Administrative Agent where complaints of excess rent can be made.
- Mailing annual notices to all Owners of affordable dwelling units, reminding them of various affordability controls. A sample notice is available on COAH's website for Administrative Agents.
- Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee Owners, and notifying all such Owners that they must either move back to their unit or sell it.
- Reviewing and approving requests from unit Owners to incur additional debt, such as refinancing or a home equity loan. The total debt may not exceed 95 percent of the current maximum restricted sales price.

Durability of Affordability Controls

In 2001, UHAC was amended to state that the affordability controls on Round III ownership and rental units shall remain in effect despite any judgment of foreclosure. When used properly, the various legal instruments included with UHAC (Appendix A thru Q), should adequately protect the unit from loss of affordability controls due to foreclosure. Furthermore, affordability controls on rental units shall remain despite a sublease or assignment of the lease; or a sale or other voluntary transfer of ownership of the unit.

However, 95/5 units may lose their identity as affordable units if they are sold at Sheriff's Sale and the property is transferred to the successful bidder after the 10-day redemption period.

There are a number of strategies a municipality may employ to prevent a Round I or Round II (95/5) affordable unit from being lost at foreclosure, including the following:

- The simplest, although not always the most effective, method is for the municipality to bid to purchase the unit at Sheriff's Sale. With this method, however, there is the chance that the municipality will not authorize the expenditure of sufficient funds prior to the sale and will be out bid at the Sheriff's Sale, resulting in a loss of the unit. If the municipality is the successful bidder, then it may apply for and collect all funds expended on the sale in excess of the first mortgage payoff or maximum resale price, whichever is greater.
- A municipality may attempt to purchase the unit from the affordable Owner prior to the unit being foreclosed. At closing the municipality would need to satisfy all the debts to clear the title.
- Finally, a municipality may request an injunction to prevent a unit from going to Sheriff's Sale. The municipality would be given the opportunity to sell the unit at the maximum resale price, guaranteeing that legitimate lien holders are made whole prior to closing. If there are holders of illegal liens, then the municipality should request that the Courts invalidate those liens before proceeding.

The following table provides information on the various notices that the municipality and/or Administrative Agent may receive during the foreclosure process and a brief explanation of the notice. The Administrative Agent should contact the municipal attorney as soon as possible to adopt a strategy to address the potential foreclosure or loss of the unit.

Type of Notice	Meaning of Notice
Notice of Lis Pendens <u>N.J.S. 2A:15-6</u>	A notice filed in the County Clerk's Office for the purposes of warning all persons that litigation is pending with respect to this particular property. It is filed after a Notice of Foreclosure has been served on the debtor.
Notice of Foreclosure <u>N.J.S. 2A:50-56</u>	Under the New Jersey Fair Foreclosure Act, a residential mortgage lender must give its mortgage debtor 30 days notice before accelerating the debt upon default, commencing a foreclosure action or taking any legal action for possession of the premises. The debtor has a right to cure the default.
Summons and Complaint in Foreclosure	Must be served on all holders of subsequent mortgages. This should include the municipality, HMFA or DCA as mortgagees under the Recapture Mortgage
Judgment Writ of Execution Writ of Possession	Judgment in favor of Lender/Mortgagee usually has attached a Writ of Execution and Writ of Possession. All are sent to the Sheriff to prepare for the sale of the property and removal of debtors from the premises.
Notice of Sheriff's Sale <u>N.J.S. 2A: 17-35</u>	A public notice required to be published in a regularly published periodical generally read and widely distributed in the area where the unit is located. The notice announces the time and date of the sale of the unit. The foreclosing entity usually establishes an acceptable minimum bid. Any surplus funds from the sale are used to either satisfy other creditors with subsequent priority liens. If any funds are left over after all secured liens have been paid, then the remainder goes to the debtor.
Equitable Right of Redemption	After a unit is sold at Sheriff's Sale, the foreclosed-on Owner has a 10-day redemption period in which to pay the Judgment (which will include arrears, court costs and legal fees) and retain ownership of the unit
The sale is complete and the redemption period is over.	Title of the unit has been transferred to a non-affordable, non-certified Buyer.

FAQs

Question: What are 95/5 units?

Answer: After July 14, 1989, all new ownership units under COAH's jurisdiction were subject to the 95/5 Rule. This rule stipulates that at the first non-exempt transfer of title of the property after the ending date of the restricted period, the Seller is entitled to the maximum restricted sales price and five percent of the amount over the maximum restricted sales price.

The 95/5 Rule, as set out in the Recapture Mortgage recorded against this unit, requires that 95 percent of the difference between the maximum restricted sales price and the actual contract price at the time of sale must be returned to the Administrative Agent, who then forwards it to the municipality, to be used for affordable housing purposes as monitored by COAH. Below is an example of this calculation.

Purchase price	\$80,000
Maximum Restricted Sales Price at expiration of controls	\$120,000
Non-restricted sales price	\$200,000
$(\$200,000 \text{ (SALE PRICE)} - \$120,000 \text{ (MRP)}) \times 5 \% =$	\$4,000
SELLER RETAINS $(\$120,000 + \$4,000) =$	\$124,000
PROCEEDS TO MUNICIPALITY $(\$200,000 - \$124,000) =$	\$86,000

However, if the Administrative Agent, in the example above, determined that the fair market value of the unit to be \$300,000, rather than the \$200,000 selling price, then the sale should not be considered the first non-exempt sale of the unit and the Recapture Mortgage would not be satisfied upon the completion of the transaction. No money would be due the municipality on completion of the transaction, but the Recapture Mortgage will assume the position of the first mortgage. The Administrative Agent should not subordinate to another mortgage provider. The Administrative Agent may discharge the Restrictive Covenant, but not the Recapture Mortgage.

Question: Can we extend affordability controls for another 30-year period at every resale?

Answer: Yes. COAH permits the continued re-extension of affordability controls at each resale as long as it is stated in the ordinance and the Operating Manual. It is recommended in all cases, when possible, that the new affordability controls be applied.

Question: How do we extend the controls on an expiring unit for additional COAH credit pursuant to N.J.A.C. 5:94?

Answer: In order to receive additional COAH credit for extending controls, the controls must be expiring during the period between 1999 and 2014 and the unit must meet the standards for a continuing certificate of occupancy or have any deficiencies brought up to code.

For 95/5 units, controls are most easily extended when the unit is made available for the first non-exempt sale of the unit. Ideally, the municipality would have put all the

tools in place to allow this to happen before the situation arose. An ordinance allowing funds for purchasing the unit and a notice of intent to extend the controls would make the process easier. Additionally, the municipality should give written notice of its intention to extend controls to all affordable homeowners.

If a for-sale unit is pre-95/5, then the municipality should pass an ordinance and notify affordable homeowners of the municipality's intent to apply the 95/5 Rule. A municipality should be warned that such an action might result in a lawsuit that the municipality would need to defend.

For rental units the process is substantially more complicated. If a project had a DCA Balanced Housing or municipal loan that matures at the expiration of affordability controls the negotiation process would involve the extension or forgiveness of the loan. If there was no such loan, then it is likely that some type of financial agreement would have to be reached with the property owner to secure extended controls.

Question: Can I start using the new UHAC documents at the resale of the units in my municipality's affordable housing inventory?

Answer: Generally, yes, the new documents should be used. However, if the unit is subject to a Master Deed that limits the restriction period and does not contain a saving clause (severability clause), the new documents cannot be used.

Question: How do I determine the amount of the Recapture Mortgage? Does my method, either the appraised value or the equalized assessed value, need to be spelled out in a municipal ordinance or should it be outlined in my Operating Manual?

Answer: The amount that the Mortgage Note recaptures is the difference between the fair market value and the restricted maximum sales price. Fair market value of the unit is based on either an appraisal or the unit's equalized assessed value at the time of each purchase. For example, if the sales price of the unit is \$110,000 and the appraised market value of the unit is \$200,000, the Recapture Mortgage Note would be for \$90,000. The method chosen by the municipality to be utilized for calculating the Recapture Mortgage must be outlined in the Operating Manual.

Question: Must the Administrative Agent attend the dosing?

Answer: Administrative Agents are encouraged, although not required, to attend closings. Mistakes discovered after closing and after the recording of documents are difficult and expensive to correct. However, COAH monitoring and auditing will verify the quality of the Administrative Agent's documentation.

Question: Are COAH credited assisted living units Deed Restricted per room or for the facility as a whole?

Answer: The Deed Restriction is placed on the entire facility for a specific number of affordable housing units.

Question: Must I re-income qualify a tenant at the expiration of unit affordability controls?

Answer: Yes. Pursuant to N.J.A.C. 5:80-26.11(b), tenants of units where affordability controls have technically expired must be re-qualified by the Administrative Agent to

determine the level of household income. If the household occupying the unit continues to earn a gross income of less than or equal to 80 percent of the regional median income, that household may occupy the unit at the restricted price until the household voluntarily vacates the unit. If a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or 60 days.

Question: One of the affordable housing homeowners in my community is illegally renting the unit. How do I begin legal proceedings against this household?

Answer: Carefully reviewing the legal instruments that were signed by the Owner is a good first step. It is important to confirm that all appropriate documents have been recorded (Declaration of Covenants, Conditions and Restrictions, if applicable, Deed, Recapture Mortgage). Share these documents with the municipality's legal counsel and work with them to develop a plan of action for bringing the unit back into compliance.

COAH suggests that the Administrative Agent or legal counsel immediately contact the Owner of the property in writing and alert them that they are in direct violation of the terms of the sale. If the restricted unit is no longer the primary residence of the Owner, the Owner should be instructed to immediately begin preparing to sell the unit, including the relocation of the current tenants. Sending a copy of the letter to the current tenants may also prove useful in bringing the unit back into compliance quickly. If the Owner fails to comply with this request in a timely manner, the municipality may be forced to foreclose on the mortgage.

Assuming that the restricted unit is no longer the Owner's primary residence, it may be difficult to find the Owner's new mailing address. Contacting the local tax office may provide the new address. If initial eligibility documentation or loan closing documents are still on file, those may also provide some resources for determining where the Owner is residing (employer, mortgage company, insurance agent, etc.).

Question: I am in the process of administering the resale of an affordable condominium unit which was constructed and first occupied in 2003. The documents used at the 2003 closing included an Affordable Housing Agreement and a Repayment Mortgage Note. The Affordable Housing Agreement imposed a 30-year affordability control. There is no recorded Master Deed for the development. Based on the matrix provided by COAH, I intend to use the following documents: Appendices C-2, D, H, G and J.

Answer: If a municipality chooses to move a 95/5 unit to the current UHAC restrictions, the documents that should be used are Appendices A, O, N and J. I would strive to get the condominium association to record Appendix C-1 so you could use Appendix D in the future. Appendix A has the terms found in Appendix C-1. Appendices A and O are recorded with the county. The Recapture Mortgage Note (Appendix N) and Appendix J are kept in the file and are not recorded with the county.

Model Documents
Appendix A of UHAC
Appendix B of UHAC
Appendix C of UHAC
Appendix D of UHAC
Appendix E1 of UHAC
Appendix E2 of UHAC
Appendix F of UHAC
Appendix G of UHAC
Appendix H of UHAC
Appendix I of UHAC
Appendix L of UHAC
Appendix M of UHAC
Appendix N of UHAC
Appendix O of UHAC
Appendix P of UHAC
Appendix Q of UHAC
Annual Notice to Affordable Unit Owners

All model documents referred to in this manual are available on COAH's website for Administrative Agents at www.nj.gov/dca/coah/administrators/administrators.shtml. Please visit this website often for up-to-date information on implementation of the Uniform Housing Affordability Controls.