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LAW AND PUBLIC SAFETY

DIVISION ON CIVIL RIGHTS

Rules Pertaining to the Multiple Dwelling Reports

Readoption with Amendments: N.J.A.C. 13:10

Proposed: October 7, 2024, at 56 N.J.R. 1936(a).

Adopted: February 21, 2025, by Sundeep Iyer, Director, Division on Civil Rights.

Filed: February 21, 2025, as R.2025 d.038, with **non-substantial changes** not requiring additional notice and public comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 10:5-8, 10:5-12, and 10:5-18.

Effective Dates: February 21, 2025, Readoption;
April 7, 2025, Amendments.

Expiration Date: February 21, 2032.

Summary of Public Comments and Agency Responses:

The official comment period for the notice of proposal ended on December 6, 2024. The Division on Civil Rights ("Division" or "DCR") appreciates receiving comments on the notice of proposal from Community Health Law Project (CHLP), Fair Share Housing Center (FSHC), New Jersey Apartment Association (NJAA), and New Jersey Realtors (NJ Realtors).

General Comments in Support

1. COMMENT: CHLP expresses its support for the readoption with amendments.

RESPONSE: The Division thanks the commenter for its support.

2. COMMENT: FSHC expresses its support for the expansion of reporting requirements to include

all occupants, regardless of age or leaseholder status.

RESPONSE: The Division thanks the commenter for its support.

Comments Related to the Regulatory Impact Analyses

3. COMMENT: NJAA comments that N.J.S.A. 52:14B-4.1b requires a "housing affordability impact analysis," which requires agencies to estimate the "types and number of housing units to which proposed rules would apply" and to describe "the estimated increase or decrease in the average cost of housing." The commenter states that the rulemaking includes neither a housing affordability impact analysis, nor a statement providing the basis of the Division's determination that the rules proposed for readoption with amendments would have no impact. NJAA states, however, that "it seems inconceivable that a comprehensive recordkeeping and reporting scheme would have no impact on the cost of operating housing, and therefore, the cost of housing in the State."

RESPONSE: N.J.S.A. 52:14B-4.1b.a requires a housing affordability impact analysis, but it states that the "subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact" because "there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing." The multiple dwelling reporting rule has been in place for decades, and it imposes minimal recordkeeping and reporting requirements on owners of multiple dwellings. The readoption of these rules with amendments is, therefore, extremely unlikely to "evoke a change in the average costs associated with housing." The rules proposed for readoption with amendments clarify that owners and property managers are required to disseminate the MDRR Tenant/Applicant Inquiry document but may not enter a dwelling unit without the permission of leaseholders or occupants or otherwise conduct an investigation for the

purpose of collecting information related to this chapter. Limiting the actions an owner or property manager may take to secure the requested information does not increase potential costs related to reporting.

4. COMMENT: NJAA comments that the regulatory flexibility analysis does not meet the requirement to minimize the adverse economic impact on small businesses, as there is no explanation as to why including small businesses is necessary to protect public health, safety, and general welfare. NJAA comments that costs associated with rule compliance include: (1) paper to print and disseminate forms; (2) stamps or computer systems to mail or email them; (3) administrative costs of disseminating and collecting forms; (4) electronic or physical storage to retain the forms; (5) professional services to complete the analysis and computations; and (6) professional services to update computer systems. The commenter requests that the Division provide its basis for: (1) determining "minimal or moderate" economic impacts in its economic impact analysis; (2) determining no impact on housing affordability; and (3) determining the inability to exempt small businesses from rule coverage.

RESPONSE: As discussed in Response to Comment 3, the economic impact of the rules proposed for readoption with amendments is minimal. Owners of multiple dwellings bear fixed costs associated with the leasing and maintenance of multiple dwellings, such as the maintenance of computer systems and electronic or physical storage, that are unlikely to increase as a result of the minimal recordkeeping associated with the rules proposed for readoption with amendments. The rules proposed for readoption with amendments do not generally require owners of multiple dwellings to obtain information in a particular way and allows flexibility to collect and store information in ways that minimize compliance costs.

As costs on owners are minimal, it is also unlikely that compliance costs will have any impact on housing affordability.

The Division is unable to exempt small businesses from the rules readopted with amendments coverage pursuant to the New Jersey Law Against Discrimination (LAD), which does not contain an exemption for small businesses. The LAD "was designed to eliminate practices of discrimination," that "threaten ... not only the rights and privileges of [the State's] inhabitants ... but menace ... the institutions and foundation of a free democratic society." *New Jersey Builders, Owners & Managers Ass'n v. Blair*, 60 *N.J.* 330, 334-35 (1972); N.J.S.A. 1:5-3. The Supreme Court of New Jersey held that the Division's "[a]ssembling and evaluating [demographic] data may obviously be a rational approach toward fulfilling the responsibility with which the [Division] has been charged." *Id.* at 336. Therefore, the elimination of discrimination in the housing market, including by small businesses that own multiple dwellings, is necessary to protect the general welfare of New Jerseyans, and exempting small businesses that own multiple dwellings would be incompatible with the purpose of the LAD and the rules proposed for readoption with amendments.

Comments Related to Definition of "Multiple Dwelling"

5. COMMENT: CHLP and FSHC express support for the proposed amendment of the definition of "multiple dwelling" to include "25 or more dwelling units at the same general location, or across various locations within the State of New Jersey, and operated under one management or with ownership in common." CHLP comments that the proposed amendment will expand the number of properties and landlords that will have to comply with Multiple Dwelling Reports (MDRR), which will provide the Division with more data that can be used to help the consumers served by CHLP. FSHC comments that the broader definition ensures that civil rights data reflects the

realities of dispersed housing portfolios, which supports more informed policy decisions, identifies potential barriers to fair housing, and promotes inclusivity in communities Statewide.

RESPONSE: The Division thanks the commenters for their support.

6. COMMENT: NJ Realtors opposes the proposed amending of the definition of "multiple dwelling" to include "25 or more dwelling units at the same general location, or across various locations within the State of New Jersey, and operated under one management or with ownership in common." NJ Realtors states that there is a difference between a single building with 25 or more units and 25 individual homes across the State. The commenter asserts that this proposed amendment could set a dangerous precedent and open the door for the definition of "multiple dwelling" to change across State law.

RESPONSE: The Division finds that the proposed amendment to the definition of "multiple dwelling" is necessary to meet its obligation pursuant to the LAD to investigate and eliminate discrimination in housing. Where there is common ownership or management of several dwelling units spread across multiple locations, the housing provider may maintain discriminatory policies or practices that affect all of those dwelling units across all of those locations. This proposed amendment is, therefore, necessary so that the Division can better identify discriminatory patterns that affect dwelling units that are spread across multiple locations and assess their effects. Without it, the Division will lack information on properties managed by one management or properties with ownership in common that have fewer than 25 units in a single location. The proposed amendment of the definition of "multiple dwelling" is necessary to eliminate discrimination in single-family dwelling units or buildings with fewer than 25 dwelling units that are operated under one management or with ownership in common that were previously excluded from the definition

pursuant to this definition. The amended definition of "multiple dwelling" applies only to the multiple dwelling reporting requirement pursuant to this chapter and not to other State regulations or statutes.

Comments Related to Definition of "Applicant"

7. COMMENT: NJAA comments that the rules proposed for readoption with amendments should differentiate between applying to rent an available unit or a soon-to-be-available unit and applying to be included on a waitlist for housing that is not yet available. The commenter states that because affordable housing utilizes waitlists, sometimes known as "pre-applications," as a tool in their affirmative marketing plans, the definition of "applicant" should be amended to make clear that a prospective tenant does not complete an application when seeking inclusion on a waitlist for affordable housing. Specifically, NJAA comments that the definition should be amended as follows (additions to proposal indicated in boldface; deletions from proposal indicated with strikethrough):

> "Applicant means any person considered for, or who requests **to the owner, or an agent thereof,** to be considered for, tenancy ~~within a~~ **of an available, or soon-to-be-available,** rental dwelling unit**; this shall not include a "pre-application" or a request to be included on a waitlist for any project operating under an approved "Affirmative Fair Housing Marketing Plans" under Subpart M of 24 CFR, Part 200 or State assisted housing [that] is subject to affirmative marketing plans under the Uniform Housing Affordability Controls (UHAC)."**

RESPONSE: The Division agrees with the commenter and partially adopts the suggested non-

substantial change to clarify that the definition of "applicant" excludes individuals who have submitted a "pre-application" or request to be included on a waitlist for housing that is not yet available. "Pre-applications" or requests to be included on a waitlist are often required for affordable housing programs and are used to determine if an individual or family qualifies for a specific program and to include them on a waitlist if they are approved. The Division changes the definition of "applicant" to "any person considered for, or who requests to be considered for, tenancy within an available or soon-to-be-available rental dwelling unit" and includes that "[a]pplicant does not include a person who submits a 'pre-application' or a request to be included on a waitlist." The Division does not adopt the entirety of the language suggested by NJAA, but the change provides the clarification sought by the commenter.

8. COMMENT: NJAA comments that the proposed amended definition of "applicant" is unclear because it does not identify when in the leasing process a person becomes an "applicant."

RESPONSE: As discussed in the Response to Comment 7, the Division is changing the definition of "applicant." The rules readopted with amendments now define "applicant" as "any person considered for, or who requests to be considered for, tenancy within an available or soon-to-be-available rental dwelling unit." The addition of "considered for, or who requests to be considered for, tenancy" aligns the definition with the definition of "applicant" in the Fair Chance in Housing Act. N.J.S.A. 46:8-54. It also clarifies that an individual who submits an application, including an electronic application, but who never appears in-person or virtually in front of an owner, is included within the definition of "applicant." Therefore, anyone who completes the application process, even if the owner does not actually consider the individual for tenancy, is considered an applicant pursuant to the amended definition. The amended definition additionally provides

clarification about when in the leasing process a person becomes an applicant by specifically excluding a person who submits a "pre-application" or a request to be included on a waitlist, in response to NJAA's suggestion at Comment 7. Therefore, anyone who completes the application process, even if the owner does not actually consider the individual for tenancy, is considered an applicant pursuant to the amended definition.

Comments Related to Protected Characteristics

9. COMMENT: CHLP supports the collection of information related to whether rental applicants, including dwelling unit leaseholders and known occupants, receive rental assistance, including, but not limited to, Section 8 housing choice vouchers. CHLP comments that while it supports the collection of this information for the purposes of ensuring that landlords are not engaging in income discrimination and tenants are able to secure safe, affordable housing, the commenter cautions that landlords could be hesitant to accept applications with a housing subsidy knowing that they will have to report it.

RESPONSE: The Division thanks the commenter for its support. The LAD prohibits discrimination in housing on the basis of "source of lawful income used for rental or mortgage payments," which includes receiving rental assistance, including, but not limited to, Section 8 housing choice vouchers. N.J.S.A. 10:5-12.g and h. Any landlord that does not accept applications from individuals with a housing subsidy violates the LAD. Any applicant who believes that they may be the victim of discrimination is encouraged to file a complaint with the Division.

10. COMMENT: FSHC comments that the rules proposed for readoption with amendments do not differentiate between affordable and non-affordable units in reporting requirements. It states that

differentiating between affordable and non-affordable units would align with P.L. 2024, c. 2, which mandates updates to the Uniform Housing Affordability Controls, including specific affirmative marketing standards for affordable housing. The commenter states that reporting on affordable units would aid in monitoring patterns related to applications and occupancy, ensuring equitable access, and enabling better enforcement of anti-discrimination laws.

RESPONSE: The rules readopted with amendments enforce and further a critical purpose of the LAD—to eliminate discrimination in housing. In contrast, P.L. 2024, c. 2, concerns the administration of and municipal obligations regarding affordable housing, placing authority with the Executive Director of the New Jersey Housing and Mortgage Finance Agency, in consultation with the Department of Community Affairs, to adopt rules and regulations updating the Uniform Housing Affordability Controls, including affirmative market standards for affordable housing. N.J.S.A. 52:27D-321. The Division declines to add a requirement in this rulemaking for filers to differentiate between affordable and non-affordable units. The LAD prohibits discrimination on the basis of "source of lawful income used for rental or mortgage payments," which includes receiving rental assistance. In furtherance of that prohibition, the rules readopted with amendments require owners of a multiple dwelling to report whether rental applicants, dwelling unit leaseholders, and known occupants receive rental assistance.

11. COMMENT: NJ Realtors requests clarification regarding whether the LAD permits a landlord to request from a tenant the information required by the proposed rule amendment.

RESPONSE: Landlords are permitted pursuant to the LAD to request the information from tenants in aid of their reporting requirements pursuant to the rules readopted with amendments. In fact, N.J.A.C. 13:10-2.3(c) requires landlords to provide leaseholders DCR's MDRR Tenant/Applicant

Inquiry document. The rules proposed for readoption with amendments just prohibits landlords from "*requiring* a leaseholder, a known occupant, or an applicant to complete the MDRR Tenant/Applicant Inquiry document." See N.J.A.C. 13:10-2.3(e) (emphasis added). Thus, landlords are free to request the needed information from tenants, the rules readopted with amendments just make clear that landlords cannot require tenants to fill out the forms. Requesting the information in the rules readopted with amendments is in line with the language and purpose of the LAD and is expressly authorized by caselaw. See *New Jersey Builders, Owners & Managers Ass'n v. Blair*, 60 *N.J.* 330, 334-36 (1972) ("Assembling and evaluating [demographic] data may obviously be a rational approach toward fulfilling the responsibility with which the [Division] has been charged"); N.J.S.A. 10:5-3. Based on the reports of housing discrimination the Division has received, and the investigations it conducts, the Division has determined that the collection of demographic data regarding gender, familial status, and receipt of rental assistance, in addition to previously required data regarding racial/ethnic designation, is necessary to fulfill its responsibilities pursuant to the LAD to eliminate housing discrimination based on these protected characteristics. Therefore, landlords are permitted pursuant to the LAD to request the information from tenants, consistent with this rulemaking.

Comments Related to MDRR Tenant/Applicant Inquiry Document

12. COMMENT: NJ Realtors comments that because the rules proposed for readoption with amendments require property owners to report information received from the MDRR Tenant/Applicant Inquiry document, the Division should change N.J.A.C. 13:10-2.3(c) upon adoption to require tenants to complete the MDRR Tenant/Applicant Inquiry document.

RESPONSE: The Division declines to make the recommended change. As previously stated in the Response to Comment 11, landlords are required to request the information from tenants in aid of

their reporting requirements pursuant to N.J.A.C. 13:10, but they cannot require tenants to complete the MDRR Tenant/Applicant Inquiry document. The rules readopted with amendments require owners of a multiple dwelling to report to the Division to aid in uncovering patterns of discrimination in the housing market. Owners have been subject to the chapter's reporting requirements for decades, and many owners of multiple dwellings are familiar with the reporting process, including the practice of voluntary tenant reporting. While owners are required to provide tenants and applicants with the MDRR Tenant/Applicant Inquiry document, the rules readopted with amendments do not require tenants or applicants to complete the form. Although tenants and applicants are encouraged to complete the forms to aid in the Division's data collection and efforts to eliminate discrimination in the housing market, the Division declines to require the form's completion by tenants and applicants. If tenants and applicants do not wish to complete the MDRR Tenant/Applicant Inquiry document, housing providers cannot and should not require them to complete it.

13. COMMENT: NJAA comments that it is unclear pursuant to the rules proposed for readoption with amendments when an application process is complete and that it is, therefore, unclear when the rules proposed for readoption with amendments require an owner to disseminate the MDRR Tenant/Applicant Inquiry document. It states that providing the form too late in the application process would lower the likelihood that it is completed and returned. NJAA suggests replacing "the completion of the application process" in the first instance at N.J.A.C. 13:10-2.3(d) with "submission of an application" and replacing "their completion of their application process" in the second instance with "the submission of a completed application."

RESPONSE: The rules proposed for readoption with amendments require an owner to provide

applicants with the MDRR Tenant/Applicant Inquiry document at the completion of the owner's application process and further provide that owners are prohibited from requesting the information from an applicant prior to the completion of their application process. The completion of the application process occurs when the applicant has completed all the requirements and submitted all the information required by the owner to be considered for tenancy. Providing the reporting form at the completion of the application process reduces the likelihood that the information contained therein will be used to discriminate against an applicant in the leasing process. Therefore, amendment of the language is unnecessary.

14. COMMENT: NJAA comments that, as many firms have moved to electronic application, leasing, and communications platforms, owners should be permitted to inquire about an applicant's demographics electronically so that they can more easily complete the required submission and, accordingly, suggests changes at N.J.A.C. 13:10-2.3(d), upon adoption, replacing "document" with "in writing or electronically."

RESPONSE: The Division declines to make the suggested change. Nothing in the rules readopted with amendments prohibits the electronic provision of the MDRR Tenant/Applicant Inquiry document.

Comments Related to Reporting Requirements

15. COMMENT: FSHC states that requiring reporting on demographic information for all residents will result in a more complete picture of occupancy patterns. The commenter states that "[m]aintaining consistent language throughout the document to reflect this inclusion is crucial to avoid any ambiguities in implementation."

RESPONSE: The Division agrees with the commenter and proposed language throughout the rules proposed for readoption with amendments that reflects the requirement to include demographic information for all residents in reporting.

16. COMMENT: FSHC comments that the proposed amendments at N.J.A.C. 13:10-2.3(c) through (f) that prohibit requesting information from applicants prematurely or coercing tenants to provide demographic data ensure tenants' rights are protected and provide much-needed guidance to landlords, reducing the risk of unintentional violations of the LAD. The commenter suggests that, to support compliance, the Division could consider developing training materials or guidance documents for landlords to ensure consistent and equitable application of the rules proposed for readoption with amendments.

RESPONSE: The Division thanks the commenter for its support and suggestion.

17. COMMENT: NJ Realtors suggests amending the rules upon adoption to create a distinction between false and willfully false reporting in the penalties section at N.J.A.C. 13:10-2.7. According to NJ Realtors, because landlords are required to complete and file the MDRR based on information provided by the tenants (if the tenants choose to report), landlords have no way to verify the accuracy of information tenants provide on the MDRR Tenant/Applicant Inquiry document.

RESPONSE: The Division declines to make the suggested change but clarifies that owners of multiple dwellings are not responsible for false or incorrect information given to them by applicants and tenants. When owners of multiple dwellings report to the Division based on the information received from applicants and tenants, they are not subject to penalties for false or

incorrect information given to them by applicants and tenants. In the event the Division initiates an investigation due to alleged false reporting, the rules proposed for readoption with amendments require the maintenance of records, including completed MDRR Tenant/Applicant Inquiry documents, and require owners to provide those records for the Division to review in aid of its investigation. An owner would not be liable for false reporting if they accurately reported data to the Division based on the information they received through MDRR Tenant/Applicant Inquiry documents, and that is information the Division could easily verify. Therefore, a distinction between false and willfully false reporting in the text of the rule is unnecessary.

18. COMMENT: NJ Realtors comments that because landlords are already required to report information about tenants and applicants, the Division should not amend the rules proposed for readoption with amendments in a way that makes it more difficult for landlords to gather the information necessary from applicants and tenants. The commenter additionally questions whether the added provisions are necessary, given that the LAD already has protections in place that prohibit applicants and tenants from being discriminated against in the rental of housing.

RESPONSE: The rules proposed for readoption with amendments do not make it more difficult for owners to gather information from applicants and tenants. Owners are required to report to the Division based on the information available to them. To protect the privacy of applicants and tenants and to protect applicants and tenants from discrimination, harassment, and retaliation, the rules proposed for readoption with amendments make clear that applicants and tenants are not required to complete the MDRR Tenant/Applicant Inquiry document. The rules proposed for readoption with amendments also make clear that owners are prohibited from taking action beyond providing the form at the required intervals to obtain the information requested by the form. These

clarifications are necessary to help protect tenants and applicants from discrimination, harassment, and retaliation and to ensure that owners do not take negative action against tenants and applicants beyond providing the MDRR Tenant/Applicant Inquiry document to meet their reporting requirements. These clarifications also do not in any way increase the burden on housing providers in complying with the rules, as they do not require owners to take significant steps beyond those they have already long been required to take pursuant to the rules proposed for readoption with amendments.

19. COMMENT: FSHC comments that the rules proposed for readoption with amendments gives the Attorney General the authority to determine reporting requirements at N.J.A.C. 13:10-2.3(b)2, and that this risks a future reduction or elimination of reporting requirements, undermining the rules' purpose. The commenter states that this provision should explicitly state that any adjustment to reporting requirements must align with the MDRR's overarching goal of preventing housing discrimination and ensuring compliance with the LAD. The commenter further states that the MDRR should clarify that the Attorney General is required to report demographic and unit data and should not leave any such determinations to the Attorney General's discretion.

RESPONSE: The Division declines to change N.J.A.C. 13:10-2.3 upon adoption because the provision, as currently drafted, does not grant the Attorney General authority to eliminate reporting requirements specified in the rule. N.J.A.C. 13:10-2.3(b)2 requires all owners of a multiple dwelling to file an annual report with the Division concerning the demographic composition of each multiple dwelling and whether rental applicants, dwelling unit leaseholders, and known occupants receive rental assistance. The rules proposed for readoption with amendments afford no discretion to the Attorney General with respect to these reporting requirements and does not grant

the Attorney General authority through the rules proposed for readoption with amendments to reduce or eliminate these reporting requirements. N.J.A.C. 13:10-2.3(b)7 does allow for the Attorney General to require other information that the Attorney General deems necessary to effectuate the purposes of this rule. However, this information would be in addition to, rather than in place of, the information required by the other reporting requirements in the subsection. Therefore, nothing in this provision risks a reduction or elimination of reporting requirements. Other changes to the Attorney General's discretion or authority are more appropriately made through legislation rather than rulemaking.

Comments Related to Penalties

20. COMMENT: NJAA comments that short grace periods for filing deadlines and higher penalties for late filings will penalize less sophisticated landlords who cannot afford legal counsel, including owners new to New Jersey or whose first language is not English, the most. NJAA suggests the Division provide notice and an opportunity to cure before imposing the enhanced penalties pursuant to N.J.A.C. 13:10-2.7(b), (c), and (d).

RESPONSE: The rules proposed for readoption with amendments provide that the Director may, in their discretion, waive all or part of the penalties incurred with the late filing of a report or reports for good cause shown, so long as such waiver would not compromise the purpose of the reports. The rules proposed for readoption with amendments allow an owner of a multiple dwelling to apply to the Director of the Division for a waiver or relaxation of the penalties incurred because of the late filing or failure to file a report or reports, stating the owner's reasons for the late filing or failure to file. N.J.A.C. 13:10-2.7(g). The rules proposed for readoption with amendments also state that the Director may consider any exceptional circumstances related to the delinquency in deciding whether to grant the waiver or relaxation. Moreover, the rules proposed for readoption

with amendments apply only to owners or common management of 25 or more dwelling units in New Jersey, meaning the rules will not impact the smallest landlords, who may be less likely to have counsel. Therefore, a proposed amendment is unnecessary because the rules proposed for readoption with amendments contain a mechanism to provide relief to owners who file reports late, or fail to file reports with good cause shown.

Federal Standards Statement

A Federal standards analysis is not necessary because the readopted rules with amendments are not intended to implement or comply with any programs established pursuant to Federal law or pursuant to a State statute that incorporates or refers to Federal law.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:10.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicted in brackets with asterisks *[thus]*):

SUBCHAPTER 1. DEFINITIONS

13:10-1.1 Definitions

The following words and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. (Unless the context indicates to the contrary, all terms used in this rule have the same meanings as at N.J.S.A. 10:5-1 et seq.)

"Applicant" means any person considered for, or who requests to be considered for, tenancy within *[a]* ***an available or soon-to-be-available*** rental dwelling unit. ***"Applicant" does not include a person who submits a "pre-application," or a request to be included on a waitlist.***

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