

LAW AND PUBLIC SAFETY

DIVISION ON CIVIL RIGHTS

Multiple Dwelling Reports

Proposed Readoption: N.J.A.C. 13:10

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

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

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

Proposal Number: PRN 2010-009.

Submit written comments by March 5, 2010 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1 and Executive Order No. 66 (1978), the multiple dwelling report rules, N.J.A.C. 13:10, will expire on November 24, 2009.

Pursuant to N.J.S.A. 52:14B-5.1c the expiration date is extended for 180 days to May

23, 2010, by the filing of this notice of proposal with the Office of Administrative Law on November 24, 2009.

An administrative review has been conducted, and a determination made that the existing rules are necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. Thus, in accordance with the rulemaking authority found at N.J.S.A. 10:5-8 and 10:5-12, N.J.A.C. 13:10 is proposed for readoption without amendment.

The Division on Civil Rights (Division), in the Department of Law and Public Safety, is statutorily charged to enforce the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 through 10:5-12. First enacted in 1945, among its many prohibitions, the LAD makes it unlawful to refuse to rent or offer for rental any real property or to discriminate in the terms and conditions of such rental, including on the basis of race, color and national origin. N.J.S.A. 10:5-12(h). Until 1963, the Division was venued in the Department of Education, where the primary focus of the Division's efforts was education rather than enforcement.

Chapter 10 was first promulgated in 1970, at the height of the civil rights movement, amid calls for the Division to do more to eliminate race-based discrimination in housing. The rule required all owners of multiple dwelling developments with 25 units or more to retain records and file an annual report with the Division containing the racial identity of apartment applicants and leaseholders, rental recruitment techniques and such other information necessary to effectuate the purposes of the chapter.

In August 1967, Governor Richard J. Hughes empanelled a commission incident to “civil disturbances” in Newark, Teaneck and Plainfield. The report that followed, entitled Report for Action, Governor’s Select Commission on Civil Disorder, State of New Jersey, February 1968 (Lilley Commission Report) included housing discrimination among the factors that contributed to the civil unrest. The Lilley Commission documented the frustrations of African-Americans who were most often relegated to overcrowded and substandard housing, even when they could afford better housing in traditionally white neighborhoods. With reorganization of the Division already underway, the Lilley Commission recommended that the Division take a more aggressive posture and act on its own initiative to seek out and correct racial discrimination, in the public interest, and not rely solely on specific individual complainants alleging a violation of the LAD.

Thus, the multiply dwelling report rules were designed to provide the Division with data necessary to study patterns of housing occupancy, investigate practices of discrimination and to affirmatively administer the LAD, in addition to acting on individual complaint-based housing discrimination. The validity of the multiple dwelling report rules were challenged in *New Jersey Builders, Owners and Managers Ass’n v. Blair*, 60 N.J. 330 (1972) and upheld as a rational approach to enforcing the LAD.

The 1999 readoption of the rule with amendments expanded the reporting requirement by replacing the term “racial designation” with the term “racial/ethnic designation.” The four categories, set forth as black, Spanish surname, white and other, were increased to six as follows: Black or African American; American Indian

or Alaska Native; Asian; Hispanic or Latino; Native Hawaiian or Other Pacific Islander; White or Caucasian. These changes were made to adopt Federal guidance found in the Standards for the Classification of Federal Data on Race and Ethnicity promulgated by the Federal Office of Management and Budget. The change was also made to reflect that many groups are bound by ethnicity, which may encompass factors that transcend race, such a common language, ancestry and culture. The readoption with amendments also added the requirement to report whether properties were “barrier-free,” as defined in the readoption with amendments.

Incident to the readoption in 2004 some procedural changes were made to the rules in order to benefit from advances in technology made available in the Division. Chapter 10 was amended to provide for optional on-line filing of the multiple dwelling reports on the Division’s website. The operational efficiencies provided to the Division by use of the internet and computer technology was balanced with educational aids and support to “non-tech savvy” owners covered by the rules.

Also, a penalty schedule for late filing of multiple dwelling reports was promulgated to substantially replace the case-by-case decision-making by the Director. Affected stakeholders welcomed the anticipated uniformity and consistency in penalty assessments incident to a schedule based upon the number of days a report is untimely filed.

Mandatory electronic filing via the Division’s website at www.njcivilrights.org became effective by rule amendment on August 18, 2008. The website includes a worksheet and detailed instructions to assist owners in collecting, recording and retaining information required by the multiple dwelling report rules. On-line fact

sheets, including answers to important questions to assist landlords with preparation for the on-line filing were also made available. Forms were prepared for tenants to explain a landlord's obligation to collect racial and ethnic information and to keep it separate and apart from other applicant/tenant records. The first mandatory on-line filing, incident to the January 30, 2009 annual report cycle, was uneventful. Calls for assistance from owners to the Division staff were minimal.

A summary of the rules follows.

N.J.A.C. 13:10-1.1 defines certain words and phrases used in the rules.

N.J.A.C. 13:10-2.1 states the purpose of the rules.

N.J.A.C. 13:10-2.2 describes the applicability of the rule to an owner or owners of multiple apartment developments with 25 units or more.

N.J.A.C. 13:10-2.3 sets forth requirements for the form and content of the report. The section includes a non-exhaustive list of the types of information that may be requested from owners: the race and ethnicity of applicants and apartment unit leaseholders; rental rates and size of apartment units; rental techniques; rental turnover; whether the multiple apartment development is barrier-free; and such other information that the Attorney General determines is necessary to effectuate the purposes of the chapter.

N.J.A.C. 13:10-2.4 establishes the time and method of filing the report. A complete report, filed electronically on the Division's website, is due January 30 of each year. It must include the prescribed information for January 1 through December 31 of the preceding year.

N.J.A.C. 13:10-2.5 prescribes the record retention period. Records must be kept on file for three years and must be made available for inspection by the Division upon request.

N.J.A.C. 13:10-2.6 concerns violations. The failure to comply with the chapter constitutes a violation of the LAD.

N.J.A.C. 13:10-2.7 prescribes a schedule of penalties for the failure to file a timely report. Scheduled penalties are established in the amounts of \$100.00, \$250.00 and \$500.00, respectively, for late filing when the report is more than 15, 30 and 60 calendar days over due. When a report is more than 90 days overdue, the Director has discretion to determine the amount of the penalty.

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

Social Impact

Unlawful discrimination threatens the rights and privileges of all inhabitants of the State. All New Jerseyans will benefit from the rules, which are intended to advance equal access and choice in the housing rental market unimpeded by invidious discrimination. The social conditions that existed at the time of the original adoption of Chapter 10 have improved, but more must be done to move closer to the LAD's goal to "eradicate the cancer of discrimination." Two national reports discuss the need for aggressive and affirmative efforts, to abate housing discrimination. The December 2008 Report of the National Commission on Fair Housing and Equal

Opportunity: The Future of Fair Housing, co-chaired by former secretaries, U.S. Department of Housing and Urban Development (HUD) Jack Kemp and Henry Cisneros, emphasized that “systemic investigations are the most effective and efficient way to bring about change and end behavior that perpetuates segregation and have the capability to reach the kinds of discrimination that are not identified by victims, or where the victims are unaware of their rights or are reluctant to file complaints.” An earlier national HUD 2000 Housing Discrimination Study reported very high levels of discrimination and steering against Black, Latino, Asian and Native American home seekers based on the experience of paired testers (investigators posing as renters or homebuyers) in major metropolitan housing markets. The proposed readoption of Chapter 10 will have a positive social impact since the Division will retain a useful tool to investigate patterns of housing discrimination that may support systemic discrimination investigations in the public interest.

Economic Impact

The multiple dwelling report rules will have a minimal economic impact on owners of multiple dwelling developments with 25 or more units since the rules have not changed substantially since the last readoption with amendments. The filing process reasonably can be accomplished by subject property owners, or their agents, without more than insignificant costs. With the rules’ minimal recordkeeping requirements landlords should not require the retention of any additional personnel; professional services or otherwise. Any assistance needed by owners will continue to be made available through Division staff. Forms, worksheets and detailed

instructions will also continue to be available, at no cost to owners, on the Division's website.

Incident to the penalty provisions of the rules owners who violate the annual filing requirements are subjects to costs for non-compliance, which range from \$100.00 to \$500.00, provided the report is not more than 90 days overdue. The Director has discretion to determine the amount of the penalty for reports filed more than 90-days after the due date.

The multiple dwelling report rules have resulted in operational efficiencies to the Division. The Division continues to experience a positive economic impact since its resources and staff can be utilized for other operational needs rather than data input activities previously associated with processing of multiple dwelling reports.

Federal Standards Statement

A Federal standards analysis is not necessary because the chapter proposed for readoption is not intended to implement or comply with any programs established under Federal law or under a State statute that incorporates or refers to Federal law.

Jobs Impact

The rules proposed for readoption will not increase or decrease the number of jobs in New Jersey. The rules proposed for readoption will have no impact on the increase or decrease of staff positions to be filled in the Division.

Agriculture Industry Impact

The rules proposed for readoption will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., requires the Division to give a description of the types, and an estimate of the number, of small businesses to which the rules will apply. The rules proposed for readoption will apply only to owners of multiple apartment dwellings with at least 25 units, of which there are approximately 3,000. Many of these may be considered "small businesses." The rules proposed for readoption will not, however, impose new reporting, recordkeeping or other compliance requirements on owners of multiple dwelling developments. There will be no additional costs to continued compliance or need to employ professional services incident to following the rules in the chapter.

Smart Growth Impact

The rules proposed for readoption will not have any impact on the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the rules proposed for readoption concern recordkeeping and filing requirements.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption concern the recordkeeping and filing requirements.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C 13:10.