



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

Landlord and Tenant Law

February 10, 2012

NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrcc@njlrcc.org
Web site: <http://www.njlrcc.org>

INTRODUCTION

The revision of laws governing landlords and tenants is long overdue. The compilation of these statutes, some of which date back to the 18th century,¹ has not evolved in a coherent manner. Landlord-tenant law is scattered over many titles of the statutes. Most of this law is in titles 2A and 46, but even there, the provisions are in multiple, non-sequential chapters. In many instances, different aspects of the same topic are discussed in more than one statutory provision in different chapters or different titles.² Many provisions no longer have meaning in modern practice and some have not been amended to keep pace with relevant court pronouncements.

Some more recent enactments also require revision. This area of the law must be easy to find and understand; it is used frequently, by many people, and often, by tenants and landlords who represent themselves *pro se*. The enactment of the Anti-Eviction Act in 1974³, and its numerous amendments in later years⁴, increased the need for revision for clarity and consistency. Many provisions that existed before the Anti-Eviction Act are considered by some attorneys to have been superseded by the Act. However, these provisions have not been repealed and no court decision has held that they are unenforceable. The interaction of the Anti-Eviction Act and the Summary Dispossess Act⁵ is often confusing and ambiguous. The Security Deposit Act includes provisions that are pages in length and cannot be deciphered without laborious effort.

The revision is intended to accomplish several objectives. First, the Commission puts all the relevant law in one place. Except for a few miscellaneous provisions (as noted later in this introduction), which are part of larger legislative acts or more appropriately belong in their current titles, the law governing landlords and tenants is compiled in a single new Title, proposed Title 46A. This will eliminate the need to search at least three nonsequential chapters in title 2A as well as numerous provisions in title 46 in order to locate statutes governing eviction, security deposits, landlord remedies -- such as distraint and liens -- and tenant rights, especially protections for senior citizen tenants, disabled tenants and tenants residing in certain types of multiple dwellings.

The Commission also eliminates or replaces archaic terms. For example, the terms “notice to quit” are replaced with the terms “notice to vacate”. The term “removal” as it refers to the removal of a tenant from rental premises is no longer used in the statutes, having been

¹ The law of distraint and of “waste” date back to Paterson’s Laws in (1795). The Supreme Court in *Callen v. Sherman’s Inc.*, 92 N.J. 114, 121 (1983) noted that the New Jersey statutes “have provided for distraint since 1795 and the current act, N.J.S. 2A:33-1 to -23 still exhibits its feudal origins.” However, the concept of “waste”, though set forth in Paterson’s Laws, is even older, having been derived from the British Statutes of Marlbridge and Gloucester (in 1267 and 1278 respectively.)

² For example, tenant holdovers are addressed in at least three separate statutes: N.J.S. 2A:39-4 (tenant holdover guilty of unlawful detainer); 2A:42-5 (double rent recoverable from holdover) and 46:8-10 (holdover results in month-to-month tenancy).

³ What has come to be called the *Anti-Eviction Act* or the *Good Cause for Eviction Act* appears at N.J.S. 2A:18-61.1 *et seq.* It covers the evictions of most residential tenants.

⁴ The *Anti-Eviction Act* was amended (some parts were amended multiple times) in 1975, 1981, 1986, 1989, 1993 and 1997.

⁵ The *Summary Dispossess Act*, N.J.S. 2A:18-53 *et seq.* was enacted in 1951 and amended in 1983 and 1991. Since enactment of the *Anti-Eviction Act*, the *Summary Dispossess Act* has been understood to cover the eviction of nonresidential tenants and residential tenants not covered by the *Anti-Eviction Act*.

replaced in every instance with the term “eviction” (except as used in orderly removal, now made part of this revision in Chapter 18, specifically section 46A:18-4). The “warrant of removal” or “warrant for removal” is now called a “warrant of eviction” or “warrant for eviction”. And the term “waste” is eliminated, as is the term “attornment”; both terms are derived from English feudal law and have no meaningful application in current practice.

The Commission eliminates inconsistencies and confusing provisions. In some cases, current provisions are inconsistent because they pre-date the Anti-Eviction Act and the Summary Dispossess Act but the provisions have not been repealed or modified to reflect the subsequent changes made as a result of those acts. At the same time, while attempting to clarify and make more accessible the Anti-Eviction Act, the Commission has strived not to alter its essence. For many tenants and tenant representatives, the Anti-Eviction Act is the most comprehensive and progressive law regulating eviction in the nation. The Commission has made every effort to update and consolidate these acts while preserving their significance.

Where appropriate, in addition to clarifying language, the Commission updates the law by incorporating the holdings of key New Jersey State court determinations. This occurs only where the Commission concluded that the cases clarified an ambiguous issue, made a reasonable determination of legislative intent or encouraged further legislative clarification.

New Title 46A is divided into nine articles and 33 chapters. The first article is devoted to general application and definitions of general terms used throughout the Title, although provisions for application and definitions for particular chapters are also set forth in those particular chapters. Article 2, entitled Relationship of Landlord and Tenant, contains provisions regarding leases, conveyances of rental property, statements that must be provided by landlords to tenants -- such as what has come to be known as the truth in renting statement -- terminations of leases by tenants including the recently enacted New Jersey Safe Housing Act⁶, month-to-month tenancies, and other provisions that concern the fundamentals of the landlord and tenant relationship.

Article 3 is devoted entirely to the landlord identity registration statement requirements that are administered by the Department of Community Affairs. Article 4 is devoted entirely to security deposits and revises and updates the Security Deposit Act⁷.

The bulk of the provisions related to landlord and tenant, as set forth in what have come to be known as the Anti-Eviction Act and the Summary Dispossess Act, are combined in article 5, entitled, “Eviction”. Article 5 is the heart of the new title. The article – comprised of nine chapters -- covers the grounds for eviction, the notices that must be served in order to evict, judgments of eviction, the issuance and execution of warrants of eviction, stays of eviction, wrongful evictions, displaced tenancies and relocation expenses, and conversions from residential rental premises. The distinctions made between the provisions that apply to residential and nonresidential rental premises are set forth expressly and in most cases at the outset of each chapter. A new category of rental premises – seasonal or vacation rental premises – are now provided for in the eviction article. And those types of residential premises currently carved out

⁶ N.J.S. 46:8-9.4 *et seq.*

⁷ N.J.S. 46:8-19 *et seq.*

of the Anti-Eviction Act are included in this Title with their own separate grounds for eviction. Not all provisions apply to all rental premises.

Article 6 pertains to landlord remedies (other than eviction), including actions for rent or damages; distraint; landlord's liens; actions for damage; destruction or material alteration of rental premises (formerly known as "waste"); and the provisions governing abandoned property.

Article 7 covers all tenancies protected because of conversion of the rental premises, *i.e.*, those provisions currently known as the Senior Citizens and Disabled Protected Tenancy Act and the Tenant Protection Act of 1992⁸. Article 8 concerns receiverships and court-appointed administration of rental housing and, finally, article 9 covers rent protections and rent control in certain multiple dwellings.

Some current provisions that affect landlords and tenants have not been made part of Title 46A because they are part of statutes governing more than landlord-tenant matters.

For example, three provisions of the Soldiers' and Sailors' Civil Relief Act of 1979, at N.J.S. 38:23C-20 *et seq.*, which pertain to the eviction from, and the distraint and termination of, residential rental premises occupied by the spouses, children and other dependents of persons in military service, are not part of the new Title. The Commission concluded that these provisions belonged with title 38 pertaining to the militia generally. Other statutes, though pertaining solely to landlord and tenant, do not belong in the new Title because their primary purpose is to regulate municipal programs that benefit tenants. For example, the Tenant Property Tax Rebate Act, at N.J.S.54:4-6.2 *et seq.*, has not been incorporated into the new Title. Though the act imposes penalties on landlords who do not give tenants rebates as required by the law, it also regulates calculations of the rebates by municipalities and was enacted along with tax laws pertaining to tax rebates for homeowners. As a result, the Commission determined this act more appropriately belongs in title 54 pertaining to taxes. Another example is the Prevention of Homelessness Act (1984), N.J.S. 52:27D-281 *et seq.*, which pertains to the Department of Community Affairs' regulation of rental housing assistance programs and remains in title 52 pertaining to state government.

A Table of Dispositions is prepared as a separate document. A list of the provisions not included in Title 46A but *not* recommended for repeal is also prepared as a separate document. Some of these provisions, as already discussed, belong to statutes governing more than landlord-tenant matters. Some of these provisions set forth the legislative history for certain source provisions.

A list of Repealers is also prepared as a separate document. All of the source provisions are recommended for repeal. In addition, some provisions are recommended for repeal because they are no longer used or because they have been held invalid by New Jersey courts or made redundant by federal law.⁹

⁸ N.J.S. 2A:18-61.22 *et seq.* and N.J.S. 2A:18-61.40 *et seq.*, respectively.

⁹ For example, the provisions pertaining to crime insurance are superseded because federal statute has terminated the crime insurance program. In addition, commenters have advised the Commission that ample HO-6 policies and

The Commission sought, at the outset, to involve both landlord and tenant representatives in this project, sensitive to their sometimes conflicting perspectives of current law and its application. Some aspects of the revision, but differing aspects, have been welcomed and others opposed by landlords and tenants. The Commission obtained informal comments from the Department of Community Affairs, as applicable, which were incorporated as much as possible. Those who graciously contributed to the drafting of this report include the Administrative Office of the Courts; Nicholas J. Kikis of the New Jersey Apartment Association; the New Jersey Manufactured Housing Association; Loretta Dibble of the Manufactured Home Owners Association of New Jersey; Roger S. Antao, Esq., Antao & Chuang; Tracey Goldstein, Esq. of Feinstein, Raiss, Kelin and Booker, L.L.C.; Bruce E. Gudin, Esq. of Levy Ehrlich & Petriello, P.C.; David S. Gordon, Esq. and Francine E. Tajfel, Esq. of Wilentz, Goldman & Spitzer on behalf of the New Jersey Chapter of NAIOP (Commercial Real Estate Development Association); Richard J. Laiks, Esq. of Heller & Laiks, P.A.; Donald M. Legow, Esq., Legow Management Company, LLC; Kevin Orr, Esq., and others who did not want to be named.

The Commission also relied on the generous contributions of Mahlon L. Fast, J.S.C. Ret., author of *Landlord-Tenant and Related Issues in the Superior Court of New Jersey* (3rd Ed. 2008), who provided yet another perspective on this important body of law. Judge Fast's insight, practical approach, and vast knowledge of this area of the law were valuable to the project beyond measure.

A summary of the changes made to current law in each of the articles and chapters is set forth below.

1. ARTICLE 1 (CHAPTER 1): DEFINITIONS AND GENERAL APPLICATION

Many terms are not currently defined in the laws governing landlords and tenants. This article defines those terms that are used in more than one chapter. Examples are the definitions of "Bureau", "Commissioner", "senior citizen" and "seasonal use or rental". Other terms are not defined in current law but should be, such as "enforcement officer", which is used in the eviction and distraint chapters, and "service", which is distinguished from service of process in accordance with court rules. Some terms are intentionally not defined at all at the request of commenters. For example, the terms "tenant" and "landlord" are not defined because these terms have their commonly understood meanings; the meaning of "tenant" also continues to evolve in case law and the term "landlord" is defined differently in many chapters. The term "mobile home park" is now defined and includes the term "manufactured housing community" in accordance with the request of organizations representing both park owners and tenants.

Article 1 also contains general provisions applicable to the entire Title, the most important of which prohibits the waiver by a residential tenant of any rights under the Title. A few other terms that are defined in this article may be defined differently in another chapter, as

other insurance options now available to apartment residents have made statutorily required crime insurance unnecessary.

noted, in which case the meanings given to them in the individual chapters supersede the meanings given to them in article 1.

2. ARTICLE 2 (CHAPTERS 2 THROUGH 11): RELATIONSHIP OF LANDLORD AND TENANT

This article incorporates a variety of provisions from titles 2A and 46 that address the interaction of the landlord and tenant. For example, chapter 2 focuses on the lease, which may be written or oral. In some cases, however, as referenced in the Comment to section 46A:2-1, a tenancy may exist without a lease. Chapter 3 compiles existing provisions regarding conveyance of rental property and the effects of subleases. Chapter 4 incorporates the current Truth in Renting Act¹⁰ but modifies it to reflect changes in the manner in which the Department of Community Affairs distributes the truth in renting statement. The tenant now is given the option of accessing the statement directly via the Department's Internet website. Chapter 4 is different from current law in that it requires a larger group of landlords to provide the truth in renting statement; owner-occupied premises containing not more than three dwelling units and premises containing not more than two dwelling units are no longer excluded from the applicability of these provisions.

New section 46A:4-7, pertaining to notification to tenants if property is in a flood zone, has evolved from its source provision. A landlord's obligation to notify is now triggered by the landlord's actual knowledge that the rental property is in a special flood hazard area as determined by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), and a tenant is now permitted, under certain circumstances, to terminate a lease if a landlord does not comply with the requirements of this section.

Chapter 5 incorporates current law that governs statements required to be provided to senior citizens in housing projects. Chapter 6 addresses the affect of the new Title on the landlord's obligation to provide any other statements and notifications to tenants under other law.

Chapters 7 through 9 of this article govern the end of a tenancy, other than by eviction. Chapter 7 pertains to the total destruction of rental premises, in which case, as under current law, the lease will terminate and the tenancy cease. Chapter 8 includes all the statutes that regulate a tenant's termination of a residential lease because of death, disability, loss of income, or domestic violence. The New Jersey Safe Housing Act is incorporated in its entirety with minor language changes. Chapter 9, pertaining to month-to-month tenancies, updates its source provision to reflect changes made since enactment of the Anti-Eviction Act.

Chapter 10 incorporates current law on domesticated animals in senior citizen housing projects. Chapter 11 contains two provisions regarding a utility permitting a tenants' organization to accept the billing for utility services and how tenants contribute to payment of the utility bills.

3. ARTICLE 3 (CHAPTER 12): LANDLORD IDENTITY REGISTRATION

This article incorporates what is currently known and administered by the Department of Community Affairs as the landlord identity registration and disclosure law. Changes have been made to the requirements for the contents of the certificate. For example, e-mail addresses for the

¹⁰ N.J.S. 46:8-44 *et seq.*

owner, managing agent and person with authority to make repairs now must be included in the certificate of registration as does the name and mailing address of any mortgage service providers for recorded mortgages on the premises. The procedures for distributing the information contained in the identity statement to the tenant have also changed. A landlord can include or attach in a prominent manner to the lease the information that is required to be contained in the registration statement. A new section is added to clarify the rights of a municipality and the Department of Community Affairs with regard to requiring other owner registrations for rental property.

4. ARTICLE 4 (CHAPTER 13): SECURITY DEPOSITS

This article incorporates the Security Deposit Act with a number of modifications to current law. The purpose of the security deposit is expressly stated in section 46A:13-3. The law has been revised to provide that a tenant may pay a security deposit in installments in accordance with a lease or written schedule agreed to by both tenant and landlord. The revised statute regulates a tenant's purchase of a surety bond in lieu of a security deposit, a growing practice in rental apartments throughout New Jersey now occurring without any regulation whatsoever. The statute further provides that a landlord may offer a tenant the alternative of paying a nonrefundable security deposit replacement fee -- a current practice which is also unregulated. See sections 46A:13-16 and 46A:13-3. Penalties for a landlord's failure to comply with these sections are clearly stated. A new section requires a tenant to cooperate with procedures required by law of the depository institution where the security deposit is to be invested and provides for self-administration of security deposit investment accounts by landlords. See 46A:13-5.

The revised statute expressly provides that a tenant may apply a lawfully collected and maintained security deposit towards the payment of rent if a court determines that doing so will avoid the entry of a judgment of possession against the tenant and both the landlord and tenant are in agreement. See subsection i. of 46A:13-10. This new language reflects current practice. However, because the source statute prohibits the making of deductions from a security deposit of a tenant who remains in possession of the rental premises, the new language was deemed necessary.

Language is added to the statute to reflect the holding and dicta of *Reilly v. Weiss*, 406 N.J. Super. 71 (App. Div. 2009). There, the court reaffirmed existing law -- that what is to be returned to the tenant, and in some cases, doubled in accordance with the statute, is not the entire amount of the deposit "wrongfully withheld", but the "net sum", *i.e.*, the amount of the security deposit less expenditures made in accordance with the lease. The court further determined, however, that the current statute failed to provide a specific remedy for violations of its limit upon the amount of a security deposit that a landlord may demand. The revision now provides such a remedy. See subsection c. of 46A:13-3. Also in the new Title, when the security deposit is required to be returned under the statute, the deposit's return now is imposed, in most cases, after a tenancy is terminated *and after* possession is returned to the landlord. See section 46A:13-10.

5. ARTICLE 5 (CHAPTERS 14 THROUGH 22): EVICTION

This article is divided into chapters by topic. Chapter 14 pertains to general provisions, chapter 15 to the grounds for eviction, chapter 16 to the notices required in connection with eviction, chapter 17 to judgments and the execution of the judgments of eviction, chapters 18 and 19 to stays and dismissals of eviction actions, chapter 20 to wrongful and retaliatory evictions, chapter 21 to relocation assistance, and chapter 22 to conversions from residential rental premises. Highlights of the changes are set forth below.

Chapter 14. Eviction generally: This chapter combines new and current provisions that apply to evictions generally. For example, section 46A:14-3, although not based specifically on any source provisions, sets forth existing and well-established concepts. This general provision expressly prohibits any form of self-help by landlords to evict any tenant. It also clarifies that a landlord may obtain possession of rental premises either by summary eviction or a plenary proceeding, but in either case only upon establishment by the landlord of a ground for eviction. The provision further clarifies that possession is returned to the landlord by execution of a warrant of eviction or enforcement of a writ of possession issued pursuant to a judgment for possession. Section 46A:14-2, also not based on any source provisions, sets forth those types of “housing” for which the eviction article is not applicable.

Incorporated into proposed section 46A:14-7 are the well-established factors that a court will consider when making a determination of whether to transfer an eviction proceeding commenced in Special Civil Part to the Law Division. This section also permits transfer to the Chancery Division. The provision now embedded in current section 2A:18-61.3, which states that a tenant may not be evicted from premises covered by the Anti-Eviction Act nor the tenant’s lease not renewed except for good cause, is prominently stated in a new separate provision. See section 46A:14-5. Section 46A:14-4 expressly provides that the landlord has the burden of proving any ground for eviction and the facts required to obtain a judgment of possession.

Chapter 15. Grounds for action for eviction: This chapter incorporates substantially in its current form the entirety of section 2A:18-61.1, also known as the Anti-Eviction Act. The importance of preserving the essence of the Anti-Eviction Act is best illustrated by the statement appended to Assembly Bill 1586, L.1974, c.49, s 2. Acknowledging that (at that time) there were few limitations imposed by statute upon the reasons a landlord may evict a tenant, the bill sponsors concluded that:

As a result, residential tenants frequently have been unfairly and arbitrarily ousted from housing quarters in which they have been comfortable and where they have not caused any problems. This is a serious matter, particularly now that there is a critical shortage of rental housing space in New Jersey. This act shall limit the eviction of tenants by landlords to reasonable grounds and provide that suitable notice shall be given to tenants when an action is instituted by the landlord.

In short, a person protected by the Anti-Eviction Act enjoys a tenancy “for as long as the tenant wishes to remain, provided [the tenant] pays rent . . . and provided there is no statutory cause for eviction under [the Act].” See *Maglies v. Estate of Guy*, 193 N.J. 108 (2007), citing to *Center Avenue Realty, Inc. v. Smith*, 264 N.J. Super. 344, 350 (App. Div. 1993). The revision

does not alter this basic premise. In fact, all of the current Anti-Eviction Act grounds remain in the revision. Some important changes are noted below.

46A:15-1. New section 46A:15-1, although incorporating all of the current grounds for eviction from residential rental premises, updates language and organizes the grounds by category. For example, all grounds that require prior service of a notice to cease are together in one subsection. Grounds pertaining to a tenant's conduct (or what Judge Fast likes to call "fault grounds") are separated from grounds involving a landlord's use of the property.

In addition, 46A:15-1 adds several new grounds for eviction in response to commenters' concerns. New subsection b. (5) addresses tenant conduct that, if continued after a notice to cease, will create imminent serious danger to others, to the building and to the vicinity of the rental premises while new subsection a. (5) (E) provides for eviction for a tenant's criminal behavior involving the intentional creation of such imminent serious danger. New subsection a. (5) (C) has been added to address conduct of a tenant that involves aggravated assault against one or more other tenants in the same building or complex.

Additional new grounds have been added to reflect two separate provisions enacted after the Anti-Eviction Act. The first ground is for termination of a lease by a tenant because of domestic violence, which was not expressly added as a ground when the New Jersey Safe Housing Act, the source statute for those provisions, was enacted. For similar reasons, a ground is also added based on the provisions pertaining to tenants in senior citizen housing projects (N.J.S. 2A:42-103 *et seq.*). These provisions enable a landlord not to renew a lease where either the existence of a domesticated animal or a tenant's refusal to comply with the rules and regulations governing that animal violate the law, or the tenant fails to care properly for or clean up after the animal in accordance with the statute. When these provisions were enacted in 1990, the Anti-Eviction Act was not amended accordingly.

Section 46A:15-1 a. (10) adds a new ground for eviction because of a tenant's having caused, or created a reasonable likelihood of causing, imminent death or injury to others or catastrophic destruction to the rental premises or a building containing the premises, by extraordinary conduct under very circumscribed conditions. In most cases, a notice to cease such conduct would be appropriate under new section 46A:15-1 b. (5). However, where conduct is so excessive or severe, that it having occurred even once instills fear or apprehension in a reasonable person and a notice to cease likely will not rectify it, subsection a. (10) may be invoked.

Finally, section 46A:15-1 a. (11) adds a new ground for eviction for a tenant's knowingly giving false information or omitting material facts in an application for a tenancy subject to certain conditions.

46A:15-2. This new provision, derived from N.J.S. 2A:18-53, sets forth grounds for eviction from the types of residential premises that are expressly excluded from the current Anti-Eviction Act, *i.e.*, owner-occupied rental premises with no more than two residential rental units or residential premises occupied by developmentally disabled members of an owner's family. A

tenant in these premises is subject to eviction without good cause, unlike tenants in residential premises covered by the Anti-Eviction Act.

46A:15-3. Certain amendments to the Anti-Eviction Act apply the Act to seasonal tenants, thus implying that the original Act also applies to seasonal tenants. However, current law is unclear on this issue. In the revision, seasonal tenants *are not* treated in the same manner as residential tenants protected by the Anti-Eviction Act. This new provision sets forth grounds for eviction from seasonal or vacation rental premises which resemble the grounds in the Summary Dispossess Act. The Legislature intended the Anti-Eviction Act to remedy arbitrary and unfair ousters of residential tenants from their usual housing at a time of a critical shortage of rental housing. Because seasonal tenants – defined in current law as those residential tenants for 125 consecutive days or less who have a permanent residence elsewhere – do have other housing at the time of their seasonal rentals, the Commission determined that seasonal tenants should not be treated for purposes of eviction in the same manner as other residential tenants.

46A:15-4. This section, which applies to eviction from nonresidential rental premises only, incorporates, for the most part, the provisions of the Summary Dispossess Act.

46A:15-7. This new provision clarifies that foreclosure of a mortgage secured by residential rental premises is not, by itself, a permitted ground for eviction.

Chapter 16. Notices: This chapter is devoted to all notice provisions required for eviction, along with their service and sufficiency requirements. Model forms of each notice -- not now part of the current statute -- are provided in this chapter. Although use of those model forms is not mandatory – the revision provides that any form may be used that complies with the statute -- use of the model forms will satisfy the formal requirements of the statute.

Two new types of forms have been created. First, is a form of notice for increasing rent, a model form of which is provided in 46A:16-3. The requirement of serving a notice to quit and demand for possession when increasing rent is no longer required; service of the notice to increase rent, in accordance with sections 46A:16-3 and 46A:16-6 is sufficient. There is also a newly created form of notice for making reasonable changes to lease provisions (other than rent). See section 46A:16-4. A single notice may be used to both increase rent and make reasonable changes to the lease provisions other than rent. All time periods for service of all types of notices appear at section 46A:16-6.

Chapter 17. Judgments for possession; warrants for eviction: This chapter addresses judgments for possession and warrants for eviction and writs of possession, including execution and jurisdictional issues. Sections 46A:17-1 and 46A:17-2 clarify at the outset that a court may not enter a judgment for possession unless it is satisfied by due proof that any notice required for eviction is sufficient and has been properly served and, if the judgment is for nonpayment of rent, that the increase in rent is not unconscionable and complies with other law or municipal ordinances governing rent increases. The requirements for a warrant of eviction are set out in section 46A:17-4. New provisions have been added to set forth the requirements of a writ of possession. See 46A:17-3d. and 46A:17-7. Much of current law is preserved in this chapter.

Chapter 18. Stays of eviction and orderly removals: This chapter sets forth the parameters for stays of evictions, including what are known as and referred to in court rules (but not referred to at all currently in the statutes) as “orderly removal” of a tenant where a limited stay of execution of a warrant of eviction is granted after entry of the judgment and issuance of the warrant (and in some cases, after execution of the warrant). See section 46A:18-4. This type of stay is applicable to residential tenants, other than seasonal tenants.

Chapter 19. Dismissal of actions for eviction or possession; vacating defaults: This chapter preserves, with minor word changes, current law in chapters 18 and 42 of Title 2A that pertains to dismissal of actions for eviction or possession.

Chapter 20. Wrongful evictions from residential rental premises: This chapter incorporates existing law on wrongful evictions from residential rental premises, including landlord liability for reprisals or retaliatory evictions.

Chapter 21. Tenants displaced from residential rental premises; relocation assistance: This chapter covers displacement of residential tenants because of lawful landlord conduct and relocation assistance for certain displaced residential tenants. The provisions pertaining to relocation assistance are modified in two significant ways. First, owners who pay relocation assistance under these provisions may now reduce no more than 50% of the amount of the relocation assistance lump sum payment by the amount of rent due and unpaid from the tenant. See sections 46A:21-6 and 46A:21-7. In addition, in the case of a code violation requiring enforcement activity which a court finds is primarily attributable to the tenant, the tenant shall not be entitled to receive *any* relocation assistance. This new provision, however, applies only to code violations and not to zoning violations as defined under current law.

Chapter 22. Conversions from residential rental premises. This final chapter in the eviction article governs conversions from residential rental premises. Although preserving existing law, changes were made to reflect the fact that an offer of comparable housing is required to be made to all protected tenants, not just qualified income tenants.

6. ARTICLE 6 (CHAPTERS 23 THROUGH 27): LANDLORD REMEDIES (OTHER THAN EVICTION)

Currently chapters 42 and 33 of title 2A contain a number of provisions pertaining to recourse by a landlord against a tenant other than by an eviction action. These source provisions range from the simple remedy of an action for rent to the long-ago established but still viable body of law of distraint to the more recent provisions regarding disposal of abandoned tenant property. This article incorporates with modifications the various landlord remedies provided in source provisions.

Chapter 23. Action for rent or damages. The revision eliminates double rent as a remedy for a residential tenant’s failure to vacate the rental premises in accordance with the tenant’s own notice to terminate the tenancy. That tenant now will be subject to liability for actual damages incurred by the landlord together with the costs of the action. Distinctions are made in this provision between residential and nonresidential tenants. See section 46A:23-2.

Chapter 24. Distraint. This chapter incorporates all of the distraint provisions with significant changes. The law on distraint has evolved in the case law but the current statute does not reflect this evolution. The revised provisions incorporate the changes made to the law of distraint as expressed by the New Jersey Supreme Court in *Callen v. Sherman's, Inc.*, 92 N.J. 114 (1983). Thus, notice and a hearing must occur prior to distraint, unless the nonresidential tenant has waived due process rights or the landlord learns of the imminent removal of the personal property. See section 46A:24-4. In addition, current distraint law is arcane and archaic. The revised statute includes more modern and user-friendly word choices and provides that distraint may only be used for nonresidential tenants.

Chapter 25. Lien or right to preference in payment for rent. This section clarifies what is meant by a landlord's lien for rent. Under current law, two such "liens" exist, one known as the Loft Act lien and the other as a landlord's right to preference in payment over unsecured creditors. The Loft Act lien provisions are recommended for repeal because they are no longer relevant or useful. The source provisions pertaining to the landlord's right of preference have been incorporated but modified for reasons of practicality and clarity. See section 46A:25-3. Chapter 19 of title 2A pertaining to liens on assignor's goods and assignments for the benefit of creditors are preserved in this new chapter.

Chapter 26. Action for damage, destruction or material alteration of rental premises. This new section addresses what used to be known in the common law (and the statutes) as "waste". That concept has been replaced in the revision by the concept of destruction or material alteration of rental premises. Thus a tenant is now prohibited from materially altering or changing the nature or character of the rental premises or the real property in which rental premises exist if doing so will violate the lease or any other agreement regulating the conduct of the owner or restricting the use of the real property. See section 46A:26-3. The recovery of treble damages for waste has also been eliminated and replaced with a provision that sets forth the standards by which actual damages may be measured, depending upon whether the tenant's conduct is damage or destruction to the rental premises or material alteration and change in the nature or character of the rental premises or the real property. Punitive damages may also be recovered for a willful violation, in the court's discretion. See section 46A:26-4.

Chapter 27. Abandoned tenant property. Finally, this section incorporates the source provisions known as the Abandoned Property Act¹¹. Changes have been made to reflect recent case law, other statutory references, and practical considerations involving service of notices and bulk sales. Otherwise, no major substantive changes have been made to the source statute other than to clarify that the transfer of ownership of abandoned tenant property in accordance with a lease or the new chapter is not a bulk transfer of business assets.

7. ARTICLE 7(CHAPTER 28): PROTECTED TENANCIES

This article contains a consolidation of the source provisions known as the Senior Citizen and Disabled Protected Tenancy Act and the Tenant Protection Act of 1992 while preserving their distinctions. The Commission consolidated these source provisions because they

¹¹ N.J.S. 2A:18-72 *at seq.*

overlapped to a great extent. Other than language modifications for clarity and to reflect that comparable housing must be offered to all protected tenants, as well as changes suggested by the Department of Community Affairs, the source provisions are continued.

8. ARTICLE 8 (CHAPTERS 29 AND 30): RECEIVERSHIPS AND COURT-APPOINTED ADMINISTRATION OF SUBSTANDARD RESIDENTIAL RENTAL PREMISES

Chapter 29 incorporates the Multifamily Housing Preservation and Receivership Act¹² in substantial form. Language changes have been made for clarity and to reflect updated information. Chapter 30 incorporates provisions pertaining to the court-administration of rents deposited to improve substandard multiple rental housing and the procedure for preventing wrongful diversion of utility services in the substandard housing.¹³

9. ARTICLE 9 (CHAPTERS 31 THROUGH 33): RENT PROTECTIONS

This article pertains only to rent protections other than municipal rent control. Chapter 31 incorporates rent protection emergency provisions that permit the Governor to declare a state of emergency regarding the availability and pricing of rental housing and thereafter regulate rent increases. Although these provisions were enacted in response to the extensive flooding caused by Hurricane Floyd in 2002, and would apply only in the case of a similar emergency situation, the language has been retained “just in case”. Chapter 32 incorporates provisions for municipal rent regulation of substandard multiple dwellings and chapter 33 contains current provisions regarding the exemption of newly-constructed multiple dwellings from municipal rent regulation.

¹² N.J.S. 2A:42-114 *et seq.*

¹³ N.J.S. 2A:42-85 *et seq.*

TITLE 46A

LANDLORD AND TENANT LAW

ARTICLE 1

DEFINITIONS AND GENERAL APPLICATION

CHAPTER 1: DEFINITIONS AND GENERAL APPLICATION

46A:1-1. Definitions pertaining to title

a. Except as provided in subsection b., for the purposes of this Title:

“Bureau” means the Bureau of Housing Inspection in the Department of Community Affairs.

“Business day” means any day other than a Saturday, Sunday or State or federal holiday.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Day” means a calendar day unless otherwise noted.

“Department” means the Department of Community Affairs.

“Dwelling unit” means one or more rooms in rental premises used for residential purposes.

“Enforcement officer” means a sheriff, sheriff’s officer as applicable, or special civil part officer or any other citizen more than 18 years of age appointed by a court to enforce or execute a judgment, order or warrant.

“Mobile home park” means any mobile home park or manufactured housing community, including a trailer park, or a ‘private residential leasehold community’ as defined in N.J.S. 46:8C-10, that leases sites for mobile homes or for manufactured homes which are sited on a year-round basis.

“Owner-occupied premises” means rental premises consisting of at least two dwelling units, one unit of which is lawfully occupied by an owner as a place of residence.

“Planned real estate development” means any real property within the State, whether or not contiguous, that consists of, or will consist of, separately owned areas in any form, and which are offered or disposed of pursuant to a common promotional plan that provides for common or shared elements or interests in real property. It shall include, but not be limited to, property subject to the Condominium Act, N.J.S. 46:8B-1 *et seq.*, any form of homeowners’ association, any housing cooperative or any community trust or other trust device.

“Return receipt” for purposes of certified mailing means a paper return receipt or an electronic return receipt.

“Seasonal use or rental” or “seasonal tenancy” means use or rental for a term or the use or rental intended to be for a term of not more than 125 consecutive days for residential purposes by a person having a permanent place of residence elsewhere. A “seasonal tenant” means a tenant subject to a seasonal tenancy. “Seasonal use or rental” or “seasonal tenancy” does not mean use as living quarters for seasonal, temporary or migrant farm workers in connection with any work or place where work is being performed, or use for residential purposes by a transient guest.

“Senior citizen” means a person who is at least 62 years of age and shall include a surviving spouse, domestic partner or partner in civil union if that surviving spouse, domestic partner or partner in civil union is at least 55 years of age.

“Senior citizen housing project” or “project” means any building or structure, and any land appurtenant thereto, having three or more dwelling units, that is in compliance with State or federal law and rented or owner-occupied or intended for or solely occupied by senior citizens; provided that it shall not include owner-occupied premises having not more than three dwelling units that are rented or offered for rent, or any health care facility as defined in the Health Care Facilities Planning Act, N.J.S. 26:2H-1 *et seq.*

“Service”, “serve” or “served” with regard to notices or other documents, other than notices required by the eviction article which shall be governed by that article or service of process which shall be governed by the Rules Governing the Courts of the State of New Jersey, means either by personal delivery, or by regular mail and one of the following: (1) certified mail, return receipt requested; (2) registered mail; or (3) commercial courier whose regular business is delivery service, with a required signature.

“Sublandlord” means the landlord or lessor of a subtenant.

“Subtenant” means a person who leases all or part of the rental premises from a tenant.

b. If a term is defined in another chapter of this Title, the definition in that chapter, and not the definition here, shall be applicable.

Source: New

COMMENT

This section defines those terms that are used in more than one chapter of this Title. However, as noted in subsection b., other chapters may require different definitions of one or more of the same terms, in which case, the definitions in those other chapters take precedence.

The term “enforcement officer” is defined in accordance with commenters’ suggestions. The definition of “owner-occupied premises” is purposely broad to accommodate evolving case law pertaining to owner-occupied premises and to permit use of the term in multiple chapters. For example, the term is used in both the security deposit chapter and the landlord registration chapter. However, different definitions of this term are used in other chapters. The terms “planned real estate development”, “senior citizen” and “senior citizen housing project” are excerpted (with very minor language changes) from current provisions N.J.S. 2A:42-113 and 2A:42-103. “Senior citizen” is defined slightly differently in chapter 33 pertaining to rent protections and the term “senior citizen tenant” is separately defined in chapter 28 pertaining to protected tenancies. The Senate Committee Statement for the source provisions concerning the keeping of domesticated animals in certain housing projects clarifies that “senior citizen

housing project” was intended to mean a complex of three or more dwelling units that are intended for, and solely occupied by, persons 62 years of age or older.

The term “mobile home park” has been defined. Aspects of the definition are taken from source law for chapter 22, pertaining to conversions from residential rental premises, as well as language from the *Mobile Home Protection Act*, N.J.S. 46:8C-10 *et seq.* In addition, the definition now includes what is known in current vernacular as a “manufactured housing community”.

The definition of “seasonal use or rental” is excerpted from current section 46:8-19 and incorporated here. The term is now given greater emphasis in the context of the eviction chapter; there is now a section devoted to the grounds for eviction from seasonal rentals.

The term “rent” is not defined. In *Sudersan v. Royal*, 386 N.J. Super. 246, 252 (App. Div. 2005), the court noted that parties to a residential lease “may define rent as they choose”, citing *Fargo Realty, Inc. v. Harris*, 173 N.J. Super. 262, 266 (App. Div. 1980). The court explained that New Jersey courts have long held that parties to a residential lease may treat utility charges, attorneys’ fees and costs related to an eviction as additional rent and that so long as parties to a lease have agreed in writing to describe other fees as rent, New Jersey law permits collection of such charges in a non-payment of rent eviction case unless otherwise prohibited. In a commercial lease context, the parties routinely define the term “rent” in the lease itself. Commenters suggested that other terms also should not be defined. For example, the terms “lease” and “security deposit” are not defined. However, the purpose of a lease is explained in chapter 2 and the purpose of a security deposit is explained in chapter 13. “Residential” and “nonresidential” are not defined; their meanings are commonly understood and the source provisions use more than one name for places of residence (although, in most cases, although not all, the revision uses the term “residential rental premises” to describe rental premises used for dwelling purposes.) The term “landlord” is not defined because its meaning is commonly understood and the term is defined for different purposes in chapters 5, 10, 12, 13, and 14. In addition, the term “tenant” is not defined because the term’s meaning is commonly understood and continues to evolve in the case law.

46A:1-2. Remedies set forth in title; not exclusive

The remedies set forth in this Title shall not derogate or supersede other actions or remedies to which a landlord or tenant may be entitled in accordance with this Title, other statutes and common law.

Source: New.

COMMENT

This section is new and is self-explanatory.

46A:1-3. Waiver of residential tenant’s rights; unenforceable

Any waiver of a residential tenant’s rights under this Title is against public policy and unenforceable.

Source: 2A:18-61.36; 2A:18-61.55; 46:8-24; 46:8-36; new.

COMMENT

This section, although new, continues the substance of several current statutory sections that prohibit the waiver of provisions in existing law. See, e.g., N.J.S. 46:8-24; 46:8-36; 2A:18-61.36; 2A:18-61.55. A nonresidential tenant may waive rights. For example, a nonresidential tenant may waive rights with regard to distraint as provided in chapter 24 or may waive rights with regard to abandoned property as provided in chapter 27.

46A:1-4. Severability

If any section, subsection, paragraph, sentence or other part of this Title is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Title, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this Title directly involved in the dispute in which the judgment is rendered.

Source: 2A:18-61.5; 2A:18-61.37; 2A:18-61.58; 2A:42-10.14; 46:8-37; new.

COMMENT

This section, although new, continues the substance of several current statutory sections that state this precise language as noted.

ARTICLE 2

RELATIONSHIP OF LANDLORD AND TENANT

CHAPTER 2: LEASES

46A:2-1. Relation of landlord to tenant; governed by lease

a. A lease of rental premises may be in writing or oral, subject to the requirements of N.J.S. 25:1-12.

b. The lease, whether written or oral:

(1) transfers possession of the rental premises from the landlord to the tenant for the duration of the tenancy, subject to the landlord's title and rights not inconsistent with this Title and any other privileges granted by law or contract to the tenant; and

(2) sets forth the contractual rights and obligations of the landlord and the tenant with respect to the rental premises for the duration of the tenancy.

Source: New.

COMMENT

This section is new and clarifies the purpose of the lease as derived from existing case law. In some cases, a tenancy can exist without a written or oral lease between the landlord and tenant. For example, in *Maglies v. Estate of Guy*, 193 N.J. 108 (1007) the tenant's daughter who was a financially contributing member of the household and had been in continuous residence in the tenancy with the landlord's acquiescence and consent was held to be a functional co-tenant protected by the *Anti-Eviction Act* even though her mother was the named tenant on the lease. The terms of the lease presumably governed that relationship. Likewise, after a foreclosure, a tenant may remain but the identity of the landlord may change and the successor would continue to be bound by the pre-existing lease.

46A:2-2. Five day grace period for payment of rent; senior citizens and recipients of certain governmental benefits; residential premises

a. A lease for residential rental premises shall permit a period of five business days grace from the date that rent is due, if the tenant is:

(1) a senior citizen receiving a Social Security Old Age Pension, or other governmental pension in lieu thereof, or a Railroad Retirement Pension; or

(2) a recipient of Social Security Disability Benefits, Supplemental Security Income or benefits under Work First New Jersey.

b. No delinquency or other late charge may be imposed under a residential lease during the grace period provided by this section.

c. Any person in violation of this section is a disorderly person.

d. In an action for eviction or an action by a landlord to collect unpaid rent, a court shall consider this section in determining the amount due from a tenant covered by this section.

e. In an action for eviction for habitual late payment of rent, the five-day grace period is not calculated in determining whether a rent payment is habitually late.

Source: 2A:42-6.1; 2A:42-6.2; 2A:42-6.3.

COMMENT

This section continues the substance of its source but adds a new subsection d. which requires that a court, in eviction actions and actions to collect unpaid rent, consider this section in determining the amount due from a tenant covered by this section.

CHAPTER 3: CONVEYANCE OF LEASED REAL PROPERTY OR ASSIGNMENT OF RENTAL PAYMENTS

46A:3-1. Conveyance of leased real property; rights of tenant and new landlord

a. Every conveyance by a landlord of real property in which there are rental premises or an interest in real property in which there are rental premises, or assignment of a landlord's right to receive payment under a lease, is valid and effective as to the tenant and the new landlord provided that a tenant who before receipt of written notice of the conveyance or assignment, in accordance with section 46A:3-2, pays rent to the grantor or assignor shall not be prejudiced by the payment.

b. The new landlord acquires the rights and is subject to the obligations of the grantor with regard to the rental premises or the interest conveyed and may enforce the lease in the same manner as the grantor.

c. The tenant of conveyed rental premises for any term retains the rights and obligations as exist in the lease at the time of the conveyance.

Source: 46:3-8; 46:8-2; 46:8-3.

COMMENT

This section is derived from the source provisions with significant changes in order to eliminate archaic language. The source provisions may continue to have meaning and application in the law as those provisions affect life tenants and remainder interests in real property. The concept of "attornment", i.e., the act or agreement of a tenant accepting one person in place of another as that tenant's landlord, is not necessary in order to convey rental premises and therefore reference to attornment is omitted from the revision. The rights and obligations of the grantor are transferred to the new landlord by virtue of the conveyance and the tenant retains all of the tenant's rights and obligations under the lease. An assignment of a landlord's right to receive payment under the lease is included in the proposed provision.

46A:3-2. Providing notice to tenant of identity of new owner

If real property in which there are rental premises is conveyed by the landlord, or the landlord's right to receive payment is assigned under the lease for the rental premises other than an assignment of rents for the purpose of securing a mortgage, the grantor or assignor, at the time

of conveyance or assignment, or as soon as practicable thereafter, shall provide the tenant with written notice of:

a. the identity of the new landlord, including that person's name, address and phone number and the nature of that person's relationship to the grantor or assignor; and

b. the name and address of the person to whom rent is to be paid, if that person is different from the new landlord and the information has been provided to the grantor or assignor.

Source: New.

COMMENT

This section is new and added to incorporate in the statute the requirement that notice be provided to a tenant whenever real property containing rental premises is conveyed or the landlord's right to rent under the lease is assigned. Thus, the tenant will know who has assumed the responsibilities of the landlord and to whom, and where, rent should be paid. The notice required by this statute functions as what is currently known as a "letter of attornment." The term "attornment", however, is archaic and not necessary for the purposes of this new provision.

46A:3-3. Subtenant's liability for rent under primary lease; requirements

a. When a tenant leases rental premises to a subtenant and the tenant fails to pay rent due to the landlord, the landlord may collect rent from the subtenant as follows:

(1) the landlord shall serve written notice on the subtenant that the landlord has not been paid rent due under the primary lease, and that the subtenant should make rent payments directly to the landlord in an amount not to exceed the amount agreed to be paid by the subtenant under the secondary lease;

(2) the subtenant shall pay the rent directly to the landlord in an amount not to exceed the amount agreed to be paid by the subtenant under the secondary lease for the period next following service of the notice, except that the subtenant shall be liable for the rent owed by the tenant at the time the landlord gives notice under subsection a. only to the extent that the subtenant has not paid rent to the tenant who is the sublandlord for that prior period; and

(3) the amount of rent to be paid by the subtenant shall not exceed the amount agreed to be paid by the tenant under the primary lease or if only a part of the rental premises are subleased, payment shall be required in an amount proportionate to the total rent agreed to be paid by the tenant.

b. Nothing in this section shall impair a landlord's ability to evict a tenant or subtenant or recover possession of the rental premises in accordance with the lease and law.

Source: 2A:42-4.

COMMENT

This section continues the substance of its source. If a provision in a lease or another agreement, such as a direct recognition agreement, controls the subject of this statutory section, then the provision in the lease or other agreement, and not this section, shall apply.

46A:3-4. Judicial sale of a tenant's leased interests

A tenant's leasehold interest in real property for a term of not less than two years may be sold in accordance with a judgment, as would an ownership interest in the real property, subject to the rights of a landlord to enforce the terms of the lease or tenancy.

Source: 46:8-5.

COMMENT

This section continues the substance of its source with changes in language. The provision now clarifies that any sale is subject to the rights of a landlord to enforce the lease. The reference to a “recorded” leasehold interest has been deleted.

CHAPTER 4: STATEMENT OF RIGHTS AND RESPONSIBILITIES OF TENANTS AND LANDLORDS; NOTIFICATION OF FLOOD ZONE

46A:4-1. Definitions

For the purposes of this chapter, except for section 46A:4-7 which is governed by its express terms:

“Landlord” means any person who rents or leases or offers to rent or lease, for a term of at least one month, dwelling units, except dwelling units in hotels, motels or other guest houses serving transient guests or seasonal tenants.

Source: 46:8-44.

COMMENT

References from the source provision to “premises containing not more than two dwelling units” and “owner-occupied rental premises containing not more than three dwelling units” are omitted because the Commission determined that such rental premises should not be excluded from the applicability of the chapter. Landlords for such rental premises are now required to provide the statement required by this chapter to their tenants. The definitions of “Department” and “Commissioner” that are in the source provision now appear in section 46A:1-1.

The source sections for sections 46A:4-2 through 4-7, which are 46:8-43 through 46:8-50, are known currently as *The Truth in Renting Act*.

46A:4-2. Statement of rights and responsibilities of tenants and landlords of rental dwelling units

a. The Department shall prepare and make available annually, after public hearing and at no cost to the public, to the extent that funding has been made available to the Department for free distribution, a statement of the primary and established legal rights and responsibilities of tenants and landlords of rental dwelling units, which is:

- (1) prepared in a form and size suitable for posting and distribution;
- (2) prepared in both the English and Spanish languages and any other languages deemed reasonably necessary by the Department; and
- (3) posted on the Department’s Internet website in an easily printable format.

b. The statement shall serve as an informational document, and nothing therein shall be construed as binding on or affecting a judicial determination under section 46A:4-5 of what constitutes a lease provision that violates clearly established legal rights of tenants or responsibilities of landlords.

c. Where practical considerations require the Department to limit the extent of the statement, items to be included shall be selected on the basis of the importance of their inclusion in protecting the rights of the public.

Source: 46:8-45.

COMMENT

This section continues the substance of its source. However, modifications are made to reflect the availability of the statement of rights and responsibilities of tenants and landlords on the Department of Community Affairs' website. Although because of lack of funding, the Department of Community Affairs is currently not printing the truth in renting booklet as had been its prior practice. Subsection a. (1) is continued in the statute in the event that funding again becomes available.

46A:4-3. Statement; distribution and posting by landlords

a. Every landlord shall provide the statement required to be made available by the Department in section 46A:4-2, to each tenant, either by, at the tenant's option, giving the tenant a printed copy of the statement or notifying the tenant in writing that the statement is available electronically via the Internet in the following manner:

(1) if the lease is in writing, the written lease, for new tenants and upon renewal, shall contain a cover page with the following provisions in boldface capital letters of not less than 10 point type:

“TRUTH IN RENTING STATEMENT, A GUIDE TO THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL TENANTS AND LANDLORDS IN NEW JERSEY”, THE STATEMENT ON TRUTH IN RENTING THAT IS REQUIRED BY LAW TO BE PROVIDED TO EVERY TENANT OF RESIDENTIAL RENTAL PREMISES, IS AVAILABLE ON-LINE THROUGH THE DEPARTMENT OF COMMUNITY AFFAIRS WEBSITE, WHICH IN ENGLISH, IS *[fill in current website]*, AND IN SPANISH, IS *[fill in current website.]* YOU MAY ALSO USE A SEARCH ENGINE TO FIND “TRUTH IN RENTING” ON THE INTERNET.

YOU MAY OPT TO RECEIVE THE TRUTH IN RENTING GUIDE REFERRED TO IN THIS SECTION ELECTRONICALLY BY ACCESSING THE INTERNET IN ACCORDANCE WITH THIS NOTICE. IF YOU CHOOSE TO RECEIVE IT ELECTRONICALLY, YOUR LANDLORD WILL NOT BE REQUIRED TO GIVE YOU A PRINTED COPY.

SELECT THE METHOD BY WHICH YOU WANT TO RECEIVE THE TRUTH IN RENTING GUIDE BY CHECKING THE APPROPRIATE BOX BELOW AND RETURNING THIS PAGE TO YOUR LANDLORD IMMEDIATELY, BUT IN NO EVENT LATER THAN ONE WEEK FROM THE DATE YOU RECEIVE THIS COVER PAGE.

I WANT TO RECEIVE THE TRUTH IN RENTING GUIDE VIA INTERNET ACCESS, WHICH I UNDERSTAND MEANS THE LANDLORD WILL NOT BE REQUIRED TO GIVE ME A PRINTED COPY

I WANT THE LANDLORD TO GIVE ME A PRINTED COPY OF THE TRUTH IN RENTING GUIDE; and

(2) if the lease is oral, or upon renewal of an existing lease that does not contain the notice required by subsection (1), a separate written notice shall be provided to the tenant no later than on the date of the tenant's first occupancy of the rental premises, or if a renewal lease, no later than on the renewal date, with the following information in boldface capital letters of not less than 10 point type:

“TRUTH IN RENTING, A GUIDE TO THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL TENANTS AND LANDLORDS IN NEW JERSEY”, THE STATEMENT ON TRUTH IN RENTING THAT IS REQUIRED BY LAW TO BE PROVIDED TO EVERY TENANT OF RESIDENTIAL RENTAL PREMISES, IS AVAILABLE ON-LINE THROUGH THE DEPARTMENT OF COMMUNITY AFFAIRS WEBSITE, WHICH IN ENGLISH, IS *[fill in current website]* AND IN

SPANISH, IS *[fill in current website.]* YOU MAY ALSO USE A SEARCH ENGINE TO FIND “TRUTH IN RENTING” ON THE INTERNET.

YOU MAY OPT TO RECEIVE THE TRUTH IN RENTING GUIDE REFERRED TO IN THIS SECTION ELECTRONICALLY BY ACCESSING THE INTERNET IN ACCORDANCE WITH THIS NOTICE. IF YOU CHOOSE TO RECEIVE IT ELECTRONICALLY, YOUR LANDLORD WILL NOT BE REQUIRED TO GIVE YOU A PRINTED COPY.

SELECT THE METHOD BY WHICH YOU WANT TO RECEIVE THE TRUTH IN RENTING GUIDE BY CHECKING THE APPROPRIATE BOX BELOW AND RETURNING THIS NOTICE TO YOUR LANDLORD IMMEDIATELY, BUT IN NO EVENT LATER THAN ONE WEEK FROM THE DATE YOU RECEIVE THIS NOTICE.

I WANT TO RECEIVE THE TRUTH IN RENTING GUIDE VIA INTERNET ACCESS, WHICH I UNDERSTAND MEANS THE LANDLORD WILL NOT BE REQUIRED TO GIVE ME A PRINTED COPY.

I WANT THE LANDLORD TO GIVE ME A PRINTED COPY OF THE TRUTH IN RENTING GUIDE.

and

(3) if the tenant opts for electronic distribution, the landlord’s notice under subsection a. (1) or (2) shall satisfy the landlord’s responsibility under subsection a. If the tenant opts for a printed copy distribution, the landlord shall distribute one copy of the statement printed from the Department’s Internet website to each tenant within 10 days of the landlord’s receipt of the tenant’s direction. If the tenant does not give written direction to the landlord, the landlord shall provide the printed copy to the tenant within 17 days after the landlord’s compliance with subsection a. (1) or (2).

b. In addition to complying with subsection a., the landlord shall also post a copy of the current statement in one or more locations so that the statement is prominent and accessible to all the tenants.

Source: 46:8-46.

COMMENT

This section continues the substance of its source with changes in language in accordance with suggestions as a result of informal consultations with representatives of the Department of Community Affairs and additional comments from other commenters. The method by which landlords distribute the statement required by this chapter has been modified because of the costs to the Department of Community Affairs of printing and distributing the statement and the new accessibility of obtaining the statement from the governmental website. The statute now gives the tenant the option of receiving the statement electronically via the Internet. If the tenant does not opt to receive the statement either electronically or in printed form, the landlord shall provide a printed copy of the statement to the tenant. Regardless of whether the tenant receives the statement in printed form or electronically, the landlord must post the notice at a place that is prominent and accessible to the tenants.

46A:4-4. Violations of chapter; penalty

A landlord found to have violated any provision of this chapter shall be liable in an amount of not more than \$100.00 for each offense, recoverable by the tenant or tenants affected by the violation. An action to enforce this penalty against the landlord may be commenced by the tenant, by a summary proceeding in the Superior Court, Law Division, Special Civil Part, in the county in which the premises are located.

Source: 46:8-47.

COMMENT

This section changes current law by also giving the tenant the remedy of enforcement of a penalty for failure to comply with this chapter. This change reflects the belief of commenters that mandating recovery by tenants is far more likely to foster compliance than leaving the matter to the State alone.

46A:4-5. Offer of or entry into lease in violation of rights of tenants; termination of lease; exception

a. A landlord shall not offer to any tenant or prospective tenant or enter into any lease which includes a provision that violates legal rights of tenants or responsibilities of landlords clearly established by the law of this State at the time the lease is signed or agreed to.

b. A tenant may raise as a defense in any action by the landlord that a relevant provision is illegal and may not be enforced. This provision does not derogate or supersede a tenant's rights to commence a declaratory judgment action in accordance with applicable law to determine whether a lease violates the legal rights of tenants or responsibilities of landlords.

c. Nothing contained herein shall limit any rights or remedies a tenant may have under a lease, except that a landlord is not subject to the penalty provided by section 46A:4-4 or subsection b. of this section if the challenged lease provision originated with the tenant and not the landlord.

Source: 46:8-48.

COMMENT

This section continues the substance of its source but subsection b. modifies the source statute in a significant way. The original language permitted a tenant to terminate a lease containing a provision that violates the legal rights of that tenant. Representatives of the Department of Community Affairs (DCA), who were informally consulted, suggested that this provision be changed by allowing a tenant, instead, to petition a court to strike a provision in a lease that violates the legal rights of tenants. At the same time, the Administrative Office of the Courts (AOC) suggested that permitting a tenant to petition the court to strike lease provisions is akin to seeking a declaratory judgment that adjudicates in advance the validity of a possible defense in some expected future lawsuit and such a provision may "engender conflicts with the Declaratory Judgments Act as interested by the decisional law of the courts in this State." Consistent with the AOC's suggestion, the Commission eliminates any such problematic language while retaining the meaning of the source as modified in the course of informal consultation with DCA. Language has also been added to clarify that in a summary action for eviction, a tenant may also raise as a defense that a provision is illegal under this section.

46A:4-6. Waiver of right or refusal to receive or accept statement; effect

A tenant's choice of receiving a printed copy of the statement from the landlord or receiving the form electronically by accessing the Department's Internet website shall not be deemed a waiver of a tenant's rights nor shall it alter the responsibilities of the landlord under this chapter so long as the landlord complies with the requirements of section 46A:4-3.

Source: 46:8-49.

COMMENT

This section continues the substance of its source with modifications in light of the change in how the truth in renting statement is distributed by the Department of Community Affairs. The tenant's choice of receiving the truth in renting statement in an electronic format from which the tenant may print the statement directly, rather than receiving a printed copy of the statement from the landlord, is not a waiver of the right to receive the statement. Under the revised section, a tenant can no longer waive a right to receive the statement because in the event that the tenant does not make a choice of how to receive the statement, which is then communicated to the landlord, the landlord is now obligated to provide the statement to the tenant in printed form.

46A:4-7. Notification to tenants if property in flood zone; residential and nonresidential rental premises

a. A landlord of residential rental premises or of nonresidential rental premises containing less than 3,500 square feet shall notify each tenant, in writing, if the rental premises or any portion of the parking areas of the real property containing the rental premises subject to the lease are determined, by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to be located in a special flood hazard area. The notification shall also provide the FEMA website address, street address and telephone number. If the lease is in writing, the notice required under this subsection may be included in the written lease or the written renewal lease so long as the notice is printed in bold face capital letters of not less than 10 point type. The landlord is required to notify the tenant only if the landlord has actual knowledge of the flood zone determination.

b. Each new tenant shall be notified prior to the tenant's agreement to lease the rental premises or the real property containing the rental premises. Each tenant up for renewal of the lease shall be notified prior to the agreement renewing the lease. If the landlord learns of the flood zone determination described in subsection a. after the lease term has commenced, the landlord shall notify the tenant within two weeks after the landlord learns of the determination.

c. If the landlord has actual knowledge that the premises are in a special flood hazard area at the commencement of the lease or of the renewal, and notification is not given to the tenant as required by this section, and the lease or renewal has already commenced, the tenant may terminate the lease or renewal on the basis that the rental premises or the real property are located in a special flood hazard area. Termination shall be made by giving written notice to the landlord no later than three business days after the tenant receives notification or learns that notification should have been given. Termination shall be effective on the last day of the calendar month in which the notice is provided so long as the tenant delivers possession to the landlord by that date. The remedy provided in this section does not supersede any other remedy provided by applicable law.

d. The landlord shall have thirty days after the effective date of enactment of this provision within which to give the notification required in subsection a. to a tenant who is subject to a rental agreement already in effect at that time. If the landlord provides the notification within the thirty-day grace period provided by this subsection, the tenant may not terminate the lease or renewal in accordance with subsection c.

e. If, after commencement of the lease or renewal, there is a change in the flood determination of any rental premises covered by this section such that the tenant would have been entitled to the notification required by this section, the landlord shall notify the tenant within two weeks of when the landlord learns of the change in determination.

f. A tenant who terminates a lease under this section shall pay rent, and the landlord and tenant shall otherwise perform their respective obligations, in accordance with the provisions of the then existing lease until the lease is terminated and possession is delivered to the landlord.

Source: 46:8-50.

COMMENT

This section continues the intent of its source but modifies the original provision in significant ways. First, the determination of a special flood hazard area, which is made by the Department of Homeland Security, Federal

Emergency Management Agency (FEMA) and which would trigger an obligation to obtain flood insurance on the part of the landlord or tenant, is now made the trigger for landlord notification under this section. Second, the time frame for notification has been modified; notification to the tenant is now required prior to the tenant's agreement to lease the rental premises. This will give the tenant a meaningful option to reject the lease if the property is located in a special flood hazard area. Additionally, the tenant may now terminate the lease on the basis that the property is located in a special flood hazard area if the tenant is not notified in accordance with this statute and the lease or renewal has already commenced.

The application of this statute to both residential and commercial rental premises is continued from current law. New subsection d. gives the landlord a thirty-day grace period within which to comply with this statute for those tenancies that were in existence prior to the statute's enactment. New subsection e. provides for flood determination changes, and new subsection f. has been added to clarify that the tenant who terminates a lease under this section shall continue to pay rent and both landlord and tenant comply with their obligations under the then existing lease, until the lease termination and return of possession to the landlord.

In addition, this section, as does this entire chapter, now omits reference to the exclusion of premises containing not more than two dwelling units or owner-occupied rental premises containing not more than three dwelling units. As a result, unlike current law, landlords for those rental premises will be required to provide the notification required by this section to those tenants.

CHAPTER 5: STATEMENTS PROVIDED IN SENIOR CITIZENS HOUSING PROJECTS

46A:5-1. Landlord defined

For the purposes of this chapter:

“Landlord” means (1) in the case of a senior citizen housing project in which dwelling units are rented or offered for rent under a lease, the one or more persons who own or purport to own the building, structure or complex of buildings or structures, in which are located those rental dwelling units; or (2) in the case of a senior citizen housing project that is organized or operated as a planned real estate development, the governing board or body of that development.

Source: 2A:42-113.

COMMENT

This section continues the substance of its source; however, some of the definitions from the source statute now appear in chapter 1. In addition, subsection b. from the source now appears at section 46A:5-2.

46A:5-2. Statements required for senior citizen residents

a. Every landlord of a senior citizen housing project, and every landlord of a unit within a senior citizen housing project that is a “planned unit development”, as that term is defined in the Municipal Land Use Law N.J.S. 40:55D-6, shall give copies of the statements required by chapters 4 and 10 of this Title, and by N.J.S. 55:14I-6.1 to each resident if the units in the project are rented or offered for rent. The copies of the statements required by chapter 10 of this Title and by N.J.S. 55:14I-6.1 shall be provided at the time of the signing of the lease and any renewal thereof. The statements required by chapter 4 shall be provided in accordance with that chapter.

b. If the project is organized or operated as a planned real estate development as defined in this Title, the governing board or body shall make available to residents for inspection copies of the recorded governing documents for the development, including the master deed, the current bylaws of the development and the current rules and regulations adopted by the governing board or body.

c. Every landlord shall also post copies in one or more locations at the rental building so that they are prominent and accessible to all the residents of the senior citizen housing project, the following:

(1) the statements and documents required by subsection a.; and

(2) a statement indicating that the recorded governing documents for the development, some of which may contain guidelines for the conduct of owners, residents, and their tenants, are available for inspection, including the location where they may be inspected.

d. Nothing contained in this section shall be construed as affecting a right guaranteed, or a responsibility imposed, on any person by any other law.

Source: 2A:42-113.

COMMENT

At the request of commenters, changes have been made to subsection b. of this section. Landlords of planned real estate developments are no longer required to provide to senior citizen tenants copies of the public offering statement. However, landlords of such developments, i.e., governing boards and bodies and homeowner associations, are required to make available for inspection recorded governing documents, such as the master deed with respect to the planned unit development, the declaration of covenants, the easement and restrictions with respect to any fee simple communities, bylaws, etc. The source statute had required the governing board or body to give a copy of the public offering statement and bylaws to every resident who had not received it – a task virtually impossible to achieve as the governing board or body would not be able to ascertain easily, if at all, what had been issued by a developer and which residents had received the issued documents. It was also determined that the public offering statement itself, which would have been issued by the developer of the planned real estate development at a much earlier time, very likely would no longer have any relevance.

Commenters also suggested, as now provided in subsection c., that the governing board or body be required to post a statement informing the residents that some of the governing documents may contain guidelines for the conduct of owners, residents and tenants. A commenter had suggested this change since many tenants may not be aware that the governing documents contain guidelines governing their conduct.

The definitions from the source statute are incorporated into chapter 1 of this Title.

CHAPTER 6: OTHER NOTIFICATIONS AND STATEMENTS TO BE PROVIDED TO TENANTS

46A:6-1. Other tenant notifications and statements required by law

Nothing in this Title shall alter a landlord's obligation to provide notifications or statements to tenants as required under any other law not set forth in this Title.

Source: New.

COMMENT

This section is new and acknowledges that other statutes may set forth tenant notification requirements imposed upon landlords. An example of such a requirement is contained in the recent New Jersey Foreclosure Fairness Act, signed into law as P.L. 2009, c.296 (N.J.S. 2A:50-69 *et seq.*) by Governor Corzine in January of 2010, which imposes additional foreclosure notice requirements and amends certain provisions of the Mortgage Stabilization and Relief Act, P.L. 2008, c.127 (N.J.S. 55:14K-82 *et seq.*). The law requires persons taking title to residential properties containing one or more dwelling units occupied by residential tenants, as a result of a sheriff's sale or a deed in lieu of foreclosure, to provide written notice, in both English and Spanish, to any tenants at the

property informing them that ownership has changed and that the tenants are not required to vacate the premises because of the foreclosure. Additional requirements are imposed.

CHAPTER 7: CESSATION OF LEASE

46A:7-1. Destruction of buildings on rental premises; cessation of lease

Unless otherwise agreed in the lease, whenever any building in which there are residential or nonresidential rental premises is totally destroyed by fire or other casualty not due to the gross negligence or intentional act of the tenant, the lease shall terminate and the tenancy cease and the rent shall be paid until the time of the destruction.

Source: 46:8-7.

COMMENT

This section continues the substance of its source with modifications. Reference is made to damage due to the tenant's gross negligence and intentional conduct to distinguish this provision from the provisions governing a landlord's action for a tenant's damage or destruction to the rental premises (formerly known as "waste".) Current 46:8-6, which pertains to "injuries by fire to buildings", i.e., damage from fire that is less than total destruction, is recommended for repeal because any damage that is capable of repair by the landlord is either governed by the lease itself, as well as state and local housing codes, or subject to common law habitability defenses.

CHAPTER 8: TERMINATION OF LEASE BY TENANT OF RESIDENTIAL RENTAL PREMISES

46A:8-1. Termination by tenant of certain residential leases; death

a. A lease for a term of at least one year for rental premises that are rented and used solely as a residence by the tenant, or by the tenant and the tenant's family, shall terminate, prior to the lease expiration date, and the survivor, if remaining in the rental premises, shall thereafter be subject to a month-to-month tenancy that continues in accordance with the essential provisions of the original lease, subject to reasonable changes as permitted by law, if:

(1) the tenant dies or, if the tenant resides with the tenant's spouse or domestic partner or partner in civil union, that spouse, domestic partner or partner in civil union dies; and

(2) the tenant, or the executor or administrator of the tenant's estate, or the survivor in the event the lease was executed jointly by the tenant and the tenant's spouse, domestic partner or partner in civil union, serves on the landlord written notice of the termination of the lease because of the death.

b. Termination of the lease under this section shall take effect on the fortieth day following the receipt by the landlord of written notice thereof, and the rent shall be paid up to the time of the termination.

c. The rental premises shall be vacated and possession turned over to the landlord on the termination date of the lease, in accordance with subsection b., or the survivor remaining in the premises shall be subject to a month-to-month tenancy.

Source: 46:8-9.1.

COMMENT

This section continues the substance of its source with two significant changes as suggested by commenters. Now, the survivor is required to vacate the rental premises when the lease terminates, rather than, as

the source statute provides, five working days prior to the lease termination date. However, any survivor of the deceased person who does not vacate the rental premises automatically becomes a month-to-month tenant.

46A:8-2. Termination by tenant of certain residential leases; disability; moderate income

a. For the purposes of this section:

“Disability” means impairment to, or an inability to perform, major life functions for a substantial period of time.

“Person with a handicap” shall mean any person who would be considered a “handicapped person” in accordance with the definition in N.J.S. 39:4-204.

b. A tenant may terminate, prior to the lease expiration date, a lease for a term of at least one year for rental premises that are rented and used solely for residential purposes by the tenant or by the tenant and the tenant’s family, if the tenant, or the tenant’s spouse or domestic partner or partner in civil union:

(1) becomes disabled or suffers an increase in disability, as defined by this section, after inception of the lease, and serves the landlord with written notice of the termination of the lease because of the disability along with: (i) certification of a treating physician that, because of the disability, the tenant or the tenant’s spouse or domestic partner or partner in civil union is unable to continue to engage in gainful employment; (ii) proof of loss of income; and (iii) proof that any pension, insurance or other subsidy to which the tenant or the tenant’s spouse, domestic partner or partner in civil union is entitled is insufficient to supplement the income of that person so that the rent on the property in question can be paid and the income is necessary for payment of the rent; or

(2) one of whom is age 62 years or older, is accepted into an assisted living facility, a nursing home, or a continuing care retirement community; and serves written notice of the termination of the lease because of the acceptance on the landlord along with: (i) certification of a treating physician that the tenant or spouse or partner or partner in civil union is in need of services provided by the assisted living facility, nursing home or continuing care retirement community; and (ii) documentation demonstrating acceptance into the facility, nursing home or retirement community; or

(3) one of whom is age 62 years or older, is accepted into housing reserved for occupancy by low or moderate income households, as defined in section N.J.S. 52:27D-304, provided that the tenant is not currently residing in low or moderate income housing; and serves written notice of termination of the lease because of the acceptance on the landlord along with documentation of a lease or intent to lease from the facility or housing sponsor; or

(4) is in a dwelling unit that is not made accessible for a tenant or a member of the tenant’s household who acquires a handicap as defined in N.J.S. 39:4-204 after inception of the lease and serves written notice of termination of the lease upon the landlord, which notice includes: (i) certification from a licensed physician that the tenant or a member of the tenant’s household is a person with a handicap and that the handicap is likely not to be of a temporary nature; (ii) a statement that the landlord has been asked to make the dwelling unit accessible to the tenant or to a member of the tenant’s household at the landlord’s expense and the landlord was unable or unwilling to do so.

c. Termination of the lease under this section shall take effect on the fortieth day following the receipt by the landlord of written notice thereof, and the rent shall be paid up to the time of the termination.

d. The rental premises shall be vacated and possession turned over to the landlord on the termination date of the lease, as provided by subsection c., or any person remaining in the rental premises shall become subject to a month-to-month tenancy that continues in accordance with the essential provisions of the original lease, subject to reasonable changes as permitted by law.

e. Service of any notice required by this section may be made by the tenant, the tenant's spouse, domestic partner or partner in civil union, a legal representative of the tenant or in the case of subsection b. (4) of 46A:8-2, another adult member of the tenant's family.

f. The Director of the Bureau of Homeowner Protection in the Department of Community Affairs shall, pursuant to the Administrative Procedure Act, N.J.S. 52:14B-1 *et seq.*, promulgate rules and regulations necessary to effectuate the purposes of this section.

Source: 46:8-9.2; 46:8-9.3.

COMMENT

This section continues the substance of its source. At the suggestion of the Department of Community Affairs, language is added which clarifies that the handicap must be acquired after inception of the lease. Although the term "handicapped" is defined in the source statute, the term "disabled" or "disability" is not, and the two terms are intended to be distinguishable. A definition of "disability" is added. The disability must cause the loss of income and the inability of the tenant to continue to pay the rent. The exception for a person with a handicap pertains to a tenant who can no longer access the dwelling unit without accommodations for the handicap being made by the landlord.

As with section 46A:8-1, the lease is converted to a month-to-month tenancy if the premises remain occupied after the termination of the lease under this section.

46A:8-3.1. Requirements for termination of lease by domestic violence victims

A tenant may terminate, prior to the lease expiration date, a lease for residential rental premises that are rented and used solely for residential purposes by the tenant or by the tenant and the tenant's family, if the tenant fulfills all requirements and procedures as established by this section and provides the landlord with:

a. written notice that the tenant or a child of the tenant faces an imminent threat of serious physical harm from another named person if the tenant remains on the leased premises; and

b. any of the following:

(1) a certified copy of a permanent restraining order issued by a court pursuant to section 13 of the Prevention of Domestic Violence Act of 1991, N.J.S. 2C:25-29, and protecting the tenant from the person named in the written notice;

(2) a certified copy of a permanent restraining order from another jurisdiction issued pursuant to the jurisdiction's laws concerning domestic violence, and protecting the tenant from the person named in the written notice;

(3) a law enforcement agency record documenting the domestic violence, or certifying that the tenant or a child of the tenant is a victim of domestic violence;

(4) medical documentation of the domestic violence provided by a health care provider;

(5) certification provided by a certified Domestic Violence Specialist, or the director of a designated domestic violence agency, that the tenant or a child of the tenant is a victim of domestic violence; or

(6) other documentation or certification provided by a licensed social worker, that the tenant or a child of the tenant is a victim of domestic violence.

Source: 46:8-9.6.

COMMENT

This section continues the substance of its source. Sections LT:8-3.1 through 8-3.7 incorporate what is formerly known as the *New Jersey Safe Housing Act*, N.J.S. 46:8-9.4 *et seq.*

46A:8-3.3. Effective date of lease termination for domestic violence, conditions affecting co-tenants

a. Lease terminations pursuant to sections 46A:8-3.1 *et seq.* shall take effect on the thirtieth day following receipt by the landlord of notice complying with 46A:8-3.1, unless the landlord and tenant agree on an earlier termination date. The rent shall be paid, pro rata, up to the time the lease terminates.

b. A lease terminates under sections 46A:8-3.1 *et seq.* only if the victim of domestic violence acts in good faith and fulfills all requirements and procedures in terminating the lease.

c. If there are tenants on the lease, other than the tenant who has given notice of termination as described in section 46A:8-3.1., the lease of those co-tenants also terminates, notwithstanding any provisions in sections 46A:15-1 or 46A:15-2 requiring certain grounds for eviction to the contrary. The co-tenants may enter into a new lease, for a new term, at the option of the landlord. Nothing in this section shall prohibit a co-tenant of the victim of domestic violence from holding over if holding over is permitted by the landlord.

Source: 46:8-9.7.

COMMENT

This section continues the substance of its source. During informal consultation with the Department of Community Affairs, it was suggested that language be added to subsection c. with regard to permitting the co-tenant to enter into a new lease with the landlord, at the landlord's option.

46A:8-3.4. Notice relative to public housing leases

Where the rental premises is under the control of a public housing authority or redevelopment agency, the victim of domestic violence shall give notice of the termination under section 46A:8-3.1 in accordance with any relevant regulations pertaining to public housing leases. When the terms of the tenancy are controlled by a publicly-funded housing assistance contract, notice and security deposit terms, requirements, and protections shall conform and be subject to restrictions, limitations or other requirements imposed by State or federal law.

Source: 46:8-9.8.

COMMENT

This section continues the substance of its source.

46A:8-3.5. Waiving of rights, remedies prohibited

The parties to a lease creating a tenancy for residential purposes may not agree to waive any rights or remedies arising under the provisions pertaining to the termination of a tenancy of a domestic violence victim. Any waiver of these rights or remedies is against public policy and unenforceable.

Source: 46:8-9.9.

COMMENT

This section continues the substance of its source.

46A:8-3.6. Existing lease agreements unaffected

Nothing in sections 46A:8-3.1 *et seq.* shall operate to alter, limit or impair the terms of leases existing at the time of the adoption of the New Jersey Safe Housing Act, N.J.S. 46:8-9.4 *et. seq.*

Source: 46:8-9.10.

COMMENT

This section continues the substance of its source.

46A:8-3.7. Disclosure of certain information by landlord prohibited; exceptions

A landlord shall not disclose information documenting domestic violence that has been provided to the landlord by a victim of domestic violence pursuant to section 46A:8-3.1 *et seq.*, or its source statute. The information shall not be entered into any shared database or provided to any “person” as defined by statute, but may be used when required as evidence in an eviction proceeding, or an action for unpaid rent or damages arising out of the tenancy, with the consent of the tenant, or as otherwise required by law.

Source: 46:8-9.11.

COMMENT

This section continues the substance of its source.

46A:8-3.8. Inapplicability to seasonal use, rental

Section 46A:8-3.1 *et seq.*, shall not be applicable to any lease for the “seasonal use or rental” of real property, as defined in this Title, but shall be applicable to any real property rented or used for residential purposes for seasonal, temporary or migrant farm workers in connection with any work or place where work is being performed. The landlord shall have the burden of proving that the use or rental of the residential property is seasonal.

Source: 46:8-9.12.

COMMENT

This section continues the substance of its source.

CHAPTER 9: MONTH-TO-MONTH TENANCIES

46A:9-1. Month-to-month tenancy

a. A tenant of residential rental premises covered by section 46A:15-1 who holds over or remains in possession after expiration of a lease of one month or longer continues the tenancy from month to month.

b. The month-to-month tenancy continues according to the essential provisions of the original lease, subject to reasonable changes as permitted by subsections a. (2) or (4) of 46A:15-1, until the tenancy is terminated as permitted by law.

Source: 46:8-10; new.

COMMENT

Subsection a. continues the substance of its source with changes in language. Subsection b. is new and incorporates the concept that has developed since enactment of the *Anti-Eviction Act*, now set forth primarily in chapter 15 of this revision.

CHAPTER 10: DOMESTICATED ANIMALS; SENIOR CITIZEN HOUSING PROJECTS

46A:10-1. Definitions

For the purposes of this chapter:

“Continuing nuisance” means the keeping of a domesticated animal in a manner that interferes with the health, security or comfort of the other residents of a senior citizen housing project, or the keeping of domesticated animals of a number, size, breed or species inappropriate for the type or size of senior citizen housing project or a dwelling unit within that project.

“Domesticated animal” means a dog, cat, bird, fish or other animal that does not constitute a health or safety hazard.

“Landlord” means (1) in the case of a senior citizen housing project in which dwelling units are rented or offered for rent under a lease, the one or more persons who own or purport to own the building, structure or complex of buildings or structures, in which are located those rental dwelling units; or (2) in the case of a senior citizen housing project that is organized or operated as a planned real estate development, the governing board or body of that development.

Source: 2A:42-103.

COMMENT

This section continues the substance of its source. The definitions in the source statute of “senior citizen”, “senior citizen housing project” and “planned real estate development” are deleted from the source section and incorporated into chapter 1 of this Title.

46A:10-2. Senior citizen permitted domesticated animal

a. Any senior citizen residing in a senior citizen housing project shall, upon providing written notice to the landlord, be permitted to own, harbor or care for a domesticated animal while residing in the project.

b. A landlord shall not require a senior citizen residing in a project to remove, by sale, donation, gift, or otherwise, any domesticated animal which the senior citizen owns, harbors or cares for in accordance with subsection a. of this section, except as provided in section 46A:10-4.

Source: 2A:42-104; 2A:42-105(b).

COMMENT

This section continues the substance of its source.

46A:10-3. Arbitrary refusal to renew lease prohibited; penalty; immunity of landlord

a. A landlord shall not arbitrarily refuse to renew a lease for a dwelling unit in a senior citizen housing project to a senior citizen who owns, harbors or cares for a domesticated animal in accordance with subsection a. of section 46A:10-2, except as provided in section 46A:10-4.

b. Any landlord who arbitrarily refuses to renew a lease under this chapter, in violation of subsection b. of section 46A:10-4, shall be subject to a civil penalty of not more than \$500 for each offense. An action to enforce a penalty against the landlord may be commenced by the senior citizen resident in a summary proceeding under the Penalty Enforcement Law of 1999, N.J.S.2A:58-10 *et seq.* Jurisdiction for such an action shall be in the Special Civil Part of the Law Division of the Superior Court in the county, or the municipal court of the municipality, in which the project is located. Any recovery shall be remitted by the court to the senior citizen resident who commences the action.

Source: 2A:42-105(a).

COMMENT

This section continues the substance of its source.

46A:10-4. Allowable circumstances for refusal to renew lease

A landlord may refuse to renew a lease covered by this chapter, or may require that a senior citizen remove a domesticated animal from a dwelling unit in a project, under the following circumstances:

a. when the existence of the domesticated animal, or the senior citizen's refusal to comply with the rules and regulations governing domesticated animals, is a violation of federal, State or local building, health or use codes;

b. when the senior citizen fails to care properly for the domesticated animal;

c. when the senior citizen fails to control properly the domesticated animal by use of a leash, if appropriate, or other necessary safety devices when walking or taking the domesticated animal to or from the dwelling unit or while on the land appurtenant thereto, or fails to take prompt action to remove any animal waste when requested by the landlord; or

d. when the senior citizen fails to confine the domesticated animal's body waste functions to areas that do not interfere with the ingress and egress to or from the senior citizen housing project or to or from the apartment itself, or with the use of common areas in and about the senior citizen housing project by the other residents thereof and their invitees.

Source: 2A:42-107.

COMMENT

This section continues the substance of its source.

46A:10-5. Guard dog

The presence of a guard dog used by the landlord shall not constitute a waiver of the provisions of this chapter.

Source: 2A:42-108.

COMMENT

This section continues the substance of its source.

46A:10-6. Rights of persons with disabilities

Nothing in this chapter shall impair the rights of a person with disabilities to own, harbor or care for a domesticated animal, including guide dogs and service animals, and emotional support, therapeutic or companion animals in accordance with the Law Against Discrimination, N.J.S. 10:5-1 *et seq.* and applicable federal law.

Source: 2A:42-109.

COMMENT

This section continues the substance of its source. However, references to federal law, as well as the types of domesticated animals permitted under federal law, are now added. The Commission has been advised that currently the federal *Fair Housing Act* (applicable to multifamily housing), Section 504 of the *Rehabilitation Act of 1973* (applicable to recipients of federal funding) and *Title II of the Americans with Disabilities Act* (applicable to state and local government entities that provide housing), all protect the rights of people with disabilities to equal housing opportunity and in some cases, those protections may be broader than the LAD provides.

46A:10-7. Removal of animal that is continuing nuisance

a. Nothing in this chapter shall limit the legal rights and remedies of a landlord either:

(1) to remove, in accordance with a lease or master deed and bylaws, a domesticated animal that constitutes a continuing nuisance to the welfare or property of the landlord or to the other residents of a senior citizen housing project; or

(2) to otherwise enforce the landlord's or the residents' legal rights and remedies.

b. In an action to remove a domesticated animal or to evict a senior citizen from a project for violation of a lease due to the presence of a domesticated animal that is alleged to be a continuing nuisance, the plaintiff shall have the burden of proof.

Source: 2A:42-110.

COMMENT

This section continues the substance of its source.

46A:10-8. Rules; regulations

a. A landlord may promulgate reasonable written rules and regulations, in accordance with this chapter, relating to the care and maintenance of domesticated animals by senior citizens, except that a landlord may not require that the domesticated animal be spayed or neutered.

b. Any rules and regulations that are promulgated shall be given, in writing, to the residents of each dwelling unit in the project and shall be incorporated within each lease upon its subsequent renewal and the master deed and bylaws, as applicable.

c. A landlord may require that a senior citizen remove from the project any offspring of the domesticated animal eight weeks after the birth, or earlier if the offspring may be removed without unreasonable danger to the health of the offspring or the animal.

Source: 2A:42-111.

COMMENT

This section continues the substance of its source.

46A:10-9. Rights of municipality not limited

Subject to the requirements of section 46A:10-6, nothing in this chapter shall limit the rights of a municipality to prohibit, by ordinance, the owning, harboring, or keeping of certain species of animals within the municipality.

Source: 2A:42-112.

COMMENT

This section continues the substance of its source.

46A:10-10. Immunity of landlord

A landlord who is in compliance with this chapter shall not be liable to respond in damages in any civil action for injury to persons or property caused by a domesticated animal owned, harbored or cared for by a senior citizen who is in compliance with this chapter. However, nothing in this subsection shall grant the landlord immunity for a willful or wanton act of commission or omission.

Source: 2A:42-106.

COMMENT

This section continues the substance of its source.

CHAPTER 11: TENANT ORGANIZATION ACCEPTING UTILITY BILLING

46A:11-1. Tenants' organization permitted to accept billing for utility

Whenever, in those cases where a landlord is responsible for the payment of the utility service, an electric, gas, water or sewer public utility provides written notice to tenants in residential rental premises of a proposed discontinuance of service and those tenants indicate a desire to continue the service, the utility shall permit a tenants' organization representing the tenants to accept the billing for the service if the utility determines that it is not feasible to bill each tenant individually. The billing shall include the periodic billing for current charges and a statement of any arrearage which is unpaid by the landlord for service previously supplied by the utility. If payment is received by the utility, the utility shall continue providing the service to the rental premises.

Source: 2A:18-61.60.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:11-2. Deduction of certain utility costs from rental payment

Whenever a tenants' organization agrees to accept billing for a utility service, the tenants comprising the membership of the organization accepting and paying such billing shall be permitted to deduct from each of their respective rental payments to the landlord an amount corresponding to the tenant's contribution towards the currently due utility payment and the arrearage, if any, owed by the landlord, provided that any contribution by a tenant to the arrearage shall not exceed 15 percent of the tenant's rental payment which would have been payable to the landlord but for the contribution.

Source: 2A:18-61.61.

COMMENT

This section continues the substance of its source with minor changes in language.

ARTICLE 3

LANDLORD IDENTITY REGISTRATION

CHAPTER 12: LANDLORD IDENTITY REGISTRATION

46A:12-1. Definitions

For the purposes of this chapter:

“Common ownership association” means an association managing the common or shared elements or interests of owners, including but not limited to a council of co-owners of a horizontal property regime, a condominium association, an association managing the common or shared elements or interests in a fee simple community, or a cooperative association.

“Landlord” means an owner of any building or project in which there are residential rental premises including, but not limited to, any multiple dwelling subject to the Hotel and Multiple Dwelling Law, N.J.S. 55:13A-1 *et seq.* “Landlord” also means the following owners if the owner is renting a dwelling unit to a tenant: (i) an owner of an apartment in a horizontal property regime as defined in N.J.S. 46:8A-1 *et seq.*; (ii) an owner of a dwelling unit in a condominium as defined in N.J.S. 46:8B-1 *et seq.*, (iii) an owner of a dwelling unit in a fee simple community as defined in N.J.S. 40:67-23.2; (iv) an owner in a cooperative entity as defined in N.J.S. 46:8D-3; or (v) any other owner of a dwelling unit in a real property development of a kind now existing or yet to be developed. “Landlord” does not mean a cooperative corporation unless the corporation rents a dwelling unit to a person other than a proprietary shareholder of the cooperative. However, a common ownership association or cooperative corporation shall comply with the registration requirements of N.J.S. 55:13A-12 with respect to any multiple dwelling as a whole.

“Multiple dwelling” means (i) any building in which three or more dwelling units are occupied or are intended to be occupied by three or more persons or households who live independently of each other, or (ii) any group of ten or more buildings on a single parcel of land or in a project, in each of which two dwelling units are occupied or intended to be occupied by two persons or households who live independently of each other, except as excluded under the Hotel and Multiple Dwelling Law, N.J.S. 55:13A-1 *et seq.*

“Owner-occupied” means personally and lawfully occupied as the primary residence of the owner or a member of the owner’s household if the owner has temporarily taken lodging elsewhere. “Primary residence” means the residence where the owner resides a majority of the time. “Temporarily” means for a period lasting no more than 90 days when the owner either already maintains a primary residence or intends to establish a primary residence and does so within 90 days after taking lodging elsewhere.

“Owner” means the person who holds record title to a building, project or dwelling unit.

"Project" means a group of buildings under common or substantially common ownership that stand on a single parcel or more than one contiguous parcel of land, and is named, designated or advertised as a common entity. The contiguity of such parcels shall not be adversely affected by public rights-of-way incidental to such buildings.

“Unit of dwelling space” or “dwelling unit” means a room or rooms, floor or floors of rooms, suite, or apartment, whether furnished or unfurnished, occupied or intended or designed to be occupied for sleeping or dwelling purposes by one person, including but not limited to the owner, or by one household, including but not limited to the household of the owner.

Source: 46:8-27; new.

COMMENT

The definitions are taken from the source and from the *Hotel and Multiple Dwelling Law*, at N.J.S. 55:13A-3, with some modifications in language. The definitions of “owner” and “owner-occupied” are new and consistent with current N.J.S. 55:13A-3. The terms “Department”, “Bureau”, and “Commissioner”, as used here and throughout this Title, are defined in chapter 1 of this Title. Some of the source provisions for this article were not applicable to owner-occupied two rental unit premises. This exception is not continued because the requirements for lead-paint registration are now combined with general landlord identity registration. The requirements for owner-occupied residences as opposed to other residential rental premises are now expressly set forth in the text.

46A:12-2. Construction and application with *Hotel and Multiple Dwelling Law*

a. This chapter shall be applicable only to buildings and projects in which premises are rented or offered for rent for residential purposes.

b. This chapter shall be construed, where appropriate, in conjunction and consistent with the Hotel and Multiple Dwelling Law, N.J.S. 55:13A-1 *et seq.*

c. A landlord who has complied with N.J.S. 46:8-27 *et seq.*, or with N.J.S. 55:13A-1 *et seq.*, with regard to any building or project, shall not be required to register the building or project again pursuant to this chapter. After the effective date of this chapter, a landlord who is

required to file an amended certificate of registration pursuant to this chapter, or N.J.S. 55:13A-1 *et seq.*, or former N.J.S. 46:8-27 *et seq.*, shall do so in accordance with this chapter.

Source: 46:8-28.3; new.

COMMENT

Subsection a. is new and is added to clarify that the new chapter must be read in conjunction and consistent with the *Hotel and Multiple Dwelling Law*, N.J.S. 55:13A-1 *et seq.* The *Hotel and Multiple Dwelling Law* applies to landlord registration in small part, but also applies to a much broader group of owners of hotels and multiple dwellings. Subsection b. continues the substance of source section 46:8-28.3 with some changes in language.

46A:12-3. Certificate of registration; filing; separate lead-paint registration

a. Every landlord of rental premises as defined in this chapter shall file a certificate of registration within seven days after becoming a landlord, in the manner set forth below.

b. If the rental premises are a multiple dwelling, the landlord shall file the certificate with the Bureau in accordance with N.J.S. 55:13A-12.

c. If the rental premises consists of a single dwelling unit, or consists of two dwelling units neither of which is owner-occupied, the landlord shall file the certificate with (1) the clerk of the municipality in which the rental premises is located and (2) the Bureau for the purpose of lead paint inspection on forms prescribed by the Commissioner, provided that subsection (2) of this subsection shall not be applicable if the premises:

(A) have been certified by a certified lead paint inspector or evaluator, to be free of lead-based paint or to have a lead-free interior as those terms are defined by regulations promulgated hereunder and under N.J.S. 46:8-28.5;

(B) were constructed during or after 1978; or

(C) are a seasonal rental unit which is rented for less than six months duration each year.

d. If the rental premises consists of two dwelling units, one of which is owner-occupied, the landlord shall file only with the Bureau for the purpose of lead-based paint inspection, a certificate of registration on forms prescribed by the Commissioner for this purpose, provided that this section shall not be applicable if the premises:

(1) have been certified by a certified lead paint inspector or evaluator, to be free of lead-based paint or to have a lead-free interior as those terms are defined by regulations promulgated hereunder and under N.J.S. 46:8-28.5;

(2) were constructed during or after 1978; or

(3) are a seasonal rental unit as defined in this Title.

e. Any filing with the Bureau that is required by this section shall be accompanied by a filing fee not exceeding the filing fee for multiple dwellings established by N.J.S. 55:13A-12. The filing fee with the municipality, if required, shall not exceed the filing fee for multiple dwellings established by N.J.S. 55:13A-12.

Source: 46:8-28.5; 46:8-28; new.

COMMENT

This section combines the substance of source section 46:8-28 (which applies to general registrations) with the substance of source section 46:8-28.5 (which addresses lead-paint contamination). Some changes have been made to the language of the source statutes. The portion of source section 46:8-28 that sets forth the required contents of the certificate of registration now appears in its own proposed section, 46A:12-4. The penalty provision of source section 46:8-28.5 now is included with other penalties in proposed section 46A:12-8.

Unlike its source statute, subsection a. now requires that the landlord file the certificate of registration within seven days after becoming a landlord, mirroring the requirement in source section 46:8-29 that the landlord furnish the tenant with a copy of any amended certificate within seven days after it is filed. The source provided for filing within 30 days of the source's effective date or at the time of creation of the first tenancy in any newly constructed or reconstructed building. Subsection d. is taken from source statute 46:28.5 and pertains solely to the lead-based paint registration and inspection now required by the Department of Community Affairs. The section has been modified from its source. Reference also is now made to the regulations that define "free of lead-based paint" as certified by a certified lead paint inspector or evaluator.

46A:12-4. Contents of certificate

a. The certificate of registration shall contain the following information:

(1) The name, mailing address, e-mail address, if available and telephone number of each owner of the rental premises;

(2) If the owner of the premises or the rental business is a general partnership, the names and mailing and street addresses of all general partners shall be provided. In the case of a limited liability partnership, the name and address of the managing partner or agent who has the authority to act on behalf of the partnership shall be provided. In the case of a corporation, the name and mailing address of the registered agent and all corporate officers shall be provided. In the case of a limited liability company, the names and mailing addresses of the managing members of the limited liability company shall be provided;

(3) If no owner is located in the county in which the premises are located, the name, mailing address, e-mail address, if available, and telephone number of a person who resides in the county in which premises are located and is authorized to accept notices from a tenant and to issue receipts therefor and to accept service of process on behalf of the owner;

(4) The name, mailing address, e-mail address, if available, and telephone number of the property manager or managing agent of the premises, if any;

(5) The name, mailing address, e-mail address, if available, and telephone number, including the unit number, of the superintendent, janitor, custodian or other individual employed by the owner or managing agent to provide regular maintenance service, if any;

(6) The name, mailing address, e-mail address, if available, and telephone number of an individual who (i) has the authority to make emergency decisions concerning repairs or expenditures related to repairs to the building and any units in it, (ii) may be reached at any time in the event of any emergency affecting the premises or any unit therein, and (iii) shall, at all times, have access to a current list of building tenants that shall be made available to emergency personnel as required in the event of an emergency;

(7) The name and mailing address of the mortgage service provider and every holder of a recorded mortgage on the premises, if known;

(8) If fuel oil is provided by the landlord to heat the building, the name, mailing address and telephone number of the fuel oil dealer servicing the building and the grade of fuel oil used; and

(9) The date of preparation of the certificate of registration.

b. "Mailing address" for the purposes of this section means the street address and the dwelling unit, apartment, or room number.

Source: 46:8-28; 46:8-30.

COMMENT

This section continues the substance of its source with some changes in language. Source section 46:8-30 is incorporated here and also in proposed section 46A:12-6. References are now made to other forms of business entity, such as limited liability partnerships and limited liability companies.

The requirement of source statute 46:8-28g. -- that the certificate of registration contain the name and address of every holder of a recorded mortgage -- has been modified in the revision. It is unlikely that a landlord would be able to comply with the source statute requirement in its current form. The landlord might not be able to track what subsequently happens to the first recorded mortgage. The modified language is more reasonable for landlord compliance while achieving one purpose of the statute, which is to provide the tenant with meaningful information the tenant may use to compel a landlord to repair and correct the rental premises.

46A:12-5. Indexing and inspection of certificate; validation

a. All certificates of registration filed with the Bureau shall be reviewed and, if found to be in conformity with this chapter and any regulations promulgated hereunder, validated by the Bureau. The Bureau shall then issue a validated copy to the record owner, or the person who filed the original, if different than the record owner, and with respect to those rental premises for which filing with the municipality is required, to the clerk of the municipality in which the building or project is located.

b. All certificates of registration filed with the clerk of the municipality, and all validated certificates issued to the clerk by the Bureau, shall be indexed and recorded by the clerk and made reasonably available for public inspection, and the clerk may disclose to any person making inquiry whether a validated certificate of inspection has been filed for any designated property.

Source: 46:8-28.1.

COMMENT

This section continues the substance of its source with some changes in language.

46A:12-6. Amendment to certificate of registration; filing

Every landlord required to file a certificate of registration under this chapter shall file an amended certificate of registration within 20 days after any change in the information required to be included thereon. No fee shall be required for the filing of an amendment except where the ownership of the premises is changed. The amended certificate of registration shall contain the date of its preparation.

Source: 46:8-28.2; 46:8-30.

COMMENT

This section continues the substance of its source with some changes in language. Source section 46:8-30 is incorporated here and also in proposed section 46A:12-4.

46A:12-7. Provision of copy of certificate of registration to tenant if not in lease; posting

a. Unless the tenancy is governed by a written lease that includes or attaches, in a prominent manner, the information that is required by section 46A:12-4 to be contained in the certificate of registration, the landlord shall serve each tenant with a copy of the certificate of registration containing the information within:

(1) seven days after filing the certificate of registration with the clerk or Bureau in accordance with section 46A:12-3, or;

(2) if the tenant enters into a lease or occupies the rental premises subsequent to the filing of the certificate of registration with the clerk or Bureau in accordance with section 46A:12-3, seven days after the tenant enters into a lease or occupies the rental premises.

b. In the case of an amended certificate of registration required by section 46A:12-6, the landlord shall serve each tenant with a copy of the amended certificate within seven days after filing it with the clerk or Bureau.

c. A landlord who has already filed a certificate of registration in accordance with N.J.A.C. 5:10-1.11a., may serve the tenant with a copy of that certificate instead of a certificate of registration required by subsection a.

d. Every landlord shall also keep a copy of the current filed or validated certificate of registration posted in one or more locations at the rental building so that the statement is prominent and accessible to all tenants and public officials.

Source: 46:8-29.

COMMENT

This section continues the substance of its source with modifications. The landlord may now provide in, or attach to, the lease itself the information which is required to be contained in the certification of registration statement. The substance of subsection c. is also new. Notably, the source provision was not divided into subsections.

46A:12-8. Penalty for violation of chapter; failure to comply with order to register property

a. A landlord found to have violated any provision of this chapter shall be liable in an amount of not more than \$500.00 for each offense. An action to enforce a penalty against the landlord may be commenced by the municipality in which the premises are located, the Attorney General or any other person, by a summary proceeding under the Penalty Enforcement Law of 1999, N.J.S.2A:58-10 *et seq.* Jurisdiction for such an action shall be in the Superior Court in the county, or the municipal court of the municipality, in which the premises are located. If the municipality or any person other than the Attorney General commences the action, any recovery shall be remitted by the court to the municipality in which is located the premises subject to the proceeding.

b. A landlord who fails to comply with a final order of the Commissioner, pursuant to N.J.S. 2A:58-10 *et seq.*, to register any property subject to subsection d. of 46A:12-3 shall also be liable for a penalty of \$200 for each registration so ordered. The Commissioner may issue a certificate to the clerk of the Superior Court that a landlord is indebted to the Department for the payment of such penalty and thereupon the clerk shall enter upon the record of docketed judgments the name of the owner, a designation of the statute under which the penalty is imposed, the amount of the penalty so certified, and the date of such certification. The making of the entry shall have the same force and effect as the entry of a docketed judgment in the office of such clerk.

Source: 46:8-35; 46:8-28.5c.

COMMENT

This section continues the substance of its sources with some changes in language. Source section 46:8-28.5 c. is incorporated here.

46A:12-9. Service by mail upon record owner who cannot be served within the county or municipality, or upon Superior Court clerk

a. In any action against a landlord who has not complied with this chapter and cannot otherwise be served within the county or municipality, the summons and complaint may be served by certified and regular mail upon the owner of the building, project or multiple dwelling, at the last address listed in the tax records of either the municipality or county, or, if the owner has not changed since the last registration filing or validation, at the address listed in the most current filed or validated certificate of registration. If the owner is a limited liability company or a corporation, the summons and complaint may be served by certified and regular mail upon the company or corporation's registered agent. Service in accordance with this section shall be deemed proper service on the landlord even if the landlord is not served within the county or municipality in which the court issuing the summons is located.

b. If service under subsection a. cannot be made, service of process on the clerk of the Superior Court, Law Division, Special Civil Part or of the municipal court having jurisdiction over the municipality in which the property is located shall be deemed proper service on the landlord upon submission to the satisfaction of the court of:

(1) the tenant's certification that the tenant does not know the landlord's whereabouts after having made a diligent effort, satisfactory to the court, to locate the landlord; and

(2) proof of the failure of service by certified mail in accordance with subsection a. of this section.

Source: 46:8-31; 46:8-32.

COMMENT

This section continues the substance of its sources with some changes in language to clarify the intent of this provision, which is to give the tenant the necessary information to serve a landlord who has not complied with this chapter with process in any action, not just for relief under this chapter. Source section 46:8-32, which also pertains to service of process, has been incorporated into this section.

46A:12-10. Judgment for possession in favor of landlord; compliance with chapter

a. No judgment for possession shall be entered in favor of a landlord who has failed to comply with this chapter. The court shall defer the entry of a judgment for possession for up to 60 days, at which time the action shall be dismissed unless the landlord submits to the court proof of registration and service of the certificate of registration on the tenant, within the 60 days.

b. Notwithstanding subsection a., if the landlord demonstrates that relocation assistance to which the tenant is entitled under applicable law has been paid, a judgment for possession may be entered in favor of a landlord who has not filed a certificate of registration for a dwelling unit from which the landlord seeks to evict a tenant under subsection c.(3) of 46A:15-1.

Source: 46:8-33.

COMMENT

This section continues the substance of its source with modifications. The statute now permits a landlord, upon deference of a judgment for possession because of a failure to comply with this article, to demonstrate within a 60-day period that the landlord has complied with the registration and served the tenant with the certificate of registration. (The 90-day period was changed from the source statute to 60 days at the request of the Administrative Office of the Courts.) An exception to the statute has been made in subsection b. for landlords who have not registered rental premises because of an illegal dwelling unit so long as they can demonstrate compliance with the requirement of payment of relocation assistance. Commenters have advised that municipalities do not accept certificates of registration for illegal dwelling units; thus subsection b. fills a gap in current law.

46A:12-11. Right of municipality or Department of Community Affairs

This chapter sets forth a uniform and comprehensive system of registration of rental properties used for residential purposes; the information that must be provided by landlords of the rental premises; and is intended to satisfy and preempt any municipal ordinance adopted

pursuant to N.J.S. 40:48-2.12c. that requires registration of landlords of the rental premises. However nothing in this chapter shall limit:

a. the right of a municipality to require registration of the owners and management of buildings, projects or multiple dwellings as part of a rent control ordinance or to serve purposes that are authorized by statute and are different from the purposes of this chapter; or

b. the right of the Department to require owners of real property on which there are rental premises used for residential purposes to register the real property in accordance with other statutes.

Source: New.

COMMENT

This section is new. Subsection a. clarifies that the chapter was intended to permit a municipality's reasonable registration requirements for buildings and multiple dwellings in addition to those imposed by this chapter. For example, current section 2A:42-78, pertaining to substandard multiple dwellings, provides that "[a]ny ordinance adopted under this act may provide for the registration of the owners and management of every multiple dwelling in the municipality."

Subsection b. clarifies that the Department of Community Affairs is free to require the registration, for other purposes, of those properties that may be subject to registration under this chapter. For example, the *Uniform Fire Safety Act*, N.J.S. 52:27D-192 *et seq.*, though not pertaining to rental premises specifically, requires registration of "high rise structures" and "life hazard use" structures with the Department of Community Affairs so that smoke alarms and detectors, fire sprinklers and suppression systems, and other fire and safety code requirements can be monitored and enforced. *See* 52:27D-201.

ARTICLE 4

SECURITY DEPOSITS

CHAPTER 13: SECURITY DEPOSITS

46A:13-1. Landlord and tenant for the purposes of this chapter

For the purposes of this chapter:

"Landlord" includes (i) a representative, agent or fiduciary for the landlord and (ii) a person who acquires or succeeds to the rights of the landlord; and

"Tenant" includes a lawful representative, including a public agency, who or which acts on behalf of a tenant or acquires or succeeds to the rights of the tenant.

Source: New

COMMENT

This section does not define "landlord" or "tenant" but clarifies what is included when referring to these terms for the purposes of this chapter. Definitions of certain terms that are used throughout the proposed new Title appear in proposed section 46A:1-1.

46A:13-2. Application of chapter

This chapter applies to all rental premises used for residential purposes except:

a. owner-occupied premises containing not more than three units in which the owner also rents either one or two units for residential purposes, unless the tenant, at any time during the tenancy, provides written notice to the landlord invoking this chapter and gives the landlord 30 days to comply.

b. premises for “seasonal use or rental”, as defined in chapter 1 of this Title, unless the real property is rented or used for residential purposes for seasonal, temporary or migrant farm workers in connection with any work or place where work is being performed. The landlord shall have the burden of proving the nature of the use of the real property in accordance with this subsection.

Source: 46:8-26; 46:8-19.

COMMENT

This section adopts the provisions of source sections 46:8-26 and 46:8-19 that pertain to the applicability of the security deposit law. Subsection a. adopts the court’s holding in *Cristiani v. Paul*, 195 N.J. Super. 179 (Law Div. 1983), that the most reasonable interpretation of source section 46:8-26 is that “a tenant in owner-occupied premises may invoke the provisions of the Rent Security Deposit Act at any time during the tenancy”, . . . and “[t]he landlord will then have 30 days after receipt of such written notice to fully comply with the provisions of this act.” 195 N.J. Super. at 183.

The definition of “seasonal use or rental”, which was in the text of the source provision, now appears in proposed section 46A:1-1.

46A:13-3. Purpose and amount of security deposit

a. As part of the lease, a landlord may require a security deposit for the rental of real property used for residential purposes. A security deposit is money that is deposited to secure the tenant’s performance under the lease and to compensate or reimburse a landlord for any breach of the lease attributable to the tenant, including non-payment of rent and physical damage to the rental premises beyond normal wear and tear. The security deposit at all times remains the tenant’s property, and shall be maintained by the landlord and returned to the tenant in accordance with this chapter.

b. The amount of a security deposit shall not exceed one and one half times the monthly rent. Any additional amount required by the lease in any 12-month period shall not be greater than 10 percent of the then current security deposit and at no time may the amount of the security deposit exceed one and one half times the monthly rent.

c. If more than one and one half times the monthly rent is collected by a landlord in violation of this section, the tenant, at any time during the tenancy and without agreement of the landlord or court order, may request that the landlord apply the amount of the security deposit in excess of one and one-half times the monthly rent to the payment of rent. The tenant may also seek recovery of an award against a landlord for a violation of this section in accordance with subsection b. of 46A:13-15.

d. The tenant may pay the security deposit in installments, in accordance with the lease or in accordance with a written schedule agreed to by both landlord and tenant that is made part of the lease. However, the landlord shall not be required to accept payment of the security deposit in installments.

e. The landlord receiving installment payments under subsection d. shall be obligated to serve notice on the tenant in accordance with subsection c. (1) of 46A:13-6 within 30 days of

receipt of the first payment but not upon receipt of each subsequent installment provided that the information in the initial notice remains unchanged other than the increase in the amount of the deposit as a result of the installment.

f. If offered by the landlord, the tenant may purchase a surety bond, in accordance with section 46A:13-16, in combination with payment of a portion of a security deposit, so long as the total amount of security deposit and surety bond principal does not exceed one and one half month's rent.

Source: 46:8-21.2; new.

COMMENT

This section clarifies that an additional security deposit may be collected during a 12-month period provided that the total deposit does not exceed the maximum of 1½ times the rent. However, if an additional deposit is required because the landlord did not require the maximum deposit originally or the rent is lawfully increased, there is a cap of 10 per cent of the then current security deposit within any year.

New subsection b. is derived from dicta in *Reilly v. Weiss*, 406 N.J.Super. 71, 81-82 (App. Div.2009) and *Brownstone Arms v. Asher*, 121 N.J. Super. 401 (Dist. Ct. 1972). The *Reilly* court stated that although “[t]he SDA [Security Deposit Act] . . . fails to provide a specific remedy for violations of its limit upon the amount of security that a landlord may demand [citation omitted] [w]e have no doubt that had plaintiffs in this case sought to apply the \$1425 they deposited in excess of the statutory limit to their rent obligations during their tenancy, such a result would necessarily have been mandated. Although not specifically provided for by the SDA, such a remedy was recognized in *Brownstone Arms*”

New subsections d. and e. accommodate the payment of a security deposit in installments so long as both landlord and tenant agree to the arrangement. Subsection f. recognizes the combining of a payment of a portion of a security deposit with the purchase of a surety bond, if offered by the landlord in accordance with proposed section 46A:13-16. Surety bond providers contract with landlords to provide surety bonds as alternatives to security deposits.

46A:13-4. Investment of security deposit

a. Until repaid or applied in accordance with the lease and this chapter, a security deposit, including accrued interest or earnings, shall continue to be the property of the tenant who made the security deposit and shall be held in trust by the landlord. A security deposit shall not be mingled with the property or become an asset of the landlord. However, security deposits for one or more tenants may be deposited or invested in one account so long as the landlord complies with the other provisions of this chapter.

b. Unless otherwise required by the Commissioner of Banking and Insurance, a security deposit shall be deposited by the landlord in any financial institution insured by the Federal Deposit Insurance Corporation or its successor entity, which need not be headquartered in this State, in a depository account that is:

- (1) devoted exclusively to security deposits;
- (2) allows compliance with this chapter;
- (3) bears a rate of interest that is established at least quarterly, and similar to the average rate of interest on active interest-bearing accounts; and
- (4) maintained in a branch located within the State.

c. A landlord shall be required to deposit or invest any security deposit received in accordance with this section immediately upon its receipt, or in the case of a tenant in owner-occupied premises who invokes the provisions of this chapter in accordance with subsection a. of 46A:13-2, within 30 days after the landlord receives the tenant's notice invoking this chapter, provided the landlord or the depository institution receives the information required in accordance with section 46A:13-5.

Source: 46:8-19.

COMMENT

This section is derived from its source, section 46:8-19, that pertains to the investment of the security deposit, but subsection b. now eliminates any distinction in the treatment of security deposits for premises containing 10 or more or less than 10 rental units. It further provides requirements for deposits that are consistent with current law. Because of current banking procedures, reference is now made to the Federal Deposit Insurance Corporation, as noted.

New subsection c. adopts the court's holding in *Cristiani v. Paul*, 195 N.J. Super. 179 (Law Div. 1983). A landlord must deposit or invest the security deposit of a tenant living in owner-occupied premises, who invokes the provisions of the Security Deposit Act, (now this chapter) within 30 days from receipt of the notice invoking the act and not, as is the case with any other tenant, from receipt of the security deposit itself. New subsection c., however, eliminates the requirement that the landlord deposit or invest the security deposit of any other tenant within 30 days of the deposit's receipt. At the suggestion of commenters, the revised statute requires the landlord to invest or deposit the security deposit immediately after the deposit's receipt. In either case, the landlord's obligation is subject to new section 46A:13-5.

46A:13-5. Tenant cooperation to invest security deposit

a. A tenant shall comply with procedures required by law of the depository institution where the security deposit is to be invested, including compliance with State and federal laws regulating depository and investment accounts. The landlord shall have the burden of proving that these requirements and any other disclosures to the tenant required by this section were made known to the tenant.

b. If a landlord self-administers the security deposit investment account, any information required in order for the landlord to comply with State and federal laws shall be made available by the tenant to the landlord. The landlord shall notify the tenant in writing if the landlord self-administers the security investment account, including in the notice (i) a description of the required information, and (ii) instructions to the tenant to provide the information to the landlord in accordance with this section.

c. If a depository institution administers the security deposit investment account, any information required in accordance with this section may be provided by a tenant directly to the depository institution without the information being made available to the landlord. The landlord shall notify the tenant in writing, including in the notice (i) a description of the required information, and (ii) instructions to the tenant that the information required in accordance with this section may be provided directly to the depository institution without being made available to the landlord.

Source: New.

COMMENT

This section is new and included because of the requirements of depository institutions that pay interest on rent security accounts to report those payments to federal and State governments. As a result, these institutions require tenants to provide tax identification numbers or other identifying documents, such as passports, driver's licenses or employment authorization cards. Such institutions are also obligated to collect information about certain individuals in accordance with the USA Patriot Act. In those cases where the depository institutions administer the security deposit accounts, tenants may provide the required information directly to the institutions without the information being provided to landlords.

46A:13-6. Notification of investment of security deposit

a. A landlord shall serve written notice of a deposit or investment required in accordance with section 46A:13-4 to each tenant as set forth below and otherwise provided in this chapter.

b. The notice required by this section shall identify (i) the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment is made, (ii) the type of account, (iii) the account number; (iv) the current rate of interest; and (v) the amount of money deposited or invested.

c. Except as provided by subsection (d), notice shall be served:

(1) within 30 days after the receipt of the security deposit, and within 30 days after each transaction thereafter in the account where the security deposit is deposited or invested, except that no notice shall be required for the periodic posting of interest for any period less than annually;

(2) within 30 days after transfer of the security deposit from one depository institution or fund to another, if the change occurs more than 60 days prior to the date for payment of annual interest to the tenant in accordance with subsection a. of 46A:13-7, except that in the case of a merger of institutions or funds, within 30 days of the date that the landlord receives notice of that merger;

(3) within 30 days after transfer of the security deposit from one account to another account if the change in the account occurs more than 60 days prior to the date for payment of annual interest to the tenant in accordance with subsection a. of 46A:13-7;

(4) with each annual interest payment paid to the tenant in accordance with subsection a. of 46A:13-7;

(5) within 30 days after the transfer or conveyance of ownership or control of the rental premises in accordance with section 46A:13-8.

d. Notice of each annual interest payment credited to the tenant in accordance with subsection a. of 46A:13-7 shall be delivered to the tenant by regular mail at the time the credit is applied.

Source: 46:8-19.

COMMENT

This section incorporates the portion of its source, section 46:8-19, that pertains to the notification of the investment of the security deposit. However, the provision regarding the giving of notice within 30 days after the effective date of P.L. 2003, c. 188 (C. 46:8-21.4 *et seq.*) is not included as the effective date of that statute was January 1, 2004. In the revised section, notice of the annual interest accrued may be provided by regular mail unless

the actual payment of interest is included with the notice, in which case, the notice and payment must be served upon the tenant.

46A:13-7. Accrued interest or earnings for security deposit; disposition

a. The accrued interest or earnings from the investment of a security deposit shall be paid to the tenant, in cash, or at the option of the landlord, shall be credited toward the payment of rent due, as of the annual anniversary date of the tenant's lease, or, as of January 31 immediately following the creation of the tenancy and in each succeeding year, if the tenant has been given written notice, before the next anniversary of the tenant's lease, that interest payments will be made on, or before, January 31 of each year.

b. Subject to the requirements of subsection c., if a landlord does not comply with sections 46A:13-4 or 46A:13-6, a tenant may give written notice to the landlord that the security deposit and an amount representing interest at the rate of 7% per year be applied to the rent due or to become due from the tenant. Thereafter, the tenant shall be without obligation to make and the landlord shall not be entitled to demand any further security deposit. Interest required by this subsection shall be calculated from the date that the landlord fails to comply with this chapter.

c. Before applying the security deposit plus interest to rent due, a tenant shall give written notice to the landlord of the landlord's failure to comply and allow 30 days from the mailing date or hand delivery of the notice for the landlord to cure the defect if:

(1) the annual interest is not paid or credited in accordance with subsection a. of 46A:13-7; or

(2) the annual notice is not provided in accordance with subsection c. (4) of 46A:13-6, unless the annual notice is also serving as a notice of change of account or institution; or

(3) the notice required by section 46A:13-6 inadvertently omits or sets forth in error the address of the institution where the deposit or investment is made or any information required by subsections b.(ii), b.(iii) or b. (iv) of 46A:13-6.

Source: 46:8-19; new.

COMMENT

This section incorporates the portion of its source, section 46:8-19, that pertains to the payment of interest or earnings from the investment of the security deposit. Unlike the source statute, which does not address the issue, new subsection a. of this section gives the landlord the option of determining whether interest or earnings from the security deposit will be paid to or credited against future rent due from the tenant, which is consistent with current practice. Since the 2004 change to the security deposit law now requires all interest to be paid to the tenant, section 46:8-19.1, which pertains to regulations to establish the method of computing the interest due to the tenant, has not been incorporated into this new section.

Subsection c. (3) has been added to permit a landlord to cure an inadvertent omission or erroneous statement of certain information, i.e., the address of the institution in which the deposit or investment is made; the type of account; the account number; or the current rate of interest for the deposit, before the tenant may apply the security deposit plus interest to rent due. This exception to the otherwise automatic application of the security deposit to rent due is based on language in *Princeton Hill Associates v. Lynch*, 241 N.J. Super. 363 (App. Div. 1990) in which the Appellate Division determined that if a notice of the location of a tenant's security deposit is slightly deficient (in this case the address of the bank was not provided in the initial notice of the security deposit location which was set forth in the lease itself) "involuntary application of the deposit to the rent may be withheld by the court, after examining the relevant circumstances".

Recent unreported Appellate Division decisions have applied the same principle. See *Maglione v. Molok*, 2009 WL 2146686 (App. Div. 2009) (affirmed lower court determination that tenant was not entitled to the use of security deposit as payment for rent because landlord had substantially complied with statute); *Kulig v. Beer*, 2007 WL 174342 (App. Div. 2007) (court upheld denial of motion for reconsideration of summary dispossession action in favor of landlord; stating “when informed by defendants that [landlord] had not provided the notice and interest payment required by the Act, [landlord] promptly paid the interest earned on the deposit, and informed defendants of the savings bank where the monies were deposited, the type of account in which the monies were being held, and the current interest rate . . . there has been no showing of bad faith or overreaching by [landlord] . . . [and] defendants have not been prejudiced in any way by [landlord’s] technical violation of the Act.”); and *Dira Management v. Banks*, 2005 WL 2860499 (App. Div. 2005), cert. denied, 186 N.J. 244 (2006) (“[w]hile the Act’s intent is to alleviate certain practices employed by unscrupulous landlords, it is not to punish those landlords who act in good faith. . . Thus, even when a landlord’s notice is deficient, application of the deposit to rent may be withheld by the court ‘after examining the relevant circumstances’ [citing *Princeton Hill Associates.*]”).

46A:13-8. Procedure on conveyance of property

a. A landlord shall turn over all security deposits and the accrued interest or earnings thereon already posted, or the security deposit replacement fee, if applicable, upon the transfer or conveyance of the rental premises in the following manner:

(1) to the purchaser upon sale at the time of closing, either directly, or by a credit against the purchase price in which case the purchaser shall comply with this chapter as though the purchaser had received the funds directly from the tenant; or

(2) to the grantee or assignee of the landlord’s interests upon assignment of the lease within five days after delivery of the instrument of assignment, except that this provision shall not be applicable to an assignee that is a mortgage lender when the assignment is in connection with a mortgage secured by the rental premises; or

(3) to the grantee or purchaser upon a mortgage foreclosure sale upon expiration of the right of redemption; or

(4) to the person taking title to the rental premises upon the insolvency or bankruptcy of the landlord within five days after the making and entry of an order discharging the receiver or trustee.

b. Any accrued interest or earnings not yet posted to the security deposit account at the time of the turnover in accordance with subsection a. of this section shall be turned over to the person or entity to which the landlord turned over the security deposit and accrued interest or earnings, in accordance with subsection a., or paid directly to the tenant, within 10 business days after posting.

c. If a surety bond is offered and accepted by the tenant, in whole or in part, the new landlord shall accept the tenant’s surety bond and may not require:

(1) during the current lease term, an additional security deposit or security deposit replacement fee from the tenant or that the tenant purchase an additional surety bond; or

(2) at any lease renewal, a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of one and one half months’ rent per dwelling unit.

d. Service of written notice of the turnover, including, if a security deposit is being transferred, the information required in subsection b. of 46A:13-6, together with the name and address of the person to whom the rental premises is conveyed, shall be made on the tenant by the person to whom the rental premises is transferred or conveyed within 10 business days of the conveyance.

e. The person to whom the rental premises are transferred or conveyed, in accordance with subsection a., shall be obligated to obtain from the landlord:

(1) at the time of the transfer or conveyance any security deposit that the landlord received from a tenant or previous landlord and was required to be invested by this chapter, plus the accrued interest or earnings posted at that time, and written confirmation from the landlord (i) whether any additional interest has yet to be posted and (ii) the date the posting of such additional interest is scheduled to occur; and

(2) within 10 business days after posting, any interest or earnings not previously turned over or proof that the interest or earnings were paid directly to the tenant; or

(3) any security deposit replacement fee paid by the tenant, if applicable; or

(4) any document or agreement evidencing the surety bond purchased by the tenant, if applicable.

f. The person to whom the rental premises is transferred or conveyed shall comply with this chapter as though the security deposit, or security deposit replacement fee, had been received directly from the tenant.

Source: 46:8-20.

COMMENT

This section continues the substance of its source but provides for the turnover or payment directly to the tenant of interest that is posted after the conveyance or transfer. Subsections are now included with the revision.

46A:13-9. Release from liability on transfer

a. A landlord shall be relieved from liability to a tenant for the repayment of a security deposit and accrued interest or earnings that are turned over in accordance with section 46A:13-8.

b. Even if a security deposit is not transferred at time of the transfer or conveyance in accordance with section 46A:13-8, the person to whom the rental premises is transferred or conveyed is responsible for investing the security deposit, giving notice and paying interest in accordance with this chapter, and for returning the security deposit, plus any accrued interest or earnings, in accordance with the lease and this chapter, unless before expiration of the lease term, the security deposit and the accrued interest or earnings are again turned over in accordance with section 46A:13-8, or otherwise applied in accordance with this chapter.

c. A court shall have discretion not to impose a penalty upon a successor landlord to whom a security deposit in violation of section 46A:13-10 is transferred or conveyed, if the court finds that the successor landlord (i) returned the security deposit within 30 days of the transfer or conveyance, and (ii) did not knowingly participate in conduct in violation of section 46A:13-10 or otherwise act in bad faith with regard to the tenant's right to the security deposit.

Source: 46:8-21; new.

COMMENT

This section continues the substance of its source. Subsections are now included with the revision. Subsection c., however, is new.

46A:13-10. Return of security deposit; termination of lease; vacancy of tenant; no deduction during tenancy

a. For the purposes of this section:

(i) “net sum” shall mean a security deposit, plus accrued interest or earnings thereon that have not yet been paid or credited to the tenant in accordance with section 46A:13-7, less any reasonable valid and lawful expenses chargeable to the tenant because of damage to the rental premises beyond normal wear and tear, failure to pay rent that is due and owing, or other breach of a valid and enforceable lease provision that is attributable to that tenant; and

(ii) “itemization” shall mean a written statement of how a net sum was calculated, including a detailed list of the items added to and deducted from the security deposit; and

(iii) “return” of the net sum shall be made by personal delivery; commercial courier whose regular business is delivery service, with a required signature requested; certified mail, return receipt requested; or registered mail.

b. Within 30 days after a tenancy is terminated and possession is returned to the landlord or a tenant compelled to vacate and surrender to the landlord possession of the rental premises, either in accordance with a chapter of this Title not otherwise noted in this section, or by judgment or mutual agreement of the landlord and tenant, the landlord shall return to the tenant the net sum, along with an itemization. Return shall be made to the tenant’s last known address, if no other address is found after diligent good faith effort. In the case of multiple tenants, the security deposit shall be returned to all tenants named on the lease unless the tenants otherwise instruct the landlord in writing.

c. Within 30 days after a tenancy is terminated and possession is returned to the landlord, in accordance with section 46A:8-1, because of the death of a tenant, the landlord shall return the net sum and itemization to the executor or administrator or other representative of the tenant’s estate upon proof of that person’s appointment and the appropriate address for return, or, if no appointment is made, to the co-tenant at the address of the rental premises.

d. Within 15 business days after a tenancy is terminated in accordance with section 46A:8-3.2 because of the imminent threat of serious physical harm from another to the tenant or the tenant’s child due to domestic violence, the landlord shall make available and return upon demand the net sum and itemization in accordance with subsection f. In the case of multiple tenants, the security deposit shall be returned to all tenants named on the lease unless the threatened tenant shares the rental premises with a co-tenant who is subject to a restraining order, in which case the security deposit shall be deposited with the court that issued the restraining order and disbursed in accordance with court order.

e. Within five business days after a tenant vacates the rental premises because of fire, flood, condemnation or evacuation, the landlord shall make available and return upon demand the net sum and itemization in accordance with subsection f., provided that an authorized public official posts the premises with a notice prohibiting occupancy, or a building inspector, in consultation with a relocation officer, if applicable, certifies within 48 hours or a reasonable time thereafter that the prohibition of occupancy is expected to continue longer than seven days and so notifies the landlord in writing.

f. Whenever a net sum under subsections d. or e. is required to be made available by a landlord for return upon demand, the landlord shall serve written notice on the tenant, within three business days after receiving notification of the tenant's having vacated the rental premises, that the net sum is available for return. The notice shall (1) include the days and hours when and the location in the same municipality as the rental premises where the net sum will be available, and (2) be served upon the tenant at the tenant's last known address with a duplicate notice upon the relocation officer or the municipal clerk if no relocation officer is designated, unless the last known address of the tenant is the location from which the tenant has vacated and the mailbox of that address is not accessible during normal business hours, in which case the notice shall also be posted at each exterior public entrance of the vacated property. The landlord shall continue to make the net sum available for return upon demand at the location and during the normal business hours provided in the notice, or by mutual agreement with the municipal clerk, have the municipal clerk of the municipality in which the rental premises is located do so, for a period of 30 days.

g. If the net sum made available in accordance with subsection f. is not demanded and returned to the tenant within the 30-day period, the landlord shall redeposit or reinvest the net sum in an appropriate interest bearing or dividend yielding account in the same investment company, State or federally chartered bank, savings bank or savings and loan association from which it was withdrawn. Disposition of any unclaimed security deposit shall be made in accordance with the Uniform Unclaimed Property Act, N.J.S. 46:30B-1 *et seq.*

h. In the event that no net sum is payable to a tenant in accordance with this section, the landlord shall serve an itemization upon the tenant.

i. Notwithstanding this section or any other law to the contrary, no deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises. However, the tenant may:

(1) apply to rent due or to become due, in accordance with section 46A:13-7, a security deposit not lawfully collected or maintained by a landlord; or

(2) apply a lawfully collected and maintained security deposit to the payment of unpaid rent if a court determines that doing so will avoid the entry of a judgment of possession against the tenant, the landlord and the tenant both agree to apply the security deposit to the payment of unpaid rent, which may include a repayment schedule, if appropriate, and the court approves the payment and any agreed-to schedule on the record. As part of its approval, the court shall require that the tenant restore the security deposit or be subject to the consequences of not doing so in accordance with subsection j.;

j. A tenant who continues or remains in possession of the rental premises after return of a security deposit or after application of a security deposit in accordance with subsection i. (2) of 46A:13-10, shall redeliver to the landlord the original security deposit amount as provided by the agreed-to repayment schedule. This schedule shall be in the form of a consent or settlement order and enforced in the same manner as any other consent or settlement order. The landlord receiving payment or payments under this subsection shall be obligated to serve only one notice on the tenant in accordance with subsection b. of 46A:13-6 within 30 days of receipt of the final payment and shall not be obligated to serve any other notices under subsection c. of 46A:13-6, or mail a notice under subsection d. of 46A:13-6.

Source: 46:8-21.1.

COMMENT

This section continues the substance of its source with some changes in language. Defined terms (see subsection a.) have been created for this section in order to make the language more concise and less cumbersome. Subsections have been denoted and consolidated for brevity and clarity.

Notably, the source section refers to termination of tenancies generally, not making a distinction in the first paragraph between terminations by statute, judgment or mutual agreement of the landlord and tenant. In subsequent paragraphs, not all statutes that permit termination are referenced. For example, terminations pursuant to sections 46:8-9.1 and 46:8-9.6 are mentioned, but section 46:8-9.2, which permits termination of a tenancy by a residential tenant who is suffering a disabling illness or accident, is not specifically referenced. New subsection b. clarifies that unless otherwise noted in the statute, the landlord shall return the security deposit (net sum as defined in 46A:13-10) within 30 days of any tenancy termination, whether the termination occurs by judgment, mutual agreement of the landlord and tenant, or in accordance with another statutory provision not noted in this section.

Language is added, as appropriate, to accommodate concerns about the return of a security deposit to multiple tenants. Language is also added, in subsection i., to address commenters' concerns that a tenant be permitted to apply a lawfully collected security deposit to unpaid rent in order to avoid eviction, subject to landlord and tenant agreement and court approval on the record. Giving the tenant this option in the statute is alluded to in case law and supported by current landlord tenant practice. Finally, language is added to the end of subsection j. to make clear that the landlord, under the circumstances set forth in this subsection, shall not be required to serve more than the one notice after final repayment of the third installment of the security deposit.

46A:13-11. Retroactivity; date of compliance

A landlord who holds a security deposit made before January 1, 2004, must comply with the requirements of this chapter. A landlord who purchased the rental premises before January 1, 2004 and did not obtain a security deposit made prior to that date is not required to comply with this chapter with regard to that security deposit and a tenant who made a security deposit prior to January 1, 2004, whose deposit was not transferred to the grantee, assignee, or purchaser of or person taking title to the rental premises, shall not be required to make another security deposit. All actions taken after January 1, 2004 but prior to the effective date of this chapter, and all actions taken after the effective date of this chapter shall be in compliance with this chapter.

Source: 46:8-21.3.

COMMENT

This section continues the substance of its source but adds text at the suggestion of commenters.

46A:13-12. Small claims jurisdiction of actions on security deposits

Disputes between landlord and tenant respecting the return of all or part of the security deposit shall be cognizable in the Small Claims Section of the Special Civil Part, Superior Court, Law Division, as provided by the Rules Governing the Courts of the State of New Jersey.

Source: 46:8-21.4.

COMMENT

This section continues the substance of its source with modifications in language, and now refers to the court rules rather than reiterating the applicable rule. Current Rule 6:1-2, pertaining to matters cognizable in the Special Civil Part, provides that the small claims section includes "actions for the return of all or part of a security

deposit when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of \$5,000.”

46A:13-13. Security deposit recovery, court action not required for tenant receiving financial assistance

A tenant, who receives financial assistance through any State or federal program, including welfare or rental assistance, shall not be required to file an action in court to recover security deposits withheld by a landlord in violation of section 46A:13-4 in order to continue participation in any such program.

Source: 46:8-21.5.

COMMENT

This section continues the substance of its source.

46A:13-14. Enforcement of trust by civil action; trust on insolvency or bankruptcy of person receiving security deposit

a. Any trust arising under this chapter shall be enforceable by a civil action. The court shall have jurisdiction to make any appropriate order or judgment both pendente lite and final to fully effectuate the purposes of this chapter.

b. The claim of a tenant who paid a security deposit to a landlord who is insolvent or bankrupt shall constitute a statutory trust with respect to any money so received and not previously expended in accordance with the lease or this chapter.

Source: 46:8-22; 46:8-23.

COMMENT

The source sections have been merged and incorporated as separate subsections in this new section.

46A:13-15. Violations; double damages, attorney’s fees and costs; civil and criminal penalties

a. In an action by a tenant commenced for the return of money due under section 46A:13-10, the court, upon finding for the tenant, shall award recovery of double the amount of the security deposit to which the tenant is entitled, together with full costs of the action and, in the court’s discretion, reasonable attorney’s fees. For the purposes of this section, if the landlord has collected a security deposit in an amount that is in accordance with section 46A:13-3, the “amount of the security deposit to which the tenant is entitled” means the security deposit collected by the landlord, plus interest, and less any reasonable valid and lawful expenses chargeable to the tenant. If the landlord has collected a security deposit in an amount in excess of that permitted by section 46A:13-3, the “amount of the security deposit to which the tenant is entitled” means the excess amount of the security deposit collected by the landlord.

b. If the landlord, during the tenancy, fails to apply the excess amount of a security deposit collected in violation of section 46A:13-3 to rent due, a court, in an action commenced by the tenant to compel application of the excess security deposit to rent due, or in an eviction action commenced by a landlord in which the issue is raised as a defense to the tenant’s

nonpayment of rent, upon finding for the tenant, shall also award recovery to the tenant of an amount representing interest on the excess security deposit at the rate of 7% per year to be applied to the rent due from the tenant, together with full costs of the action and, in the court's discretion, reasonable attorney's fees. Interest required by this subsection shall be calculated from the date that the landlord fails to comply with this chapter.

c. A public entity that made a security deposit on behalf of a tenant who received financial assistance through a State, county or federal program, including but not limited to welfare or rental assistance, may impose a civil penalty of not less than \$500 or more than \$2,000 for each offense against a landlord who, in violation of section 46A:13-4, has willfully withheld from the tenant or refused to invest the security deposit. This penalty shall be collected and enforced by summary proceedings pursuant to the Penalty Enforcement Law of 1999, N.J.S. 2A:58-10 *et seq.* The public entity which made such security deposit on behalf of the tenant shall be entitled to any penalty amounts recovered pursuant to such proceedings.

d. The knowing unlawful diversion or consent to the knowing unlawful diversion of a security deposit may be prosecuted as a violation of the New Jersey criminal code.

Source: 46:8-21.1; 46:8-25; new.

COMMENT

This section incorporates the portion of its source, section 46:8-21.1, that pertains to the penalties imposed for violations thereof.

Subsection a., which is taken directly from the source statute and penalizes the landlord's wrongful withholding of a security deposit, is further modified to provide a remedy to the tenant for a landlord's failure to return the excess of a security deposit impermissibly collected (in violation of new subsection 46A:13-3) but not addressed by the tenant until after the termination of the tenancy, consistent with *Reilly v. Weiss*, 406 N.J. Super. 71 (App. Div. 2009). In *Reilly*, the court determined that a landlord that collects more than the permissible amount of a security deposit has wrongfully withheld the excess security deposit in violation of source section 46:8-21.1 and should be subject to the doubling penalty, but only with regard to the excess of the deposit impermissibly withheld. Where a landlord withholds an excess security deposit impermissibly collected, no offsets are to be deducted, and the entire amount of the excess should be doubled. However, in those cases where a landlord withholds a lawfully collected security deposit, offsets required because of the tenant's conduct, such as the costs of the tenant's damage to the rental premises, are to be deducted *before* doubling the amount of the entire security deposit. If no amount remains after the offsets are deducted, the tenant is not entitled to anything.

At least one commenter has proposed that a penalty also be imposed upon the landlord for a violation of what is now proposed section 46A:13-3 during the tenancy. The *Reilly* court suggests further, in dicta, that an appropriate penalty against a landlord for collecting more than the permissible amount of security deposit (1 and ½ month's rent) might be obligating the landlord "to credit the tenant with some amount of interest earned on the illegal excess deposit similar to that required for a violation of N.J.S. 46:8-19." Thus, subsection b. was added to this section.

Subsection c. is retained from the source section. Security deposits paid by governmental entities on behalf of a tenant become the property of the tenant and must be returned directly to the tenant.

Although section 46:8-25, pertaining to the penalty for the unlawful diversion of trust funds, has not been incorporated into this chapter, reference has been made in subsection d. to possible prosecution under the criminal code for unlawful diversion of a security deposit. The prohibited conduct is currently covered by sections 2C:20-9 and 2C:20-2 of the criminal code, where it is made a more serious crime than provided in source section 46:8-25.

46A:13-16. Alternatives to securing the tenant's performance

a. Alternative to security deposits.

A landlord may offer the tenant the alternative to a security deposit of either purchasing a surety bond or paying a nonrefundable security deposit replacement fee in accordance with the provisions of this section. A security deposit replacement fee is a fee designed as a substitute for a security deposit and is not designed or intended to compensate the landlord for any extra expenses incidental to the lease. The security deposit replacement fee may be required instead of a security deposit only if it is offered by the landlord and accepted by the tenant in accordance with subsection c. below. A landlord may also offer the tenant the option of combining payment of a partial security deposit with purchasing a surety bond so long as the total amount of security deposit and surety bond principal does not exceed one and one half month's rent. A landlord may not, however, require a security deposit replacement fee and another form of security from a tenant. Nor may a landlord require, as a condition of the lease or otherwise, a surety bond or the payment of a security deposit replacement fee in place of a security deposit, or the combination of security deposit and surety bond, and a tenant may not use a surety bond or a security deposit replacement fee unless that alternative is offered by the landlord.

b. Surety bond requirements.

(1) A surety bond issued under this section may only be issued by a surety licensed by the Department of Banking and Insurance.

(2) The amount of the surety bond principal shall be no more than the maximum amount of security deposit allowed by section 46A:13-3 and the cost of the premium for the surety bond shall not exceed 20% of the amount of the surety bond principal. If the surety bond purchase is combined with the payment of a partial security deposit, the amount of the surety bond principal shall be no more than the maximum allowable security deposit minus the amount of the security deposit actually paid. The premium shall be nonrefundable, provided that if the landlord does not accept the bond or the tenant does not enter into a lease with the landlord, the landlord shall refund the premium or any portion thereof that has been paid by the tenant.

(3) The tenant remains responsible for performance of the tenant's obligations under the lease, including but not limited to payment of all unpaid rent and payment for physical damage to the rental premises beyond normal wear and tear and may be required to reimburse the surety for amounts the surety paid to the landlord because of a claim against the tenant under the surety bond;

(4) Prior to the tenant's purchase of the surety bond, the landlord shall serve the tenant with written notification that:

(A) the surety bond premium is nonrefundable unless the landlord does not accept the bond or the tenant does not enter into a lease with the landlord, in which case, the premium is refundable in accordance with subsection b. (2) of 46A:13-16. The word "nonrefundable" shall be conspicuously placed on the first page of the notification and in bold lettering;

(B) the surety bond is not insurance for the tenant;

(C) the surety bond is being purchased in place of the tenant's payment of a security deposit under this chapter, or in combination with the tenant's payment of a partial security deposit;

(D) the tenant may be required to reimburse the surety for amounts the surety paid to the landlord because of a claim against the tenant under the surety bond;

(E) the tenant remains responsible for performance of the tenant's obligations under the lease, including but not limited to payment of all unpaid rent and payment for physical damage to the rental premises beyond normal wear and tear; and

(F) the landlord shall forfeit the right to make any claim against the tenant under the surety bond if the landlord fails to comply with the requirements of this chapter.

(5) Subsequent to the tenant's purchase of the surety bond, the landlord or surety shall deliver by regular mail to the tenant a copy of any agreement or document signed by the tenant at the time of the tenant's purchase of the surety bond.

(6) The landlord shall forfeit the right to make any claim against the tenant under the surety bond if the landlord fails to comply with the requirements of this section.

c. Security deposit replacement fee requirements.

(1) The cost of a security deposit replacement fee shall not exceed 1/3 of the maximum amount of security deposit allowed by subsection b. of 46A:13-3.

(2) The security deposit replacement fee shall be paid once, at the time of signing of the lease, and shall not be refundable.

(3) A landlord may not collect a security deposit replacement fee from a tenant unless the landlord offers the tenant in the lease or in a writing provided to the tenant at the time the lease is signed an option to pay a security deposit replacement fee in place of a security deposit under this chapter, and the tenant accepts the option in writing. The lease or writing shall state:

(A) the security deposit replacement fee is a one-time nonrefundable fee. The word "nonrefundable" shall be conspicuously placed on the first page of the lease or other writing and in bold lettering;

(B) the security deposit replacement fee is being paid in place of the tenant's payment of a security deposit under this chapter; and

(C) the tenant remains responsible for performance of the tenant's obligations under the lease, including but not limited to payment of all unpaid rent and maintaining the rental premises in good condition except for normal wear and tear; provided that a landlord who accepts a security deposit replacement fee may not seek to obtain a judgment against the tenant for physical damages to the rental premises unless the damages are deemed by a court to be the result of the tenant's intentional or grossly negligent conduct and not otherwise paid for by insurance, whether the landlord's or tenant's, or the damages exceed the amount that would have been due in accordance with subsection b. of 46A:13-3.

(4) The tenant shall remain responsible for performance of the tenant's obligations under the lease, including but not limited to payment of all unpaid rent and maintaining the rental premises in good condition except normal wear and tear, provided that a landlord who accepts a security deposit replacement fee may not obtain a judgment against the tenant for physical damages to the rental premises unless the damages are deemed by a court to be the result of the tenant's intentional or grossly negligent conduct and not otherwise paid by insurance, whether the landlord's or tenant's, or the damages exceed the amount that would have been due in accordance with subsection b. of 46A:13-3.

d. Effect of alternatives to security deposit if property is transferred.

If the landlord's interest in the rental premises is transferred or conveyed, the new landlord shall, in accordance with section 46A:13-8, accept the tenant's surety bond posted with the prior landlord or collect from the prior landlord the security deposit replacement fee paid to the prior landlord. No new or additional form of security may be required during the tenancy except as permitted by section 46A:13-3 or subsections i. and j. of 46A:13-10.

e. Penalty for landlord's failure to comply with this section.

If a landlord fails to comply with subsections a., b. (2), or c. (1) or (4) of 46A:13-16, the tenant may commence an action to recover double the maximum amount of the security deposit allowed by section 46A:13-3 together with full costs and, in the court's discretion, reasonable attorneys' fees.

Source: New.

COMMENT

This new section authorizes the common practice of some landlords who offer tenants alternatives *in lieu of* security deposits. This new section clarifies that both the landlord and tenant must consent to the offer and exercise of any alternative to a security deposit. The landlord may not make acceptance of the alternative a condition of a lease, nor may a tenant exercise an option unless offered by the landlord. This new section reflects a reasonable cost for a surety bond and for a security deposit replacement fee based on current practice. The requirements set forth for landlords who offer tenants the option of purchasing surety bonds is modeled, in part, on similar statutes in Maine, Maryland and Nevada. A security deposit replacement fee is designed to be a substitute for a security deposit. It is not intended to be (and should not be confused with) any other extra fees that landlords may customarily charge tenants in accordance with law.

46A:13-17. Abandoned security deposit

The holder in possession of a security deposit that is presumed to be abandoned and subject to custody as unclaimed property under the Uniform Unclaimed Property Act, N.J.S. 46:30B-50 shall comply with the notice requirements set forth in N.J.S. 46:30B-50.

Source: New.

COMMENT

This new section refers the reader to the *Uniform Unclaimed Property Act*, N.J.S. 46:30B-50 which governs abandoned and unclaimed property, including rental security deposits covered by this chapter. At the time of this writing, bill A608/S662 pending in the Legislature (having been introduced in the Senate Community and Urban Affairs Committee and also released from the Assembly Financial Institutions and Insurance Committee in the last legislative session as A3062/S2019, but not yet voted upon by the full Assembly) proposed an amendment to N.J.S. 46:30B-50 requiring that the account holder of security deposit monies presumed to be abandoned and subject to custody as unclaimed property, send, by certified mail, return receipt requested, an additional written notice to the landlord at the last known address informing the landlord that: (1) the holder is in possession of property subject to this chapter; (2) the claim of the apparent owner is not barred by the statute of limitations; and (3) the property has a value of \$50 or more.

ARTICLE 5

EVICITION

CHAPTER 14: EVICTION GENERALLY

46A:14-1. Tenant, landlord, residential rental premises; what is included

For the purposes of this article:

“Complex” includes, but is not limited to, a set of buildings or a manufactured housing community.

“Landlord” includes, but is not limited to, the landlord or lessor, the agent of the landlord or lessor, or an owner or owner’s agent, as appropriate, or a sublandlord. For purposes of any sections of this article concerning eviction from residential rental premises, the term “landlord” also includes, unless otherwise stated in this article, a successor in possession or ownership to a landlord, lessor or owner, such as, for example, a foreclosing mortgagee or a purchaser at a sheriff’s sale.

“Tenant” includes, but is not limited to, a lessee or tenant at will or at sufferance or for any duration, or any subtenants, assigns or legal representatives of the lessee or tenant.

“Rental premises for residential purposes” or “residential rental premises” includes, but is not limited to, any rental premises, in a house, apartment, or mobile home, or land in a mobile home park but does not include campgrounds as defined in the Campground Facilities Act, N.J.S. 5:16-1 *et seq.*

Source: 2A:18-51; 2A:18-53; 2A:18-61.1; 2A:18-61.3.

COMMENT

This section is derived from its source provisions. Notably, both source sections 2A:18-53 and 2A:18-61.1 expressly apply to tenants and lessees and their assigns, undertenants or legal representatives. The *Anti-Eviction Act* was amended in 1986 (2A:18-61.3) to, *inter alia*, expand the act’s coverage to include a landlord’s or owner’s successor in ownership or possession. See *The Chase Manhattan Bank v. Josephson*, 135 N.J. 209, 221-222 (1994).

Also, this section does not define “landlord” and “tenant” but clarifies what is included when referring to these terms for the purposes of this article. Definitions of certain terms that are used throughout the proposed new Title appear in chapter 1 of the Title. The term “undertenant” has traditionally meant a tenant who leases all or part of the rental premises from the original tenant for a term less than that held by the original tenant. However, because the term “undertenant” is archaic and its meaning is included within the meaning of subtenant, the term is no longer used in the revised statute.

“Complex” is added here to include sets of buildings as well as a mobile home park (also known as a manufactured housing community.)

“Residential rental premises”, though not defined, is added here because of the range of dwellings covered by the source provision, including land in a mobile home park that is residential in nature. Campgrounds are specifically excluded from the definition. The *Campgrounds Facilities Act*, N.J.S. 5:16-1 *et seq.* provides a separate procedure for the eviction of occupants of campgrounds who do not abide by the rules and regulations of the campgrounds or do not pay the rental fees.

46A:14-2. Applicability of this article

This article shall not be applicable to:

- a. rooms or other parts of hotels, motels or guest houses used by transient guests; or
- b. nursing homes or continuing care retirement communities; or
- c. dormitories maintained by educational institutions; or
- d. transient occupants of a transitional residential facility with social services, such as a battered women’s shelter or a recovering substance abuse facility; or
- e. any dwelling units rented to a legal entity to accommodate the transient housing needs of the personnel or employees of the legal entity who otherwise have permanent residences elsewhere. This subsection does not apply to seasonal tenants.

Source: New.

COMMENT

Only tenants are protected by the eviction article. Thus, a nursing home resident is not protected nor is a student in a dormitory. See *Starns v. American Baptist Estates of Red Bank*, 352 N.J.Super. 327, 337 (App.Div. 2002) (in determining whether landlord could retire building from residential use and evict tenants, court held that retirement community addition proposed for site of apartments should not be considered a “residential use” in that “[a] continuing care retirement facility provides more for each resident than a place to live.”) Likewise, a transient

guest in a hotel or motel, who is not deemed to be a tenant, is not protected by this section or other provisions of this article. See, e.g., *Poroznoff v. Alberti*, 161 N.J. Super. 414 (Passaic County 1978), *aff'd*, 168 N.J. Super. 140 (App. Div. 1979). Compare *McNeill v. Estate of Lachmann*, 285 N.J. Super. 212 (App. Div. 1995) and *Williams v. Alexander Hamilton Hotel*, 249 N.J. Super. 481 (App. Div. 1991), where the courts held that the plaintiffs were “tenants” and not transient guests for purposes of the *Anti-Eviction Act* protections. Compare *Open Door Alcoholism Program, Inc. v. Board of Adjustment*, 200 N.J. Super. 191 (App. Div. 1985) where the court found that the proposed operation of a “halfway house” for ten recovering alcoholics was more akin to a boarding house and thus would not satisfy the single-family zoning ordinance requirements.

However, this article does apply to premises for seasonal use or rental as defined in chapter 1 of this Title. Thus, “seasonal tenants” (also now defined in chapter 1 of this Title) are protected by this article.

Subsection e. adopts the holding in *Morristown Memorial Hospital v. Wokem Mortgage & Realty Co., Inc.* 192 N.J. Super. 182 (App. Div. 1983) (apartment rented to provide housing for hospital’s transient personnel involved in training and education programs not fundamentally residential in nature for purposes of *Anti-Eviction Act*).

46A:14-3. Eviction of tenants generally

a. Possession of rental premises shall be returned to a landlord by execution of a warrant for eviction or enforcement of a writ of possession issued pursuant to a judgment for possession of the premises.

b. A tenancy may be terminated and possession of the premises returned to a landlord after entry of a judgment for possession in a summary action commenced in the Superior Court, Law Division, Special Civil Part upon establishment of a ground for eviction in accordance with this article. No claim other than for eviction may be joined in a summary action except as permitted by the Rules Governing the Courts of the State of New Jersey.

c. A landlord may also obtain possession of rental premises after entry of a judgment for possession in a plenary action in ejection commenced in the Superior Court, Law or Chancery Division, upon establishment by the landlord of a ground for eviction in accordance with this article.

d. Forcible or unlawful entry and detainer of rental premises or any method of self-help shall not be used by a landlord to evict a tenant or obtain possession of rental premises subject to a tenancy.

e. A provision in a lease waiving this section is against public policy and unenforceable.

Source: New.

COMMENT

This section is new and added for clarification. Subsections b. and c. distinguish a summary proceeding for eviction from a plenary proceeding, while emphasizing that the grounds for eviction in either proceeding are limited to those set forth in this chapter. Eviction by summary proceeding is a creation of the legislature and in derogation of the common law. See *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116, 123 (1967) (jurisdiction of the court to apply stern remedy of dispossession stems from the statute with which courts demand strict compliance); *Carr v. Johnson*, 211 N.J. Super. 341, 347 (App. Div. 1986) (summary dispossession statute is “entirely a creature of the Legislature . . . and as such its provisions should be construed strictly.”); *Floral Park Tenants Ass’n v. Project Holding, Inc.*, 152 N.J. Super. 582, 591 (Chan. Div. 1977) *aff’d*, 166 N.J. Super. 354 (App. Div. 1979), *cert. denied*, 81 N.J. 278 (1979) (“[T]he purpose of the *Anti-Eviction Act* was not to eliminate evictions but to limit them to reasonable grounds.”)

A landlord may commence an action for possession of rental premises from a tenant in a plenary proceeding if the landlord seeks possession and money damages or other relief. The landlord or the tenant also may seek to transfer an eviction action to the Law Division in accordance with section 46A:14-7.

Since the *Forcible Entry and Detainer Act*, 2A:39-1 *et seq.* may apply beyond the landlord and tenant relationship, that Act is not altered by this revision or recommended for repeal. However, subsection d. is added here to make clear the longstanding prohibition on self-help remedies for the eviction of tenants. Notably, forcible entry and detainer is classified as a disorderly persons offense under the criminal code (see N.J.S. 2C:33-11.1) and the *Forcible Entry and Detainer Act* itself (see 2A:39-1.)

46A:14-4. Burden of proof on landlord

The landlord shall have the burden of proving any ground for eviction and the facts required to obtain a judgment for possession.

Source: New.

COMMENT

This section is new and was requested by commenters to make clear that the landlord has the burden of proof in any proceeding to evict a tenant.

46A:14-5. Mandatory renewal of residential tenancy except for statutory good cause

No tenant may be evicted from residential rental premises under section 46A:15-1, nor may the lease of a tenant in residential rental premises under section 46A:15-1 fail to be renewed, except for good cause in accordance with this article.

Source: 2A:18-61.3.

COMMENT

This section adopts subsection a. of source section 2A:18-61.3 with some minor modifications in language. Section 46A:15-1 makes minor revisions to N.J.S. 2A:18-61.1, currently known as the *Anti-Eviction Act* or as the *Good Cause for Eviction Act*.

A judgment for possession is enforced by eviction of the tenant. If possession of rental premises are returned to the landlord, however, all persons living with the tenant must also leave the rental premises. See Rule 6:3-4 which permits a party to file a single complaint seeking possession of a rental unit from a tenant of that party *and from another in possession of that unit* in a summary action for possession provided that the defendants are separately identified by name or otherwise permitted by court rule and each party's interests are separately stated in the complaint. (Emphasis added.) Also note the law pertaining to the eviction of tenants subject to domestic violence as set forth throughout this Title.

46A:14-6. Waiver; prohibited in residential lease

A provision in a lease for residential rental premises covered by section 46A:15-1, whereby the tenant agrees that the tenancy may be terminated or not renewed for other than good cause or whereby the tenant waives any rights under this article, is against public policy and unenforceable.

Source: 2A:18-61.4.

COMMENT

This section adopts source section 2A:18-61.4 with some modifications in language. Although chapter 1 of the Title states that a tenant's waiver of rights is against public policy, the importance of this issue requires its repetition here.

46A:14-7. Transfer of proceedings into Law or Chancery Division; trial by jury

a. At any time before trial of an action for eviction, the landlord or the defendant may apply to the Superior Court, Law Division, Special Civil Part, for transfer of the action to the Law or Chancery Divisions. The court may order that the action be transferred if it determines, in its discretion, that the matter is of sufficient importance. The court may also require that all rent due and not in dispute at the time of the transfer shall be paid in full prior to the transfer.

b. In determining whether a matter is of sufficient importance, the court may consider, but is not limited to consideration of, the following factors:

(1) the complexity of the issues presented, and whether discovery or other pretrial procedures are necessary or appropriate;

(2) the importance to the public good of the issues presented, in particular those cases where constitutional issues may be involved;

(3) the presence of multiple actions for possession arising out of the same transaction;

(4) the amount in controversy, taking into account the alleged extensiveness of the defects and the cost of repairs as well as the amount of rent claimed to be unpaid;

(5) the need for equitable relief of a permanent nature;

(6) the appropriateness of class relief;

(7) the need for uniformity of result;

(8) the necessity of joining additional parties or claims in order to reach a final result; and

(9) whether the procedural limitations of a summary action (other than the unavailability of a jury trial) would significantly prejudice substantial interests either of the litigants or of the judicial system that would outweigh the prejudice that would result from any delay caused by the transfer.

c. After a summary action for eviction pursuant to this article is transferred to the Law Division, either party may demand a trial by jury in accordance with the Rules Governing the Courts of the State of New Jersey.

Source: 2A:18-60; 2A:18-61.

COMMENT

This section adopts the provisions of source sections 2A:18-60 and 2A:18-61 with some modifications in language. The criteria for determining that a matter should be transferred, as determined by several cases, notably, *Lopez v. Medina*, 262 N.J. Super. 112 (App. Div. 1992); *Morrocco v. Felton*, 112 N.J. Super. 226 (Law Div. 1970), *Township of Bloomfield v. Rosanna's*, 253 N.J. Super. 551 (App. Div. 1992) and its progeny, are now set out in the statute. Subsection c. permits either party to a demand a jury trial in accordance with court rules. The provision permitting a court to require that all rent due and not in dispute at the time of the transfer be paid to the landlord prior to the transfer was added at the suggestion of commenters. Language has been added to permit transfer to the Chancery Division, at the suggestion of Mahlon L. Fast, J.S.C. Ret.

CHAPTER 15: GROUNDS FOR ACTION FOR EVICTION

46A:15-1. Eviction; residential rental premises; grounds

A tenant may be evicted from residential rental premises, other than residential rental premises covered by section 46A:15-2 or section 46A:15-3, only upon the establishment, in accordance with this article, of any one of the following grounds which shall be deemed good cause for the eviction:

a. Tenant conduct for which no notice to cease is required.

A tenant may be evicted if the tenant:

(1) fails to pay rent that is due and owing in accordance with the lease or other agreement governing the tenancy. Any portion of rent unpaid by the tenant but used to continue the service of an electricity, gas, water or sewer public utility to the rental premises, after receipt of notice that the service was in danger of discontinuance because of nonpayment by the landlord, shall not be deemed to be unpaid rent for the purposes of this section; or

(2) fails to pay rent after service of a written notice of increase of rent provided that the rent increase is not unconscionable and complies with all laws and municipal ordinances governing rent increases; or

(3) willfully or by reason of gross negligence destroys or damages or causes or allows destruction or damage to the rental premises or the real property in which there are the rental premises; or

(4) at the termination of the lease and after service of written notice, refuses to accept reasonable changes of substance to the terms and conditions of the lease, or if the lease is in writing, refuses to sign a lease that includes reasonable changes of substance to the terms and conditions of the lease, including but not limited to a change in the duration of the lease; provided that where a tenant has received a notice to vacate and demand for possession under subsection b. (6) of 46A:16-6 or has a protected tenancy status pursuant to chapter 28 of this title, the landlord has the burden of proving that any change in the terms and conditions of the lease (i) are reasonable, and (ii) do not substantially reduce the rights and privileges to which the tenant was entitled; or

(5) is convicted of or pleads guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under, any of the criminal statutes set forth in (A), (B), (C), (D), or (E) below, provided that no action for eviction may be brought pursuant to subsections (5) (A) (B) or (C) more than two years after the date of adjudication or conviction or more than two years after the person's release from incarceration, whichever is later:

(A) the Comprehensive Drug Reform Act of 1987, N.J.S. 2C:35-1 *et seq.* involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act in or on the rental premises, or the building and land appurtenant thereto or the mobile home park in which the rental premises are located, and has not, in connection with the sentence for that offense, either successfully completed, or been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to N.J.S. 2C:35-14; or

(B) N.J.S. 2C:12-1 or N.J.S. 2C:12-3 involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or

(C) subsection b. of N.J.S. 2C:12-1 involving aggravated assault against one or more other tenants residing in the same building or complex; or

(D) N.J.S. 2C:20-1 *et seq.*, involving the theft of property from the landlord, the rental premises, or other tenants residing in the same building or complex; or

(E) any other crime involving intentional creation of an imminent serious danger to others, to the building, or to the immediate vicinity of the rental premises; or

(6) knowingly harbors or harbored a person convicted of or who pleads guilty to any offense set forth in subsection (5), or otherwise permits or permitted such person to occupy the premises for residential purposes, whether continuously or intermittently, except that this subsection shall not be applicable to the harboring of or permitting occupancy by a juvenile who has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under N.J.S. 2C:35-1 *et seq.* No action for eviction based on an offense under subsections (5) (A) (B) or (C) may be brought more than two years after the adjudication or conviction or more than two years after the person's release from incarceration, whichever is later; or

(7) is found, by a preponderance of the evidence, liable in a civil action for eviction under this chapter based upon an offense set forth in subsection (5), other than an aggravated assault against other tenants as provided under subsection (5) (C), or if the tenant knowingly harbors a person who committed such an offense or otherwise permits the person to occupy the premises for residential purposes, whether continuously or intermittently, except that this subsection shall not be applicable to the harboring or permitting occupancy by a juvenile who has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under N.J.S. 2C:35-1 *et seq.*; or

(8) is found, by clear and convincing evidence, liable in a civil action for eviction under this chapter based upon the offense set forth in subsection (5) (C), or if the tenant knowingly harbors a person who committed such an offense or otherwise permits the person to occupy the premises for residential purposes, whether continuously or intermittently; or

(9) who is in public housing under the control of a public housing authority or redevelopment agency substantially violates or breaches any covenants or agreements contained in the lease pertaining to illegal uses of controlled substances, or other illegal activities, regardless of whether sufficient language in the lease conveys that the violation or breach of the covenant or agreement allows the landlord to seek a termination of the lease, eviction of the tenant and a return of possession of the rental premises, provided that the covenant or agreement conforms to federal law and regulations regarding the lease provisions and was contained in the lease at the beginning of the lease term; or

(10) is found to have engaged in extraordinary conduct that:

a. creates or is reasonably likely to create immediate injury or death to other tenants or occupants, or catastrophic destruction to the rental premises or the building; and

b. is so excessive or severe that the conduct having occurred even once instills fear or apprehension in a reasonable person; and

c. is not likely to be rectified by service of a notice to cease on the tenant responsible for the conduct; or

(11) knowingly gives false material information or omits material facts in an application for tenancy provided that the landlord proves that had the landlord known the truth, the landlord's consistent and lawful policy would have been to deny the lease. No eviction under this subsection may be commenced later than 90 days after the falsity or omission is discovered or one year after the application is received, whichever is earlier. This subsection shall not bar commencement of any other actions to which the landlord may be entitled under law.

b. Continuing tenant conduct after service of notice to cease.

A tenant may be evicted if the tenant, after service of a written notice to cease:

(1) habitually and without legal justification pays rent after the date that it is due and owing; or

(2) is so disorderly as to destroy the peace and quiet of the other tenants or occupants living in the building or surrounding neighborhood; or

(3) substantially violates or breaches any of the landlord's rules and regulations governing the premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term;

(4) substantially violates or breaches any of the covenants or agreements contained in the lease where sufficient language in the lease conveys that the violation or breach of the covenant or agreement allows the landlord to seek a termination of the lease, eviction of the tenant and a return of possession of the rental premises, provided that the covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term; or

(5) engages in any conduct that will create, if it continues, an imminent serious danger to others, to the building, or to the immediate vicinity of the rental premises.

c. Health or safety code violations; zoning violations.

A tenant may be evicted if the landlord or the owner seeks to do any of the following, provided that the owner shall comply with the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, or the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.*, or chapter 21 of this Title pertaining to displaced tenants, as applicable, before a warrant for eviction may be issued:

(1) permanently board up or demolish the rental premises because of having been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and eliminating the violations is economically unfeasible; or

(2) comply with the local or State housing inspectors, after having been cited with substantial violations affecting the health and safety of tenants, where doing so without evicting the tenant is economically unfeasible, in which case simultaneously with service of notice of eviction pursuant to this subsection the landlord shall notify the Department of the intention to institute eviction proceedings and provide the Department with such other information as it requires pursuant to rules and regulations, and the Department subsequently shall inform all appropriate parties and the court of its view with respect to the feasibility of compliance without eviction of the tenant and may, in its discretion, appear and present evidence; or

(3) correct an illegal occupancy because of having been cited by local or State housing inspectors or zoning officers and doing so without evicting the tenant is unfeasible, provided that the tenant may not be entitled to relocation assistance if the tenant's own conduct is the primary cause of the code violation; or

(4) permanently retire the rental premises from the rental market pursuant to the redevelopment or land clearance plan in a blighted area and the owner is a governmental agency; or

d. Retiring building or mobile home park from residential use.

A tenant may be evicted if the landlord or the owner seeks to permanently retire the building or mobile home park from residential use or use as a mobile home park, provided this subsection shall not be applicable to circumstances covered under subsection c. (1), (2), (3) or (4); or

e. Termination by landlord of employment of the tenant.

A tenant may be evicted if the landlord conditioned the initial tenancy upon and in consideration for the tenant's employment by the landlord, and the employment is terminated; or

f. Conversion from rental market to condominium or cooperative.

A tenant may be evicted if the landlord who is an owner is converting two or more residential units or park sites in a building or mobile home park from the rental market to a condominium, cooperative or fee simple ownership, other than as provided in subsection g., except that no action shall be commenced pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status under chapter 28 of this Title so long as, in accordance with chapter 28, the protected tenancy status has not been terminated nor the protected tenancy period expired; or

g. Personal occupancy by landlord who is an owner or by buyer who wishes to personally occupy the rental premises.

A tenant may be evicted if the landlord who is an owner:

(1) of a building or mobile home park which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant whose initial tenancy began after the master deed or agreement establishing the condominium, cooperative or subdivision plat was recorded, because the landlord contracted to sell the residential unit to a buyer who wishes to personally occupy the unit, and the contract of sale requires the unit to be vacant at the time of closing of title, provided that no action may be brought against a tenant under this subsection unless the tenant was served with a statement pursuant to section 46A:22-3;

(2) of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from a landlord of three or less residential units after the master deed or agreement establishing the condominium or cooperative was recorded because the landlord wishes to personally occupy the unit, or contracts to sell the unit to a buyer who wishes to personally occupy the unit, and the contract of sale requires the unit to be vacant at the time of closing of title; or

(3) of three residential units or less, seeks to personally occupy a unit, or contracts to sell a residential unit to a buyer who wishes to personally occupy the unit and the contract of sale requires the unit to be vacant at the time of closing of title; or

h. Termination of lease because of domestic violence.

A tenant may be evicted if a lease is terminated by a tenant because of the imminent threat of serious physical harm from another tenant, in accordance with section 46A:8-3.1 through section 46A:8-3.8 pertaining to domestic violence, and any co-tenant remaining on the lease does not enter into a new lease with the landlord or hold over with permission of the landlord; or

i. Violation of section 46A:10-4 pertaining to domesticated animals.

A tenant may be evicted if a lease is not renewed by a landlord because of a violation of section 46A:10-4, pertaining to domesticated animals in senior citizen housing projects, and the tenant, at the expiration of the lease, refuses to vacate the rental premises.

Source: 2A:18-61.1; new.

COMMENT

This section adopts the provisions of source section 2A:18-61.1 with some modifications in language. In addition, the section now categorizes the grounds for eviction for the purposes of clarity and order. For example, grounds based on landlord conduct are kept together; grounds that require a prior notice to cease are kept together. Several new grounds for eviction also have been added.

Subsection a. is based on 2A:18-61.1(a.), (f.), (c.) and (i). Notably, the elimination in subsection a. of the archaic word “injury” with regard to property (which appears after the word “damage” in the source provision) was not intended to limit the application of the statute.

Subsection b. is based on 2A:18-61.1(j.), (b.), (d.) and (e.) (1). New subsection b. (5) is added to address those situations where the tenant’s conduct, if it does not cease, will cause an imminent serious danger to other people or to property. Such a ground was first suggested by Judge Mahlon L. Fast, Ret. because of a concern that no ground existed in the *Anti-Eviction Act* for eviction of a tenant who engages in certain types of continuing conduct that likely may result in serious injury or death, or damage to persons or property. Examples of such conduct are where a tenant uses noxious chemicals contrary to their intended use or leaves a lit stove unattended. The landlord must serve a notice to cease on this tenant before an eviction proceeding may be commenced. Support for such a ground exists in the federal statutory provisions related to subsidized rental housing. See 42 U.S.C. sec. 1437d(1)(6)(E).

At the same time, a concern was expressed by commenters that certain kinds of conduct are so serious that a notice to cease should not be required. Subsection a. (10) was added to address those concerns. Subsection a. (10) creates a new ground for eviction that has been added to address extraordinary tenant conduct, a single incident of which is so severe or excessive that the service of a notice to cease is futile or irrelevant; either the harm has already occurred or the reasonable likelihood of harm is just too great. The behavior this ground is intended to cover is very circumscribed, such as a tenant brandishing a loaded registered weapon or threatening others with a pipe bomb. This subsection also will cover those situations that cannot be addressed by new subsection (5) (E) (see below) because a crime has not yet been committed, or those situations where, even though a crime may have been committed, a landlord’s having to wait for a conviction or guilty plea before commencing an eviction action poses too great a risk to the other tenants or to the property. Thus, a landlord would be able to evict a tenant who is found to have been stalking another tenant even though the offending tenant has not been convicted of or pled guilty to any crime.

Subsection a. (5) is based on 2A:18-61.1 (n.), (o.), (p) and (q.) but adds two new grounds. Subsection a. (5) (C) adds a ground for tenant conduct that involves aggravated assault against one or more tenants residing at the same building or complex if the tenant is convicted of or pleads guilty to an act which would constitute an offense under N.J.S. 2C:12-1 (b). Subsection a. (5) (E) addresses those situations where the tenant’s intentional creation of an imminent serious danger to other people or to property constitutes a crime and thus a notice to cease is not

necessary. Consistent with subsection a. (5) generally, the tenant, under (5) (E) must be convicted of or plead guilty to the crime.

Subsection a. (11). is also new and was suggested by commenters. This provision is supported by the Appellate Division decision in *Edward Gray Apartments v. Williams*, 352 N.J.Super.457 (App. Div. 2002) (tenant fraudulently obtained a second subsidized rental apartment in violation of lease and HUD requirements) and general principles of equity and fair dealing.

Subsection c. is based on 2A:18-61.1 (g.) (1), (2), (3) and (4). Subsection d. is based on 2A:18-61.1(h.) Subsection e. is based on 2A:18-61.1 (m.) Subsection f. is based on 2A:18-61.1 (k.). Subsection g. is based on 2A:18-61.1 (l.).

Subsection h. is added to fill in the void that now exists in the Title because of the introduction of the source sections known as the *New Jersey Safe Housing Act*, appearing at N.J.S. 46:8-9.4 *et seq.*, which require that once a lease is terminated by a tenant pursuant to the source statutes, the co-tenancy also automatically terminates. The addition of new subsection h. expressly states this ground for eviction which is otherwise implied. In accordance with subsection c. of N.J.S. 46:8-9.7, a co-tenant may enter into a new lease at the option of the landlord, or hold over if holding over is permitted by the landlord. These source sections appear in this revision at sections 46A:8-3.1 through 46A:8-3.7. New subsection i. fills the void that now exists in the Title because of current section 2A:42-107(now section 46A:10-4) which permits a landlord not to renew an expiring lease of a senior citizen in a housing project who fails to maintain and care for a domesticated animal in accordance with the statute but does not vacate the rental premises.

It should be noted here that, in accordance with section 46A:30-9 (based on source provision 2A:42-92), proof that alleged unpaid rent was deposited with the clerk of the court in accordance with a judgment directing such deposit under 46A:30-1 *et seq.* (pertaining to court-appointed administration of substandard dwelling units) is a valid defense to an action for possession based on a failure to pay rent.

Current sections 33:1-54 (violation of alcoholic beverage laws) and 46:8-8 (use of rental premises for prostitution; the current section also includes use of the premises for “assignment”) arguably have been superseded by the enactment of the *Anti-Eviction Act*. Regardless of whether these provisions have been superseded, they are not used in modern practice in order to evict tenants and, therefore, they are recommended for repeal.

Finally, the Appellate Division, in *Kuzuri Kijiji Inc. v. Bryan*, 371 N.J.Super. 263 (App. Div. 2004) clarified that a requirement of the precise words “right of re-entry” are no longer required in a lease to support a ground for eviction. The court stated: “We conclude that words other than ‘right of re-entry’ satisfy the letter and public policy of the statute as long as the words employed clearly convey that violation of covenants and agreements in the lease allow the landlord to seek a termination of the lease, the removal of the tenant from the leased premises, and a return of possession of the premises to the landlord. . . . Mindful of the nature of the right of re-entry, the language of the lease used by plaintiff satisfies the statutory requirement that the landlord reserve a right of re-entry.” See pp. 272-273.

Subsection descriptors are intended to be part of the revised statute.

46A:15-2. Eviction; residential premises that are owner-occupied or occupied by owner’s developmentally disabled family member; grounds

a. A tenant may be evicted from residential rental premises that are owner-occupied with not more than two rental units, or from a dwelling unit that is permanently occupied by a developmentally disabled member of the immediately family of the unit owner or by a developmentally disabled member on whose behalf the dwelling unit is held in a trust that is established by that member’s immediate family, upon establishment that:

(1) the tenant fails to pay rent that is due and owing in accordance with the lease or other agreement governing the tenancy; or

(2) the tenant holds over and continues in possession of any part of the rental premises after expiration of the lease; or

(3) the tenant is so disorderly as to destroy the peace and quiet of the landlord or the other tenants or occupants living in the rental premises or surrounding neighborhood; or

(4) the tenant, willfully or by reason of gross negligence, destroys or damages or causes or allows destruction or damage to the rental premises or the real property in which there are the rental premises; or

(5) the tenant continues, after service of a written notice to cease:

(A) to habitually and without legal justification pay rent after the date that it is due; or

(B) to substantially violate the landlord's rules and regulations governing the rental premises, provided such rules have been accepted in writing by the tenant or are made a part of the lease at the beginning of the lease term; or

(C) to substantially violate or breach any of the covenants or agreements contained in the lease where sufficient language in the lease conveys that the violation or breach of the covenant or agreement allows the landlord to seek a termination of the lease, eviction of the tenant and a return of possession of the rental premises, provided that the covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term; or

(D) to engage in any conduct that will create, if it continues, an imminent serious danger to others, to the building, or to the immediate vicinity of the rental premises; or

(6) the tenant is convicted of or pleads guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under, any of the criminal statutes set forth in (A), (B) (C), (D) or (E) below, provided that no action for eviction may be brought, pursuant to subsections c. (1) (A) (B) or (C), more than two years after the date of adjudication or conviction or more than two years after the person's release from incarceration, whichever is later:

(A) the Comprehensive Drug Reform Act of 1987, N.J.S. 2C:35-1 *et seq.* involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act in or on the rental premises, or the building and land appurtenant thereto or the mobile home park in which the rental premises are located, and has not, in connection with the sentence for that offense, either successfully completed, or been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to N.J.S. 2C:35-14; or

(B) N.J.S. 2C:12-1 or N.J.S. 2C:12-3 involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or

(C) subsection b. of N.J.S. 2C:12-1 involving aggravated assault against one or more other tenants residing in the same building or complex; or

(D) N.J.S. 2C:20-1 *et seq.*, involving the theft of property from the landlord, the rental premises, or other tenants residing in the same building or complex; or

(E) any other crime involving intentional creation of an imminent serious danger to others, to the building, or to the immediate vicinity of the rental premises; or

(7) the tenant knowingly harbors or harbored a person convicted of or who pleads guilty to any offense set forth in subsection (6), or otherwise permits or permitted such person to occupy the premises for residential purposes, whether continuously or intermittently, except that

this subsection shall not be applicable to the harboring of or permitting occupancy by a juvenile who has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under N.J.S. 2C:35-1 *et seq.* No action for eviction based on an offense under subsections (6) (A) (B) or (C) of this section may be brought more than two years after the adjudication or conviction or more than two years after the person's release from incarceration, whichever is later; or

(8) the tenant is found, by a preponderance of the evidence, liable in a civil action for eviction under this chapter based upon an offense set forth in subsection (6) (A), (B), (D) or (E), or if the tenant knowingly harbors a person who committed such an offense or otherwise permits the person to occupy the premises for residential purposes, whether continuously or intermittently, except that this subsection shall not be applicable to the harboring or permitting occupancy by a juvenile who has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under N.J.S. 2C:35-1 *et seq.*; or

(9) the tenant is found, by clear and convincing evidence, liable in a civil action for eviction under this chapter based upon the offense set forth in subsection (6) (C), or if the tenant knowingly harbors a person who committed such an offense or otherwise permits the person to occupy the premises for residential purposes, whether continuously or intermittently; or

(10) the tenant is found to have engaged in extraordinary conduct that (a) creates or is reasonably likely to create immediate injury or death to other tenants or occupants, or catastrophic destruction to the rental premises or the building; and (b) is so excessive or severe that the conduct having occurred even once instills fear or apprehension in a reasonable person; and (c) is not likely to be rectified by service of a notice to cease on the tenant responsible for the conduct; or

(11) the tenant knowingly gives false material information or omits material facts in an application for tenancy provided that the landlord proves that had the landlord known the truth, the landlord's consistent and lawful policy would have been to deny the lease. No eviction under this subsection may be commenced later than 90 days after the falsity or omission is discovered or one year after the application is received, whichever is earlier. This subsection shall not bar commencement of any other actions to which the landlord may be entitled under law; or

(12) the landlord conditioned the initial tenancy upon and in consideration for the tenant's employment by the landlord, and the employment is terminated; or

(13) the landlord or owner of residential rental premises covered by this section seeks to:

(A) permanently board up or demolish the rental premises because of having been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and eliminating the violations is economically unfeasible, in which case the owner shall comply with the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, or the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.*, as applicable; or

(B) comply with the local or State housing inspectors, after having been cited with substantial violations affecting the health and safety of tenants, where doing so without evicting the tenant is economically unfeasible, in which case simultaneously with service of notice of eviction pursuant to this subsection the landlord shall notify the Department of the intention to institute eviction proceedings and provide the Department with such other information as it

requires pursuant to rules and regulations, and the Department subsequently shall inform all appropriate parties and the court of its view with respect to the feasibility of compliance without eviction of the tenant and may, in its discretion, appear and present evidence, in which case the owner shall comply with the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, or the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.*, as applicable; or

(C) correct an illegal occupancy because of having been cited by local or State housing inspectors or zoning officers and doing so without evicting the tenant is unfeasible, in which case the owner shall comply with the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, or the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.*, or chapter 21 of this Title pertaining to displaced tenants, as applicable; or

(14) the lease is terminated by a tenant because of the imminent threat of serious physical harm from another tenant, in accordance with section 46A:8-3.1 through section 46A:8-3.7 pertaining to domestic violence, and any co-tenant remaining on the lease does not enter into a new lease with the landlord or hold over with permission of the landlord.

b. For the purposes of this section:

(1) “member of the immediate family” means a person’s spouse, civil union partner, domestic partner, parent, child or sibling, or the spouse, civil union partner, domestic partner, parent, child or sibling of any of them as applicable;

(2) “developmental disability” means any disability which is defined as such pursuant to N.J.S. 30:6D-3; and

(3) “permanently” occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant’s behalf.

Source: 2A:18-53; new.

COMMENT

This proposed section pertains to owner-occupied residential premises with no more than two rental units and residential premises that are occupied by developmentally disabled members of an owner’s family, two categories of residential rental premises that are currently excluded from the *Anti-Eviction Act*. The section adopts, with some modifications, the provisions of source section 2A:18-53 that pertain to certain residential premises not covered by current 2A:18-61.1 but adds some of the grounds in section 2A:18-61.1 that apply to all residential rental premises currently covered by the *Anti-Eviction Act*. In addition, the definitions of terms pertaining to the residential rental premises covered by source section 2A:18-53 (as discussed at the last paragraph of section 2A:18-61.1) are incorporated here.

Judge Mahlon L. Fast, Ret. suggested to the Commission that grounds under section 2A:18-61.1 pertaining to the tenant’s conduct, or fault, should also apply to residential tenants who are currently exempted from the *Anti-Eviction Act*. Such grounds are now included in this section as well as those other grounds for which a landlord would be able to evict under section 2A:18-61.1 before expiration of the lease.

Thus, the grounds from 2A:18-61.1 that have been added to this section are the grounds pertaining to criminal convictions (subsections n., o., p., and q.), the termination of a tenant’s employment where the tenancy has been conditioned upon such employment (2A:18-61.1m.), the habitual failure to pay rent on a timely basis (2A:18-61.1j.), and the provisions pertaining to health, building and zoning code violations (2A:18-61.1g. (1), (2) and (3)). The new ground pertaining to eviction from a tenancy terminated because of domestic violence has also been added here as have all of the new grounds now made part of section 46A:15-1.

As a result of the addition of grounds in this section, in some instances, greater protection is now given to the tenants covered by this section. Now a notice to cease is required before eviction may be commenced against a tenant covered by this section for habitual late rent payment or for a violation of the landlord's rules and regulations or for any lease violations. See subsection a. (5). In addition, by inclusion of the provisions pertaining to health, building and zoning code violations, tenants under this section now may obtain the benefits of relocation expenses as permitted under this chapter. See subsection a.(13).

The additions from source provision N.J.S. 2A:18-61.1 that are recommended to be added to this section are commonly considered "fault" grounds. "Fault grounds" permit a landlord to terminate a tenancy and commence an action for eviction during the duration of the tenancy. In addition, a landlord for which this section applies may commence an action to evict a tenant who is a "holdover" tenant, i.e., a tenant who remains in possession as a month-to-month tenant and thereafter is served with an appropriate notice to vacate. The eviction notice may also be served during the tenancy, to be effective upon termination of the tenancy (either the termination date of the lease or during a month-to-month tenancy, although the complaint for possession cannot be filed before the effective date of the notice.)

46A:15-3. Eviction; seasonal or vacation rental premises; grounds

A tenant may be evicted from any dwelling unit for a seasonal use or rental, as defined in chapter 1 of this Title, upon establishment that the tenant:

a. fails to pay rent that is due in accordance with the lease or other agreement governing the tenancy; or

b. holds over and continues in possession of any part of the premises after expiration of the lease; or

c. is so disorderly as to destroy the peace and quiet of the landlord or the other tenants or occupants living in the rental premises or surrounding neighborhood; or

d. willfully or by reason of gross negligence, destroys or damages or causes or allows destruction or damage to the rental premises or the real property in which there are the rental premises; or

e. substantially violates the landlord's rules and regulations governing the rental premises, provided such rules have been accepted in writing by the tenant or are made a part of the lease at the beginning of the lease term; or

f. substantially violates or breaches any of the covenants or agreements contained in the lease where sufficient language in the lease conveys that the violation or breach of the covenant or agreement allows the landlord to seek a termination of the lease, eviction of the tenant and a return of possession of the rental premises, provided that the covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term; or

g. uses the rental premises in violation of State or federal law or municipal ordinance; or

h. is found to have engaged in extraordinary conduct that (1) creates or is reasonably likely to create immediate injury or death to other tenants or occupants, or catastrophic destruction to the rental premises or the building; and (2) is so excessive or severe that the conduct having occurred even once instills fear or apprehension in a reasonable person; and (3) is not likely to be rectified by service of a notice to cease on the tenant responsible for the conduct ; or

i. knowingly gives false material information or omits material facts in an application for tenancy provided that the landlord proves that had the landlord known the truth, the landlord's

consistent and lawful policy would have been to deny the lease. No eviction under this subsection may be commenced later than 10 days after the falsity or omission is discovered. This subsection shall not bar commencement of any other actions to which the landlord may be entitled under law.

Source: New.

COMMENT

The *Anti-Eviction Act* (2A:18-61.1 et seq.) exempts from its application tenants in hotels, motels or guest houses rented to transient guests or seasonal tenants. However, new section 46A:15-3 pertains to any tenant who rents a vacation dwelling unit for a “seasonal use or rental” as defined in chapter 1 of this Title, whether located in a hotel, motel or guest house that rents to seasonal tenants or in an apartment building or in owner-occupied rental premises with not more than two rental units. “Seasonal use” for this purpose is not the same as transient guest use, which use is not covered by this or any other provisions of the eviction article. See, new section 46A:14-3 which clarifies that the eviction article does not apply to transient guests.

Since the Legislature intended the *Anti-Eviction Act* to remedy arbitrary and unfair ousters of residential tenants from their usual housing at a time of a critical shortage of rental housing, the Commission determined that residential tenants who are renting for a relatively short duration (125 consecutive days), for vacation purposes, and who have a permanent residence elsewhere, should not be treated in the same way as residential tenants covered by the current *Anti-Eviction Act*. The grounds set forth in this section are more limited than those in the current *Anti-Eviction Act*, and more akin to the grounds for a summary dispossession action under current law.

The section adopts, with some modifications, the provisions of section 2A:18-53 that pertain to nonresidential premises and certain residential premises not covered by current 2A:18-61.1. Because of the short time frame for seasonal tenancies, the 90-day discovery rule modeled after section 46A:15-1 a.(11) (it appears here in subsection i.) has been reduced to 10 days.

46A:15-4. Eviction; nonresidential rental premises; grounds

A tenant may be evicted from nonresidential rental premises upon establishment that the tenant:

- a. holds over and continues in possession of any part of the premises after expiration of the lease; or
- b. fails to pay rent that is due in accordance with the lease or other agreement governing the tenancy; or
- c. habitually and without legal justification pays rent after the date that it is due; or
- d. willfully or by reason of gross negligence destroys or damages, or causes or allows the destruction or damage to the rental premises or the real property in which there are the rental premises; or
- e. substantially violates the landlord’s rules and regulations governing the premises that are accepted in writing by the tenant or made a part of the lease by the landlord either before or after the lease is signed or agreed to; or
- f. materially breaches or violates any covenant or agreement contained in the lease, where language in the lease states that the violation or breach of the covenant or agreement allows the landlord to terminate the lease and evict the tenant; or
- g. is so disorderly as to destroy the peace and quiet of the landlord or the other tenants or occupants at the rental premises; or

h. uses the rental premises in violation of State or federal law or municipal ordinance; or

i. is found to have engaged in extraordinary conduct that: (1) creates or is reasonably likely to create immediate injury or death to other tenants or occupants, or catastrophic destruction to the rental premises or the building; and (2) is so excessive or severe that the conduct having occurred even once instills fear or apprehension in a reasonable person; and (3) is not likely to be rectified by service of a notice to cease on the tenant responsible for the conduct; or

j. knowingly gives false material information or omits material facts in an application for tenancy provided that the landlord proves that had the landlord known the truth, the landlord's consistent and lawful policy would have been to deny the lease. No eviction under this subsection may be commenced later than 90 days after the falsity or omission is discovered or one year after the application is received, whichever is earlier. This subsection shall not bar commencement of any other actions to which the landlord may be entitled under law.

Source: 2A:18-53.

COMMENT

This proposed section adopts, with some modifications, the provisions of source section 2A:18-53 that pertain to the eviction of tenants from all nonresidential rental premises.

Notably, the term "eviction" is used in this new section (rather than removal) as it is used throughout this chapter. However, the concept of a "holdover" tenant is retained here, as it is throughout this chapter, since the concept is meaningful for legal precedent in this area.

New grounds for eviction have been added. Habitual late payment of rent (subsection c.) is now a ground for eviction under this section. Subsection h. is derived from the criminal conviction grounds for eviction from residential rental premises (see section 46A:15-1a.(5)) but broadens the language, focusing on the use of the premises to violate the laws, rather than on the unlawful conduct of the user. Subsection g. adopts current law. Also, the addition of the word "substantially" to subsections e. and f. reflects recent Appellate Division decisions that held, in a commercial tenancy, that a material breach was required to warrant the forfeiture of the defendant's leasehold interest. See *Wedgewood Properties, LLC v. Latif II International, LLC*, 2007 WL 2050264 (App. Div. 2007) (unreported) and *Mandia v. Applegate*, 310 N.J. Super. 435, 449 (App Div. 1998), both cited in *Landlord – Tenant and Related Issues in the Superior Court of New Jersey* (3rd Ed. 2008), at p. 62, Mahlon L. Fast, J.S.C., Ret.

Subsections i. and j. mirror the new grounds for eviction added to section 46A:15-5.1a.(10) and a. (11); 46A:15-5.2 a. (10) and (11); and 46A:15-5.3 h. and i.

46A:15-5. Mobile home parks; eviction for signage precluded

No mobile home park owner or operator may evict a mobile home resident for posting in or on a mobile home a "for sale" sign or similar notice of the private sale of the mobile home notwithstanding a lease provision or rule or regulation to the contrary. Nor may a mobile home park owner or operator prohibit or unreasonably restrict such posting by any means, including but not limited to, rules and regulations of the mobile home park, or a written lease or other agreement between the park owner or operator and mobile home resident.

Source: 2A:18-61.3a.

COMMENT

This section adopts the provisions of source section 2A:18-61.3a. with modifications in language.

46A:15-6. Eviction due to eminent domain, code or zoning enforcement; relocation assistance mandatory

Notwithstanding any other provision of this article, a landlord may not evict a tenant from any residential rental premises based upon a proceeding, pursuant to eminent domain or code or zoning enforcement laws, unless the landlord complies with applicable State and federal relocation laws including but not limited to the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, or the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.*, or section 46A:21-6 of this Title pertaining to displaced tenants.

Source: 2A:18-61.3.

COMMENT

This section adopts the provisions of subsection b. (3) of source section 2A:18-61.3 pertaining to eviction by pursuant to eminent domain or code or zoning enforcement laws, with some modifications in language.

The remaining current statutory language has been deleted as either unnecessary or otherwise covered in other sections of the proposed Title. Subsection a. of the source statute now appears at new section 46A:14-6. Subsections b. (1) and (2) of the source statute are now incorporated into the definitions in section 46A:14-2.

46A:15-7. Eviction for foreclosure of mortgage secured by residential rental premises precluded

The foreclosure of a mortgage secured by residential rental premises or by real property on which there are residential rental premises is not a ground for eviction from the rental premises.

Source: New.

COMMENT

This section is new but reflects amendments made to the *Anti-Eviction Act* because of the determination made by the Supreme Court in *Chase Manhattan Bank v. Josephson*, 135 N.J. 209 (1994). This section also was added because of the enactment of the *New Jersey Foreclosure Fairness Act*, which imposes additional foreclosure notice requirements and amends certain provisions of the *Mortgage Stabilization and Relief Act*, P.L. 2008, c.127 (N.J.S. 55:14K-82 *et seq.*). The act requires persons taking title to residential properties in which there are one or more dwelling units occupied by residential tenants, as a result of a sheriff's sale or a deed in lieu of foreclosure, to provide written notice, in both English and Spanish, to any tenants at the property informing them that ownership has changed and that the tenants are not required to vacate the premises because of the foreclosure. Additional requirements are imposed.

CHAPTER 16: NOTICES; SUFFICIENCY; FORM; SERVICE; WHEN REQUIRED

46A:16-1. Notice to cease

a. In order to commence an eviction action under subsection b. of section 46A:15-1 or subsection a. (5) of 46A:15-2, a notice to cease shall first be served on the tenant.

b. A "notice to cease" means a written notice that clearly warns the tenant to cease or stop the conduct or correct the failure to act specified in the notice within a reasonable time as stated.

c. The notice to cease shall:

(1) identify the lease provision, or statutory section or regulatory provision (if there is no written lease), alleged to have been violated;

(2) specify in detail the nature and approximate date of any act and conduct alleged to have caused the violation;

(3) set forth in detail what the tenant must do in order to comply with the notice to cease;

(4) set forth in detail what will occur if the tenant fails to comply with the notice to cease;
and

(5) be served in accordance with sections 46A:16-5 and 46A:16-6.

d. Any form of notice that complies with subsection c. may be used. However, use of the model form of notice set forth below shall satisfy the formal requirements of this section.

NOTICE TO CEASE

TO: *[insert name and mailing address of tenant]*

1. PRESENT LEASE. You now rent apartment or unit number (or lot number in a manufactured housing community site) *[fill in number]*, at *[fill in address of rental premises]* as tenant.

2. WHAT MUST CEASE. You have acted in violation of the law or your lease *[specify lease provision, statutory section or regulatory provision, if applicable]* by *[specify in detail the nature and approximate date of acts.]* YOU MUST CEASE OR STOP THIS CONDUCT. *[or YOU MUST CORRECT THIS CONDUCT BY [fill in what tenant must do to cure or correct the violating conduct.]]*

3. WHAT HAPPENS IF YOU DO NOT CEASE. If you do not take the action required by paragraph 2 above, within a reasonable time period from the date of this notice, then, your landlord, may serve you with a notice to terminate and demand for possession of your rental premises, and then commence a civil action to terminate your tenancy/lease and recover possession of the rental premises in accordance with New Jersey Law, specifically the eviction article of Title 46A. This means that legal action may be commenced to evict you from the rental premises. This legal action is called an eviction.

DATED: BY

Name and Address of Landlord or
Landlord's Authorized Representative

Source: New.

COMMENT

This section is new and sets forth the meaning of and language required for a notice to cease. A model form of notice to cease is also suggested. The service requirements for this type of notice are set forth in sections 46A:16-5 and 46A:16-6. See comment to section 46A:16-2 for an explanation of all new notice provisions.

46A:16-2. Notice to vacate and demand for possession

a. Except as provided in subsections b. or g. of this section, in order to commence an eviction action under any ground for eviction, a notice to vacate and demand for possession shall be served on a tenant. Where a notice to cease is required to be served, the notice to vacate and demand for possession shall not be served until after the notice to cease has been served and a reasonable period for compliance has expired.

b. No notice to vacate and demand for possession shall be required to be served in order to commence an action alleging any of the following grounds for eviction:

(1) nonpayment of rent or nonpayment of an increase in rent; or

(2) convictions for theft of property or knowingly harboring a person convicted of theft of property; or

(3) termination of the lease by the tenant because of domestic violence; or

(4) nonrenewal of a lease by a landlord because of a violation of chapter 10 pertaining to domesticated animals in senior citizen housing projects, where the tenant, at the expiration of the lease, refuses to vacate the rental premises.

c. A “notice to vacate and demand for possession” means a written notice that advises the tenant that the landlord deems the tenancy terminated for the reasons specified, and demands that the tenant leave and deliver possession of the rental premises to the landlord.

d. The notice to vacate and demand for possession shall:

(1) specify in detail the reason for the termination of the tenancy;

(2) set forth the date that the tenancy is deemed terminated and by which the tenant must leave the rental premises and turn over possession of the premises to the landlord;

(3) be served in accordance with sections 46A:16-5 and 46A:16-6;

(4) comply with any other applicable State or federal law or regulations, including but not limited to public housing laws or municipal ordinances; and

(5) comply with the lease or other agreement governing the tenancy.

e. Any form of notice that complies with subsection d. may be used. However, use of the model form of notice set forth below shall satisfy the formal requirements of this section.

NOTICE TO VACATE AND DEMAND FOR POSSESSION

TO: *[insert name and mailing address of tenant]*

1. PRESENT LEASE. You now rent apartment or unit number (or lot number in a manufactured housing community site) *[fill in number]*, at *[fill in address of rental premises]* as tenant.

2. TERMINATION OF LEASE. Your lease is considered to be terminated (ended) by the landlord as of *[fill in date]*.

3. DEMAND FOR POSSESSION. You must leave and vacate this rental property (or remove your manufactured housing from the rental property) on or before the date of termination noted in paragraph 2 above *[or fill in other date consistent with statute]*. This means you must move out and deliver possession of the rental premises to me, your landlord, by this date.

4. GROUNDS FOR TERMINATION. You have violated your lease or the law for which your landlord may terminate your lease and recover possession of the rental premises in accordance with New Jersey Law, specifically the eviction article of Title 46A.

Specifically, on and after *[fill in date]*, you *[specify in detail the nature of acts, including statutory provision, if known, and lease provision (if applicable)]*.

You have also failed to [fill in any additional violations, specify in detail the nature of acts, including statutory provision, if known, and lease provision (if applicable).]

[Copies of any notices to cease required to be served on the tenant shall be attached to this notice.]

5. TENANT'S RESPONSIBILITIES AND LANDLORD'S RIGHTS. You must make arrangements to move and return your keys to the landlord. If you fail to do so, legal action will be commenced to evict you from the rental premises. This legal action is called an eviction. You must leave the rental premises in broom clean condition and remove all of your personal belongings from the rental premises, in accordance with New Jersey Law. The landlord may also seek, in a separate action, to hold you liable for all rent that you may owe up to the time of eviction and possibly until the end of the lease, as well as court costs and attorneys' fees incurred as permitted by law or your lease. However, you have the right to defend against the eviction in court and if you win in that action, you will not have to move.

6. ANY ADDITIONAL LEASE REQUIREMENTS FOR NOTICE TO TENANT: [Set forth any additional notice requirements contained in the lease or other agreement governing the tenancy.]

[7. ONLY IF APPLICABLE: Set forth any additional requirements imposed by State or federal laws or regulations, such as if the tenancy is public assisted housing.]

DATED: BY
Name and Address of Landlord or
Landlord's Representative

f. If the ground for eviction is an illegal occupancy, in addition to compliance with the requirements of subsection d. of this section, the notice shall state the nature of the illegality or unlawful condition and provide the tenant additional notice of the requirements set forth in chapter 21 of this Title pertaining to the relocation of displaced tenants.

g. If the ground for eviction is any of the following, then a notice to vacate shall not be required to be served on the tenant; however, a demand for possession that sets forth the date by which the tenant must leave and turn over possession of the rental premises to the landlord and that complies with subsection d. (1), (3) and (5) of this section, shall be served:

(1) where a tenant holds over and continues in possession under section 46A:15-2 a. (2), or under section 46A:15-3 b. pertaining to seasonal rental premises, after expiration of a nonrenewable residential lease of a fixed duration; or

(2) where a tenant holds over and continues in possession under section 46A:15-4 a. pertaining to nonresidential rental premises.

Source: 2A:18-56; 2A:18-61.1; 2A:18-61.2; new.

COMMENT

This section, and sections 46A:16-1 and 46A:16-3, are derived from source provisions. Current statutes do not describe the notices required to evict or provide forms of these notices. To address these concerns, proposed sections 46A:16-1, 46A:16-2, 46A:16-3 and 46A:16-4 set forth the meaning of each notice, set forth the required elements for each notice, provide a model form of each notice (although any form that complies with the stated requirements of each notice shall suffice for purposes of the statute). The service requirements for each notice are set forth in section 46A:16-6.

Section 46A:16-2, which addresses notices to vacate and demand for possession, merges two current provisions: section 2A:18-56, pertaining to notices to quit (now notices to vacate) for nonresidential and residential rental premises that are currently exempt from the *Anti-Eviction Act* (and in the revision, limited to owner-occupied with not more than two rental units or occupied by a developmentally disabled family member of the owner) and

section 2A:18-61.2, pertaining to demands for possession for residential rental premises. Current language is modified significantly.

If a notice to cease was served on a tenant, and the basis for the eviction of the tenant is the tenant's failure to cease the conduct so noticed, then the notice to vacate should also specify how and when the tenant has continued to engage in the offending conduct. See *Sangiuliano v. Walker*, 2011 WL 5299591 (N.J.Super. 2011).

Consistent with the updating of other statutory language, the term "notice to quit" has been changed to "notice to vacate". The proposed statute combines the demand for possession and notice to vacate in one document, which reflects current eviction practice. However, a notice to vacate is not required in the case of a tenant "at sufferance" (the archaic term is no longer used in the proposed revision), i.e., a holdover tenant who commences the tenancy in accordance with a nonrenewable lease of a fixed term but thereafter continues in possession without the permission of the landlord. See subsection f. Hence, a demand for possession served on such a tenant does not include a notice to vacate. See *Mintz v. Metropolitan Life Insurance Company*, 153 N.J.Super. 329 (D. Ct. 1977) (tenants under renewable leases might be said to have expectancy of continued occupancy and thus are entitled to sufficient notice before being removed; but where a tenant enters into a fixed-term, nonrenewable lease, the tenant has implicitly bargained for a limited possession and has no expectancy beyond that limited possession. There is no reason for the law to protect from what "is merely the natural termination of his contract".)

At the suggestion of commenters, a notice to quit (now called notice to vacate) is no longer required in order to increase rent for a residential holdover tenant at the end of the lease term. Under this revised provision, if the landlord seeks a rent increase from the tenant, the landlord need not first terminate the tenancy by serving a notice to vacate. Instead, the landlord serves a "notice of rent increase" which makes clear to the tenant that the tenancy continues subject to payment of a lawful rent increase.

Parties to a lease for nonresidential rental premises or residential rental premises exempted from the good cause for eviction standards under current section 2A:18-53, unlike residential rental premises (see section 46A:15-4), may, subject to public policy limitations, contract by their lease for periods of notice of termination of tenancy that differ from those specified in the dispossession statute. See *Housing Authority of the City of Bayonne v. Isler*, 127 N.J. Super. 568, 572-573 (App. Div. 1974); *Pennsylvania Railroad Co. v. L. Albert & Son, Inc.*, 26 N.J. Super. 508 (App. Div.), *cert. denied*, 13 N.J. 361 (1953). This should not change as a result of the proposed revisions.

46A:16-3. Notice to increase rent

a. A landlord may not increase a residential tenant's rent at the expiration of the lease term without first serving a notice to increase rent. For the purposes of this section, a "residential tenant" means a tenant in rental premises covered by sections 46A:15-1 or 46A:15-2. If after service of the notice, the tenant fails to pay the increase in rent, no further notice is required prior to commencement of an action to evict the tenant.

b. A "notice to increase rent" means a written notice that advises the tenant that (1) the landlord will increase the rent in accordance with the lease, this article, and any other applicable law or municipal ordinances governing rent increases; and (2) if the tenant does not pay the new rent, the tenant may be evicted.

c. The notice to increase rent shall:

(1) specify the amount of the rent increase and the proposed new rent;

(2) explain that if the tenant pays the new rent, the provisions of the existing lease shall remain in effect, except the rent amount which shall be increased;

(3) explain that the tenant may contest the new rent amount, while continuing occupancy, if the tenant believes that the rent increase is unconscionable or in violation of a municipal rent control ordinance or federal regulation, and that if a court finds that the rent increase is not unconscionable, the tenant may continue in occupancy, under the same terms and conditions,

upon paying the increased rent but that if a court finds in favor of the landlord, and the tenant does not pay the increased rent, the tenant will be evicted from the rental premises and may be liable in a separate action for the landlord's costs of suit and attorneys' fees as permitted by law or the lease;

(4) set forth the date by which the tenant must leave the rental premises and turn over possession of the rental premises to the landlord if the tenant does any of the following:

(A) does not pay the rent increase; or

(B) does not contest the new rent amount; or

(C) does contest the new rent amount but the court finds the new rent amount to be reasonable and enters a judgment of possession and the tenant does not pay the new rent amount;

(5) be served in accordance with sections 46A:16-5 and 46A:16-6; and

(6) comply with any applicable rent control ordinance.

d. Any form of notice that complies with subsection c. may be used. However, use of the model form of notice set forth below shall satisfy the formal requirements of this section.

NOTICE TO INCREASE RENT

TO: *[insert name and mailing address of tenant]*

1. PRESENT LEASE. You now rent apartment or unit number (or lot number in a manufactured housing community site) *[fill in number]*, at *[fill in address of rental premises]* as tenant from *[fill in name]* as landlord.

2. PURPOSE OF THIS NOTICE. The purpose of this notice is to increase the rent for your tenancy. No other terms of your tenancy will be changed by this notice.

3. INCREASE IN RENT. This is to give you notice that, effective *[fill in date]*, the rent for the apartment or site [or rental premises] you now occupy at *[fill in address of rental premises]* will be increased from *[fill in current rent]* Dollars (\$) per month *[or other rental term]* to *[fill in new rent]* Dollars (\$), payable in advance on the *[fill in day]* of the month *[or other rental term]*. The amount of the increase in rent is *[fill in amount of increase]*.

4. PERMITTED BY LAW. The landlord believes this increase is permitted by law or the municipal rent ordinance *[if any]* *[or in accordance with the provisions of the appropriate board of [fill in municipality] [if applicable] [and in accordance with your lease, if applicable.]*

5. WHAT HAPPENS IF YOU PAY THE NEW RENT: If you pay the new rent at the time that your rent is due, your lease will continue and all other provisions of your lease will remain in effect.

6. WHAT HAPPENS IF YOU DO NOT PAY THE NEW RENT: If you:

(a) advise the landlord that you do not agree to pay the new rent when due, or

(b) do not advise the landlord but you do not pay the new rent when due; or

(c) advise the landlord that you will pay the new rent, but you do not pay the new rent when due, then the landlord may file a complaint to have you evicted.

If the landlord files a complaint to have you evicted, you will have the right to tell a judge in court why you believe that the new rent should not be paid. If the judge agrees with the landlord, you will have to pay the new rent or you may be evicted. If the judge agrees with you, and the complaint is dismissed, you will not have to pay the new rent and you may continue to stay in your *[apartment or site or rental premises]* according to the judge's decision, and all provisions of your lease will remain in effect.

You may object to the new rent on the ground that the rent increase is unconscionable, which means that the resulting amount of the rent is so great under all the circumstances as to shock the conscience of a reasonable person. You may also object to the new rent on the ground that the increase is in violation of the rent control law that applies to your municipality, or that the rent increase is in violation of State or federal law, or that the rent increase is in violation of a contract or agreement involving a State, federal or private agency or in violation of a contract or agreement between you and the landlord.

7. TENANT'S RESPONSIBILITIES AND LANDLORD'S RIGHTS IF THE JUDGE ORDERS EVICTION BECAUSE YOU DO NOT PAY THE NEW RENT. If the judge orders your eviction from the [*apartment or site or rental premises*], you must make arrangements to move and return your keys to the Landlord. You must leave the rental premises in broom clean condition and remove all of your personal belongings from the rental premises, in accordance with New Jersey Law. The landlord may also seek, in a separate action, to hold you liable for all court costs and attorneys' fees incurred as permitted by law or your lease. No further notice shall be required to be provided to you prior to commencement of an action to evict you other than a summons and complaint.

DATED: BY

Name and Address of Landlord or
Landlord's Representative

e. A notice to increase rent and a notice to change lease provisions (other than increasing rent) may be served in a single form of notice.

Source: New.

COMMENT

This section is new. See comment to section 46A:16-2 for an explanation of all new notice provisions.

Current law requires service of a notice to quit and notice offering a new tenancy at an increased rent whenever a landlord seeks to increase the rent of a month-to-month tenant (or a tenant whose otherwise longer term lease is expiring and thus is about to become a month-to-month tenant). See *Harry's Village, Inc. v. Egg Harbor Township*, 89 N.J. 576 (1982), (to increase the rent of a month-to-month tenant, the landlord must serve a notice to quit terminating the old tenancy and another notice offering a new tenancy at an increased rent.) At the suggestion of commenters, the Commission determined that this common practice was archaic and confusing to tenants. Accordingly, a notice to vacate and demand for possession, as now provided in 46A:16-2, shall not be required to be served whenever a notice to increase rent is served.

The proposed new notice to increase rent sets forth its singular purpose, in plain language, and is intended to provide a clear and easy method for increasing the tenant's rental obligation. Consistent with *Harry's Village, Inc.*, the landlord is required to serve the notice to increase rent whenever the landlord seeks a lawful increase, whether by the direction of a rent control board, or by the terms of the lease. However, if the tenant fails to pay the increase, the landlord may seek to evict the tenant for nonpayment of rent in accordance with the eviction article so long as the court is satisfied by due proof that the notice to increase rent has been served on the tenant in accordance with this section and satisfied that the new rent is not unconscionable.

Notably, under federal law, 60 days notice is required for a notice to increase the rent of a Section 8 tenant and other federally subsidized tenants. Other requirements may apply under federal law. Some municipal rent control laws also require more than 30 days notice of a rent increase.

Finally, at the suggestion of commenters, a new notice (and a proposed form of that notice) is included where the landlord seeks to make reasonable changes to lease provisions other than increasing rent. See section 46A:16-4. Commenters have also suggested that the statute permit both notices to be provided in a single form.

46A:16-4. Notice to change lease provisions (other than increasing rent)

a. A landlord may not make reasonable changes of substance to the terms and conditions of the lease (other than increasing rent) of a residential tenant at the expiration of the lease term,

without first serving a notice to change lease provisions (other than increasing rent). For the purposes of this section, a “residential tenant” means a tenant in rental premises covered by sections 46A:15-1 or 46A:15-2.

b. A “notice to change lease provisions (other than increasing rent)” means a written notice that advises the tenant that (1) the landlord will make reasonable changes of substance to the terms and conditions of the lease, other than rent, in accordance with this article and any other applicable law; and (2) if the tenant does not agree to the reasonable changes of substance to the terms and conditions of the lease, or refuses to sign a written lease or lease rider that contains the reasonable changes of substance to the terms and conditions, the tenant may be evicted.

c. The notice to change lease provisions (other than increasing rent) shall:

(1) specify the terms and conditions that are to be changed;

(2) specify the changes of substance that are to be made to the terms and conditions of the lease;

(3) explain that if the tenant signs a letter that specifies the changes, the tenant thereby agrees that the terms and conditions of the current lease shall remain in effect but for the specified changes, or that if the tenant signs a written lease or lease rider including the changes, the tenant thereby agrees to the new lease and the old lease is no longer in effect to the extent it is changed;

(4) set forth the date by which the tenant must leave the rental premises and turn over possession of the rental premises to the landlord if the tenant does not agree to the specified changes;

(5) explain that the tenant may contest the specified changes, while continuing occupancy, if the tenant believes that the changes are unreasonable, and that if a court finds that the specified changes are not reasonable, the tenant will not be required to leave the rental premises and turn over possession of the rental premises to the landlord. However, if the court finds that the specified changes are reasonable, the tenant will have to sign the lease or lease rider and agree to the changes if the tenant wants to remain. If the court finds in favor of the landlord, and the tenant does not agree to sign the proposed lease or lease rider with the changes, the tenant will be evicted from the rental premises and may be liable in a separate action for the landlord’s costs of suit and attorneys’ fees as permitted by law or the then current lease; and

(6) be served in accordance with sections 46A:16-5 and 46A:16-6.

d. Any form of notice that complies with subsection c. may be used. However, use of the model form of notice set forth below shall satisfy the formal requirements of this section.

NOTICE TO CHANGE LEASE PROVISIONS (OTHER THAN INCREASING RENT)

TO: *[insert name and mailing address of tenant]*

1. PRESENT LEASE. You now rent apartment (or unit) number (or lot number in a manufactured housing community site) *[fill in number]*, at *[fill in address of rental premises]* as tenant from *[fill in name]* as landlord.

2. PURPOSE OF THIS NOTICE. The purpose of this notice is to change the terms and conditions of your lease as set forth in section 3.

3. PROPOSED CHANGES TO LEASE TERMS AND CONDITIONS This is to give you notice that, effective [fill in date], the lease for the apartment or rental premises or site you now occupy at [fill in address of rental premises] will be changed. Specifically, the following current terms and conditions of your lease will be changed or added [specify in detail the terms and conditions that will be changed or added.] The new lease terms and conditions will be: [specify in detail the new terms and conditions.] No other provisions of your lease will be changed.

4. WHAT TO DO IF YOU AGREE TO THE CHANGES: If you agree to the new terms and conditions of the lease specified in this notice, you should sign the letter attached to this notice [or the written lease or lease rider which includes the changes specified in section 3.] and return the letter [or the signed lease or lease rider] to the landlord. If you agree to the new terms and conditions by signing the letter or the new written lease or lease rider, the new lease terms and conditions will become effective and you may continue to stay in the apartment or rental premises or at the site subject to the new terms and conditions.

5. WHAT HAPPENS IF YOU OBJECT TO THE NEW TERMS AND CONDITIONS: If you object to the new terms and conditions specified in this notice, or if you agree to some but not all of the new terms and conditions, in accordance with paragraph 3 above, and do not sign the letter attached to this notice [or the written lease or lease rider which includes the changes specified in section 3], or if you do nothing in response to this notice, then the landlord may serve you with a notice to vacate and demand for possession of your rental premises, and then file a complaint to have you evicted.

If the landlord files a complaint to have you evicted, you will have the right to tell a judge in court why you believe that the proposed changes or additions are not reasonable. If the judge agrees with the landlord, you will have to sign the lease with the new terms and conditions that the judge finds are reasonable, or a letter that specifies the new terms and conditions, or you may be evicted. If the judge agrees with you, and the complaint is dismissed, you will not have to sign a new lease or a letter that specifies the new terms and conditions, and you may continue to stay in your [apartment or rental premises or site] and all provisions of your current lease will remain in effect.

6. TENANT’S RESPONSIBILITIES AND LANDLORD’S RIGHTS IF THE JUDGE ORDERS EVICTION BECAUSE YOU DO NOT AGREE TO REASONABLE CHANGES TO THE LEASE. If the judge orders your eviction from the [apartment or rental premises or site], you must make arrangements to move and return your keys to the Landlord. You must leave the rental premises in broom clean condition and remove all of your personal belongings from the rental premises, in accordance with New Jersey Law. The landlord may also seek, in a separate action, to hold you liable for all court costs and attorneys’ fees incurred as permitted by law or your lease.

DATED: BY

Name and Address of Landlord or Landlord’s Representative

e. A notice to change lease provisions (other than increasing rent) and a notice to increase rent may be served in a single form of notice.

Source: New.

COMMENT

This section is new and sets forth the meaning of and language required for a notice to change lease provisions (other than increasing rent). The service requirements for this type of notice are also set forth in sections 46A:16-5 and 16-6. See the Comment to section 46A:16-2 for an explanation of all new notice provisions.

46A:16-5. Notices required; service; substituted service

a. In the case of residential rental premises, the notices required by this article shall be served, in accordance with the time frames set forth in section 46A:16-6:

- (1) personally upon the tenant or upon the person in possession, or

(2) by leaving a copy at the tenant's or person's usual place of abode if other than the subject premises, with a member of that person's family above 14 years of age, or

(3) by simultaneous certified mail, return receipt requested, and regular mail.

b. For the purposes of this section, "residential rental premises", mean rental premises under sections 46A:15-1, 46A:15-2, or 46A:15-3.

c. In the case of nonresidential rental premises, the notice to vacate and demand for possession shall be served in accordance with the lease. If the lease does not provide a method of service, or if there is no written lease, then the notice shall be served, in accordance with the time frames set forth in section 46A:16-6:

(1) personally upon the tenant, or

(2) by leaving a copy at the rental premises with an employee or representative of the tenant above 14 years of age, or

(3) by simultaneous certified mail, return receipt requested, and regular mail.

d. Any notice that cannot be served as provided in subsection a. or c. after good faith effort to do so may be served by posting or affixing a copy of the notice upon the door or other conspicuous part of the subject premises, which shall be deemed sufficient service.

e. If a court finds that a person actually received a notice within the time required and in sufficient form as provided in this article, even though the manner of service did not comply with the requirements of this section, service of the notice shall be deemed valid.

Source: 2A:18-54; 2A:18-61.2; new.

COMMENT

This section adopts the provisions of source sections 2A:18-54 and the last unnumbered paragraph of 2A:18-61.2 with some modifications in language. With regard to subsection c., see *Ivy Hill Park Apartments v. GNB Parking Corporation*, 236 N.J.Super.565 (Law Div. 1989), *aff'd*, 237 N.J.Super. 1 (App. Div. 1989), where the court determined that "[a] lease may provide for a different manner and time period of service than contemplated by [statute.]" (p. 572). In *Ivy*, the lease permitted the landlord to send notices to the tenant by certified mail at its business address. In the lease the tenant designated the business address as "c/o" its attorney. In confirming that service to the attorney had been proper service on the tenant, the court determined that "[h]ad the tenant wished that notices be sent elsewhere, it could have given a different address than the one contained in the lease." Pp. 571-572.

The only notice that is required by this chapter with regard to the eviction from nonresidential rental premises is the notice to vacate and demand for possession.

Subsection e. is new and added in response to the suggestion of Mahlon L. Fast, J.S.C. Ret. and author of *Landlord – Tenant and Related Issues in the Superior Court of New Jersey* (3rd Ed. 2008). This change is consistent with current case law. See *Sinha v. Fruchtman*, 2011 WL 3611337 (App. Div. 2011) (per curiam) (unreported) in which the court determined that due process was satisfied where the tenant had conceded that the notice to quit and demand for possession had been received but argued that the notice was required to be personally served. The court concluded that the notice's "contents satisfied the requisite specificity required by the Act, and Fruchtman's actual receipt fulfilled due process." Also see *I.S. Smick Lumber v. Hubschmidt*, 177 N.J.Super. 131, 136 (Law Div. 1981), *aff'd per curiam* 182 N.J. Super. 306 (App. Div. 1982), holding that "[t]o ignore the fact that a person has been given actual and concrete notice of an event merely because such notice did not conform to technical procedures not only flies in the face of common sense, it is precisely the type of labyrinthine misconception which brings the legal system into disrepute among laymen. . . . A bell cannot be unringed, knowledge cannot be erased, and actual notice is or ought to be the best notice unless either the English language or the law of common sense be repealed." Accord, *Van Orden v. Township of Wyckoff*, 22 N.J.Tax 31, 37 (2005) ("Where it is undisputed that actual notice has been

given by ordinary mail, that purpose is equally satisfied, and invalidation of an action for defective notice is empty formalism.”); *Roland-Leopold v. Khoury*, 304 N.J. Super. 372 (Law Div. 1997).

Subsection e. also comports with the equitable doctrine of substantial compliance as articulated by the New Jersey Supreme Court in *Galik v. Clara Maass Medical Center*, 167 N.J. 341, 352 (2001). There the court explained that the doctrine, which has been applied by New Jersey courts in varied contexts, is intended to “avoid the harsh consequences that flow from technically inadequate actions that nonetheless meet a statute’s underlying purpose. It is a doctrine based on justice and fairness, designed to avoid technical rejection of legitimate claims.”

See also *Ivy Hill Park, Section III, Inc. v. Abutidze*, 371 N.J. Super. 103, 113 (App. Div. 2004) in which the court determined, with regard to the service of a notice to cease, that “[r]equiring that the landlord prove actual service, as a jurisdictional prerequisite, would not further any of the goals of the statute. Moreover, it would effectively transform a statute designed to provide a speedy and efficient mechanism for determining rights to possession into one in which judges were routinely required to try disputes relating to service.”

46A:16-6. Time periods for service of notices

a. Notice to cease.

A notice to cease, when required pursuant to subsection b. of 46A:15-1 or subsection a. (5) of 46A:15-2, shall be served within a reasonable time under all the circumstances after the occurrence of the prohibited conduct described in the notice and before tenant’s compliance with the notice is sought. If the notice to cease has been served and the conduct prohibited by the notice to cease is not thereafter cured or corrected within a reasonable time, only then may a notice to vacate and demand for possession be served.

b. Notice to vacate and demand for possession.

A notice to vacate and demand for possession shall be served prior to commencement of an action alleging a ground for eviction in accordance with the following time periods:

(1) at least three days for:

(A) willful or grossly negligent destruction or damage to the premises under subsection a.(3) of 46A:15-1 or subsection a. (4) of 46A:15-2; or

(B) destroying the peace and quiet of other tenants under subsection b.(2) of 46A:15-1 after a notice to cease has already been served or destroying the peace and quiet of other tenants under subsection a. (3) of 46A:15-2 without the prior service of a notice to cease; or

(C) termination of employment upon which the tenancy is conditioned under subsection e. of 46A:15-1 or subsection a. (12) of 46A:15-2; or

(D) conviction of a criminal offense under subsections a.(5) (A), (B), (C) , (D) or (E) of 46A:15-1 or subsections a. (6) (A), (B), (C), (D) or (E) of 46A:15-2; or knowingly harboring or permitting occupancy under subsection a. (6) of 46A:15-1 or subsection a. (7) of 46A:15-2 as those sections pertain to subsections a. (5)(A), (B), (C), (D) or (E) of 46A:15-1 or a. (6) (A), (B), (C), (D) or (E) of 46A:15- 2 respectively; or

(E) liability in a civil action for eviction under subsections a.(7) or (8) of 46A:15-1 or subsections a. (8) or (9) of 46A:15-2; or

(F) engaging in extraordinary conduct that creates or is reasonably likely to create immediate injury or death, or catastrophic destruction to property under subsection a.(10). of 46A:15-1 or subsection a.(10) of 46A:15-2; or

(G) any ground for eviction under sections 46A:15-3 or 46A:15-4;

(2) at least one month for:

(A) substantial violation or breach of the landlord's rules and regulations, after a notice to cease has been served, under subsection b. (3) of 46A:15-1 or subsection a. (5) (B) of 46A:15-2; or

(B) substantial violation or breach of the covenants or agreements contained in the lease, after a notice to cease has been served, under subsection b. (4) of 46A:15-1 or subsection a. (5) (C) of 46A:15-2; or

(C) refusal to accept reasonable changes of substance to the terms and conditions of the lease under subsection a. (4) of 46A:15-1; or

(D) illegal occupancy under subsection c. (3) of 46A:15-1 or subsection a. (13) (C) of 46A:15-2; or

(E) knowingly giving false material information or omitting material facts in a tenancy application under subsection a.(11) of 46A:15-1 or subsection a.(11) of 46A:15-2;

(3) at least two months for:

Personal occupancy of the rental premises under subsection g. of 46A:15-1, provided that where there is a written lease in effect, the eviction action shall not be commenced until expiration of the lease;

(4) at least three months for:

Housing, health or safety code violations under subsection c. (1), (2) or (4) of 46A:15-1 or under subsection a. (13)(A) or (B) of 46A:15-2. In addition to compliance with the requirements of section 46A:16-2, the notice shall state the nature of the code violation and provide the tenant additional notice of the requirements set forth in the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, or in the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.* pertaining to the relocation of displaced tenants;

(5) at least eighteen months for:

Permanent retirement of the building or mobile home under subsection d. of 46A:15-1, provided that where there is a written lease in effect, the eviction action shall not be commenced until expiration of the lease. In addition to compliance with the requirements of section 46A:16-2, the notice shall state the proposed nonresidential use to which the premises are to be permanently retired;

(6) at least three years for:

Conversion of the rental premises under subsection f. of 46A:15-1, provided that where there is a written lease in effect, the eviction action shall not be commenced until expiration of the lease;

(7) the period required in accordance with federal regulations pertaining to public housing leases, in an eviction action alleging substantial breach of contract under subsection a.(9) of 46A:15-1;

(8) if the lease is for a period other than at will, from year to year, or from month to month, and does not terminate by its own terms upon a fixed date, at least the amount of time equal to one term of the lease for:

Holding over and continuing in possession under subsection a. (2) of 46A:15-2, or subsection a. of 46A:15-4;

(9) if the lease is for a period that is at will, from year to year, or from month to month, then at least one month for:

Holding over and continuing in possession under subsection a. (2) of 46A:15-2, or subsection a. of 46A:15-4;

(10) if the lease is for a dwelling unit for seasonal use or rental under subsection b. of 46A:15-3, and the lease is renewable:

(A) if the initial lease period is for thirty days or less, at least ten days for holding over and continuing in possession; or

(B) if the initial lease period is for 60 days to 125 days, at least thirty days for holding over and continuing in possession.

(11) at least one month for any other ground for eviction from residential rental premises not already covered by this section.

c. Demand for possession only.

Where only a demand for possession is required to be served under subsection g. of 46A:16-2, the demand for possession that sets forth the date by which the tenant must leave the rental premises and turn over possession of the premises to the landlord shall be served at any time prior to commencement of the action for eviction.

d. Notice to increase rent.

A notice to increase rent shall be served at least one month prior to expiration of the lease, or within the time frame stated in the lease, or within the time frame stated in any applicable municipal rent control law or federal law, whichever is longer. If, thereafter, the tenant fails to pay the new rent, no further notice is required prior to commencement of an action to evict the tenant on that ground.

e. Notice to change lease provisions (other than increasing rent).

A notice to change lease provisions (other than increasing rent) shall be served at least one month prior to expiration of the lease or within the time frame permitted by the current lease, whichever is longer. If the notice to change lease provisions (other than increasing rent) has been served and the tenant does not agree to the changes as specified in the notice or otherwise notify the landlord of any objection to the changes, or the tenant does not sign a written lease which includes the changes specified in the notice, only then may a notice to vacate and demand for possession be served upon the tenant. If the notice to change lease provisions is served along with a notice to increase rent, in one single form, then the single-form notice shall comply with the time requirements of subsection d. of this section.

Source: 2A:18-61.1; 2A:18-61.2; 2A:18-53; 2A:18-56; new.

COMMENT

This section is new although based on source statutes N.J.S. 2A:18-61.1, N.J.S. 2A:18-61.2 (*Anti Eviction Act*), N.J.S. 2A:18-53 and N.J.S. 2A:18-56 (*Summary Dispossess Act*). Current law does not set forth in a single place the time frames for the service of all notices; the time frames are both embedded in the text of the various grounds for eviction or summary dispossession and also set forth in separate provisions for eviction or summary dispossession. By placing the timeframes in a separate provision, the Commission believes the information will be more readily accessible to the reader.

Subsection a. is added to address concerns expressed by the court in *Brunswick Street Associates v. Gerard*, 357 N.J. Super. 598, 602 (Law Div. 2002) that the Legislature did not “prescribe any specific period for the interval between service of the notice to cease and the notice to quit.”

For those tenancies that are at will (which are tenancies that have no fixed duration), or from year to year, the three months’ notice provision for a notice to vacate for evictions based on holding over and continued possession under source section 2A:18-53, has been changed to one month.

In addition, for those new forms not in source provisions, appropriate time frames for service have been created based on the time periods used in case law and common practice. The subsection descriptors are intended to be part of the revised statute.

CHAPTER 17: JUDGMENTS FOR POSSESSION AND WARRANTS OF EVICTION; EXECUTION; JURISDICTION; REQUIREMENTS

46A:17-1. Notice to vacate and demand for possession; due proof of sufficiency required before judgment entered

Unless a court is satisfied by due proof that any notice required by this article, or any notice required by federal, State or local law, is sufficient and has been served in accordance with chapter 16 of this Title and, in the case of any other notice, in accordance with any other applicable law, the court may not enter a judgment for possession even if a ground for eviction has been proved.

Source: 2A:18-56; 2A:18-61.2; new.

COMMENT

This section is derived from source sections and reflects case law that provides for two levels of scrutiny for sufficiency of a notice to vacate (formerly known as notice to quit) and demand for possession.

First, the content of the notice must be sufficient. The notice must state more than a legal conclusion; it must contain particularization or an explicit detailed statement setting forth the reason for the lease termination. *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967). The purpose of the specificity requirement is to permit the tenant adequately to prepare a defense, since the tenant may wish to contest an alleged breach or raise equitable defenses. See *Ivy Hill Park Apartments v. GNB Parking Corporation*, 236 N.J. Super. 565, 568 (Law Div. 1989), *aff’d*, 237 N.J. Super. 1 (App. Div. 1989). In the case of code violations, however, the details must also include the requirements of any regulatory agencies, such as the Department of Community Affairs. See *Aspep Corp. v. Giuca*, 269 N.J. Super. 98 (Law Div. 1993). And in publicly subsidized housing cases, there may be further notice requirements in accordance with federal regulations. See *Housing Authority of the City of Newark v. Raindrop*, 287 N.J. Super. 222 (App. Div. 1996); *Riverview Towers Associates v. Jones*, 358 N.J. Super 85, 88 (App Div. 2003) (federal requirements are jurisdictional prerequisites to the establishment of good cause for eviction in state court.).

The actual service of the notice must also be sufficient, in accordance with the statute and the lease itself. In *Roland-Leopold v. Khoury*, 304 N.J. Super. 372 (Law Div. 1997), the court, discussing service of a notice to quit going back to what is described as the seminal case on the issue of service of notice, *Wilson v. Trenton*, 53 N.J.L. 645 (E. & A. 1891), determined that certified mail is a sufficient means to effect service under the Summary Dispossess Act, which, on its face, requires personal service.

The *Wilson* case is cited for the proposition that there is a distinction between official or judicial service, such as service of a summons, and substituted or constructive service, such as publication or posting. The *Wilson* court concluded that where the statute does not direct that personal service be made by any particular official in any particular manner, service is sufficient so long as the notice conveyed to the person affected by it was sufficient and there was evidence of actual delivery to the party. As the court stated in *Roland-Leopold*, so long as “the content of the notice is sufficient, the purpose behind the statute, to provide the notice to the tenant of the reasons for termination of the tenancy and to give the tenant an opportunity to prepare a defense, have been satisfied. 304 N.J. Super. at 379.

In most cases, service of a notice to vacate and demand for possession is required to evict a tenant from any rental premises. If the ground for eviction is failure to pay rent, however, no notice to vacate or demand for possession is required, although federal law may require some form of notice if a residential tenant is federally subsidized. In addition, no notice to vacate and demand for possession is required to evict a tenant from residential premises if the ground for eviction is conviction for theft from the landlord or another tenant (see 2A:18-61.1q.) or termination of the lease because of domestic abuse (see 46:8-9.4 *et seq.*), or if the basis for the eviction is a failure to pay a lawful rent increase in a residential tenancy; in the latter case, only a notice to increase rent is required. If the lease is for a fixed duration and is nonrenewable, and the ground for eviction is holdover and continued possession of nonresidential or those residential rental premises not covered by the current *Anti-Eviction Act*, then only a demand for possession is required to be served. The requirements of other notices are set forth in chapter 16.

46A:17-2. Nonpayment of rent due to rent increase; court to determine that new rent not unconscionable before judgment entered

A judgment for possession based on failure to pay rent after service of a written notice of increase of rent in accordance with section 46A:15-1 shall not be entered unless a court is satisfied that the increase in rent is not unconscionable, that the increase complies with other law or municipal ordinances governing rent increases, and that a valid notice of rent increase has been served in accordance with chapter 16 of this Title.

Source: New.

COMMENT

This section is extrapolated from section N.J.S. 2A:18-61.1(f) of the current *Anti-Eviction Act* (now appearing at subsection a. (2) of 46A:15-1) which requires that eviction for failing to pay a rent increase must occur after service of a valid notice of the increase (the source provision also required that a notice to quit be served, which requirement has been eliminated in the revision for this particular ground for eviction) provided that the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

46A:17-3. Judgment for possession; warrant for eviction; writ of possession; issuance; execution subject to 46A:17-4, 46A:17-5, 46A:17-7

a. At trial of the action under this article, and subject to sections 46A:17-1 and 46A:17-2, if the landlord prevails, or upon default, the court shall enter a judgment for possession and permit enforcement of the judgment by issuance and execution of a warrant for eviction or writ of possession in accordance with this chapter.

b. No warrant for eviction shall issue until the expiration of three business days after entry of judgment for possession except in the case of seasonal tenancies, as defined in chapter 1 of this Title, in an action alleging violation of subsections c. or d. of 46A:15-3, in which case the warrant shall be issued within two days after entry of judgment for possession. The landlord shall have the burden of proving that the use of the dwelling unit is seasonal.

c. The warrant shall be issued to any enforcement officer authorized by the court to execute the warrant, commanding the officer to evict all persons from the rental premises, and to return full possession of the premises to the claimant. The officer shall obey the command of and faithfully execute any warrant issued to that officer using such force or assistance from local police as may be necessary. Execution of the warrant shall be in accordance with sections 46A:17-4 and 46A:17-5.

d. The writ of possession shall be issued to a sheriff who shall execute the writ, commanding the sheriff to evict all persons from the rental premises and to return full possession of the premises to the claimant. The sheriff shall obey the command of and faithfully execute any writ issued to that sheriff using such force or assistance from local police as may be necessary. Execution of the writ shall be in accordance with section 46A:17-7.

e. A copy of the warrant shall be mailed to the landlord or landlord representative if a pre-addressed, stamped envelope is provided to the court.

f. Nothing herein precludes a judge of the Superior Court, Law or Chancery Divisions, from ordering the issuance of a warrant of eviction in a case where a writ of possession could otherwise has been ordered.

Source: 2A:18-57; 2A:18-58; 2A:42-10.17; new.

COMMENT

This section adopts the provisions of source sections 2A:18-57 and 2A:18-58 with some modifications in language to address archaic concepts. Notably, because of the use of the term “eviction” instead of “removal”, the term “warrant for removal” is now changed to “warrant for eviction.” The requirements of source section 2A:42-10.17 are added here except for the requirements that the seasonal tenancy be in a *furnished* dwelling unit in any residential rental premises of *five or fewer* units. If the dwelling is for “seasonal use or rental”, as now defined in the Title, it is irrelevant whether the dwelling unit is furnished or not furnished, or whether the dwelling unit is in rental premises of five or fewer units or more than five units. See also R. 6-7.1(c) of the Rules Governing the Courts of the State of New Jersey regarding the issuance and execution of warrants of removal (now eviction).

The insertion of the word “business” before the word “days” in subsection b. is added at the suggestion of the AOC because, as a practical matter, the section is construed generally as requiring three *business* days because the clerk’s office is not open on a Sunday if the third day happens to fall on a Saturday. Subsections d. and e. are new and suggested by commenters.

New subsections d., e. and f. have been added at the suggestions of commenters.

46A:17-4. Warrant for eviction from residential rental premises or a dwelling unit for seasonal use or rental; requirements; execution

a. The warrant for eviction from residential rental premises including a dwelling unit for seasonal use or rental shall:

(1) state the earliest date and time that the warrant may be executed, and state that the warrant shall be executed only by an enforcement officer as defined in chapter 1 of this Title;

(2) be executed not earlier than the third day following the day the warrant is given to the tenant by the enforcement officer or affixed to the door to which the dwelling unit applies. In calculating the number of days required, Saturday, Sunday and court holidays shall be excluded;

(3) be executed during the hours of 8 a.m. to 6 p.m., unless the court, for good cause shown, otherwise provides in the judgment for possession or by a post-judgment determination;

(4) include a notice to the residential tenant of any right to apply to the court for a stay of execution of the warrant, if applicable, together with a notice advising that the residential tenant may be eligible for temporary housing assistance or other social services and that the tenant should contact the appropriate county welfare agency at the mailing address, telephone number, and e-mail address given in the notice, to determine eligibility, provided that a notice to a seasonal tenant shall indicate that the execution of a warrant for eviction of that tenant may be stayed only upon consent by the landlord;

(5) include a notice:

(a) advising that it is illegal as a disorderly person's offense for a landlord to padlock or otherwise block entry to a residential rental premises while a tenant is still in possession of the premises;

(b) advising that a tenant's belongings may be removed from rental premises by a landlord after eviction only in accordance with chapter 27 of this Title pertaining to abandoned property or otherwise in accordance with court order;

(c) concisely summarizing this section and N.J.S. 2C:33-11.1, with special emphasis on the duties and obligations of law enforcement officers under those sections; and

(d) advising the tenant of the right to file a court proceeding pursuant to N.J.S. 2A:39-1 *et seq.*

b. Upon execution of the warrant for eviction in accordance with subsection a., the enforcement officer shall prepare a statement of "Execution of Warrant for Eviction" that identifies the warrant, the date of issuance of the warrant, the court and judge who authorized the warrant, the date and time of execution of the warrant, and the name, signature and position of the person executing the warrant. The enforcement officer who prepares the statement shall immediately deliver the statement by personal service to the court, to the landlord or the landlord's representative, and to the tenant. However, if the statement cannot be personally served on the tenant, the statement shall be affixed to the door of the dwelling unit to which the warrant applies.

c. The Superior Court, Law Division, Special Civil Part, shall retain jurisdiction for a period of 10 days subsequent to the actual execution of the warrant for eviction for the purpose of hearing applications by the tenant for lawful relief.

Source: 2A:42-10.16; 2A:42-10.17.

COMMENT

This section adopts the provisions of source section 2A:42-10.16 with some modifications in language. The source for this provision is known as *The Fair Eviction Notice Act* which applies to residential tenants, seasonal tenants and tenants in owner-occupied residential rental premises with not more than two rental units. References to premises for seasonal use are added as appropriate. A form of warrant authorized by the Supreme Court is currently accessible online as an appendix to the Rules Governing the Courts of the State of New Jersey. See also R. 6:7-1 (d) pertaining to the issuance and execution of a warrant of removal. The law distinguishes issuance of a warrant from its execution.

46A:17-5. Warrant for eviction from nonresidential rental premises; requirements; execution

a. The warrant for eviction from nonresidential rental premises:

(1) may be executed after it is issued without any waiting period;

(2) shall be executed during the hours of 8 a.m. to 6 p.m., unless the court, for good cause shown, otherwise provides in the judgment for possession or by a post-judgment determination;

(3) shall state that the warrant shall be executed only by an enforcement officer as defined in chapter 1 of this Title;

(4) shall include a notice:

(a) advising that it is illegal as a disorderly person's offense for a landlord to padlock or otherwise block entry to a nonresidential rental premises while a tenant is still in possession of the premises unless in accordance with the lease or a distraint action involving a nonresidential premises as permitted by this Title or other law;

(b) advising that the tenant's belongings may be removed from rental premises by a landlord after eviction only in accordance with the lease and chapter 27 of this Title pertaining to abandoned property;

(c) concisely summarizing this section with special emphasis on the duties and obligations of law enforcement officers under this section;

(d) advising of the tenant's right to file a court proceeding pursuant to N.J.S. 2A:39-1 *et seq*; and

(e) advising that if the tenant is a business entity, other than a sole proprietor or a partner in a general partnership, such an entity is required to be represented by counsel under R. 1:21-1 (c) and R. 6:10 of the Rules Governing the Courts of the State of New Jersey.

b. Upon execution of the warrant for eviction in accordance with subsection a., the enforcement officer shall prepare a statement of "Execution of Warrant for Eviction" that identifies the warrant, the date of issuance of the warrant, the court and judge who authorized the warrant, the date and time of execution of the warrant, and the name, signature and position of the person executing the warrant. The enforcement officer who prepares the statement shall immediately give the statement to the court and deliver the statement by personal service to the landlord or the landlord's representative and to the tenant. However, if the statement cannot be personally served on the tenant, the statement shall be affixed to the door of the dwelling unit to which the warrant applies.

Source: New.

COMMENT

This section is new and applies to warrants for eviction from nonresidential premises. The language is adopted from the provisions of section 2A:42-10.16 with some modifications in language to accommodate the nonresidential nature of the rental premises.

46A:17-6. Issuance of warrant for eviction; compliance with other law required

a. Where a tenant is evicted on any ground specified in subsections c. (1), (2), (3) or (4) of 46A:15-1, or in subsection a. (13) (A), (B), or (C) of 46A:15-2, alleging health, building or zoning code violations, no warrant for eviction shall issue until the requirements of the Relocation Assistance Law of 1967, N.J.S. 52:31B-1 *et seq.*, and the Relocation Assistance Act, N.J.S. 20:4-1 *et seq.* and, if applicable, an ordinance enacted under section 46A:21-6, or the requirements of section 46A:21-7, are satisfied. A tenant may not be entitled to relocation assistance in accordance with sections 46A:21-6 or 46A:21-7.

b. Where a tenant is evicted on the ground specified in subsection f. of 46A:15-1, alleging the conversion of rental premises from the rental market to a condominium, cooperative or fee simple ownership, no warrant for eviction shall issue until the requirements of subsection f. of 46A:15-1 and chapter 22 of this Title, are satisfied.

Source: 2A:18-61.1(g); 2A:18-61.1(k).

COMMENT

This section extracts from the provisions of source sections 2A:18-61.1(g.) and (k.) those provisions pertaining to the issuance of warrants of eviction (referred to in the source statutes as warrants for possession).

In connection with relocation compensation for displaced tenants under the *Relocation Assistance Law of 1967*, N.J.S. 52:31B-1 *et seq.*, and the *Relocation Assistance Act*, N.J.S. 20:4-1 *et seq.*, the courts have made a distinction between an unlawful occupancy by virtue of the landlord's conduct and unlawful occupancy by virtue of the tenant's conduct. The tenant whose relocation results from the tenant's own conduct is not entitled to compensation under these acts.

The court determined in *Haddock v. Dept. of Community Development, City of Passaic*, 217 N.J. Super. 592, 601 (App. Div. 1987), *cert. denied*, 198 N.J. 645 (1987) that:

[t]he Legislature could not have intended to approve relocation compensation to persons displaced as a result of Code violations primarily attributable to their own conduct. Thus, the inquiry into lawful occupancy must begin with whether the tenancy is known and accepted by the landlord, but it cannot end there. The tenant must not be the one who primarily causes the violation which leads to the relocation. This concept is also encompassed within the meaning of 'lawful occupancy.' . . . Clearly, neither the Legislature nor the Department of Community Affairs can be deemed to have intended to enact a 'Catch-22' program which afforded relocation benefits to tenants displaced by Code enforcement activities, yet simultaneously deprived them of such benefits because Code violations over which they had no control rendered their tenancies unlawful. We think it equally unreasonable to interpret the governing statutes and regulations in a manner which rewards tenants with cash payments where forced relocation results from their own conduct.

See also, *M.C. Associates v. Shah*, 226 N.J. Super. 173 (App. Div. 1988).

46A:17-7. Writ of possession; plenary action

The writ of possession shall:

(1) be enforced at any time after it is issued, either by a sheriff, if the plenary action is commenced in the Superior Court, Law Division or Chancery Division, or by an enforcement officer, if the plenary action is commenced in the Superior Court, Special Civil Part;

(2) state the earliest date and time that the writ of possession may be enforced, and that the writ shall be enforced during the hours of 8 a.m. to 6 p.m., unless the court, for good cause shown, otherwise provides in the order;

(3) include the notices required in accordance with either section 46A:17-4, if the writ pertains to residential rental premises, or section 46A:17-5, if the writ pertains to nonresidential rental premises.

Source: New.

COMMENT

This section is new. The need for it was suggested by the Administrative Offices of the Courts. The section is modeled on sections 46A:17-4 and 46A:17-5 and was drafted with the assistance of commenters.

CHAPTER 18: STAYS OF EVICTION AND ORDERLY REMOVALS

46A:18-1. Stays conditioned upon potential hardship to tenant; residential rental premises except seasonal use

a. Notwithstanding any other law to the contrary, in any action brought by a landlord against a tenant for eviction or to recover possession of residential rental premises as provided in subsection e. of this section, the court shall use sound discretion in the execution of a warrant for eviction or enforcement of a writ of possession, and if it shall appear that by the execution of the warrant or enforcement of the writ, the tenant will suffer hardship because of the unavailability of other dwelling accommodations, the court may stay the execution of the warrant or enforcement of the writ until such time as the court deems proper under the circumstances, but in no case for a period longer than six months after the date of entry of the judgment for possession.

b. However, in no case shall the execution of the warrant or enforcement of the writ be stayed or the stay continued, as the case may be, if the tenant, during the stay, engages in any conduct that would constitute a ground for eviction under sections 46A:15-1 or 46A:15-2, or if the tenant fails to pay all rent arrears and the amount that would have been payable as rent if the tenancy had continued, together with accrued costs of the action.

c. If the tenant engages in any conduct that would constitute a ground for eviction, as set forth in subsection b. of this section, the landlord may apply to the court to vacate or modify the stay by order to show cause, specifically alleging the facts supporting the application, which shall be heard on a date specified in the notice, but no earlier than four business days after service of the notice and which shall not require the service of a notice to cease or notice to vacate and demand for possession, or both, as a condition of the application even if these notices are otherwise required by chapter 16 of this Title.

d. This section shall not limit a court's ability to vacate a judgment for possession for good cause in accordance with the Rules Governing the Courts of the State of New Jersey.

e. This section shall be applicable to any residential rental premises or dwelling units except for a dwelling unit for seasonal use or rental, as defined in chapter 1 of this Title. The execution of a warrant for eviction or enforcement of a writ of possession for a dwelling unit for seasonal use or rental or for nonresidential rental premises may be stayed under this section only upon consent of the landlord.

Source: 2A:42-10.1; 2A:42-10.3; 2A:42-10.6; 2A:42-10.8; 2A:42-10.17; new.

COMMENT

This section adopts the provisions of source sections 2A:42-10.1 and 2A:42-10.6, part of what is currently known as the *Tenant Hardship Act*, with some modifications in language. New subsection c. adopts a commenter's suggestion. Section 2A:42-10.2, enacted in 1956, applied to premises subject to rent control under the *State Rent Control Act of 1953*, which has since expired. Section 2A:42-10.7, enacted in 1957, applied to premises not subject to rent control.

As noted by Mahlon L. Fast, J.S.C. Ret. and author of *Landlord – Tenant and Related Issues in the Superior Court of New Jersey* (3rd Ed. 2008), at page 272 and 288, judgments for possession in the Law or Chancery Division are enforced by writs of possession executed by a Sheriff's Officer, as distinguished from warrants of removal (now eviction) that are enforced by a Court Officer in the Special Civil Part. Also see R. 4:59-2 of the Rules Governing the Courts of the State of New Jersey.

New subsection d. adopts the holding of the New Jersey Supreme Court in *Housing Authority of the Town of Morristown v. Little*, 135 N.J. 274 (1994), citing Judge Fast's text, where the court addressed the issue of whether the *Tenant Hardship Act*, which grants courts the power to stay an eviction up to a maximum of six months, restricts a court's power to vacate a judgment for possession on equitable grounds pursuant to R. 4:50-1.

The Supreme Court in *Morristown* held that it found no evidence demonstrating that the Legislature, in enacting the *Tenant Hardship Act*, intended to limit the ability of a court under R. 4:50-1 to vacate a judgment for possession for good cause. When such relief is sought under R. 4:50-1(e), which the court noted was rarely relied upon by New Jersey courts, then the party seeking relief from the final judgment must show that "it is no longer equitable that the judgment or order should have prospective application[.]" See 135 N.J. at p. 285. However, such relief is granted under R. 4:50(f) only where there are exceptional circumstances and a trial court has weighed carefully all the relevant evidence in determining whether the specific grounds advanced to support relief under the Rule "are sufficient to override the strong countervailing interest favoring finality of judgments." 135 N.J. at 294-296. The Court stated:

To the contrary, a statement of the Senate County and Municipal Government Committee, accompanying a 1979 amendment to N.J.S. 2A:42-10.17 that limited a court's power to grant a stay of a warrant of removal for a residential seasonal tenant, acknowledges a court's residual power to vacate judgments. That statement noted that the amendment "would not affect the discretion of a court with respect to entry of a judgment or to reopening a judgment. A court could still reopen a judgment and thereby withdraw a warrant from the judgment previously entered, if it finds cause." [citation omitted]. The committee statement suggests that the Legislature perceived no conflict between a court's statutory power to issue a stay of eviction and a court's discretion to vacate a judgment for possession. . . . We conclude that the trial court had the authority to invoke Rule 4:50-1 to vacate a judgment for possession in a summary-dispossess action after a warrant of removal had been executed." 135 N.J. at 290.

The court further noted its anticipation that the "reservoir of discretion afforded by" Rule 4:50-1 would be circumscribed and used only in those circumstances required to avoid an unjust result. 135 N.J. at 296.

Subsection e. reconciles the discrepancy between source provisions 2A:42-10.3 and 2A:42-10.8 with some modifications in language. References to the stay of a warrant for removal (now eviction) of a seasonal tenant from source section 2A:42-10.17 are added here.

All references to stays of *issuance* of the warrant or writ have been deleted based on comments that such stays do not occur in practice; courts stay the execution of the warrant or enforcement of the writ, not the *issuance* of the warrant or writ.

46A:18-2. Rent payments not to create new tenancy

In no event shall any payment made by the tenant to the landlord for continued occupancy of any premises or unit during the period of a stay of execution of a warrant for eviction or enforcement of a writ of possession, as provided by section 46A:18-1, be deemed to create a new tenancy, except as provided in any court order, consent judgment or stipulation.

Source: 2A:42-10.2; 2A:42-10.7.

COMMENT

This section adopts the provisions of source sections 2A:42-10.2 and 2A:42-10.7 with some modifications in language. Source section 2A:42-10.2, enacted in 1956, applied to premises subject to rent control under the *State Rent Control Act of 1953*, which has since expired. Source section 2A:42-10.7, enacted in 1957, applied to premises not subject to rent control.

46A:18-3. Stays for eviction of holdover tenants of rental premises under 46A:15-2 who are terminally ill

a. Notwithstanding any provisions of law to the contrary, the court may grant and review one year stays of execution of a warrant of eviction from those residential rental premises under subsection a. (2) of section 46A:15-2, at the expiration of the lease, whenever the court determines that the tenant holding over and continuing in possession after service of a notice to vacate and demand for possession in accordance with chapter 16 of this Title:

(1) has fulfilled all the terms of the lease;

(2) has a terminal illness that has been certified by a licensed physician;

(3) is substantially unlikely to be able to search for, rent and move to a comparable alternative rental dwelling unit without serious medical harm; and

(4) has been a tenant of the landlord for at least two years prior to the issuance of the stay.

b. In reviewing a petition for a stay of eviction under this section, the court shall specifically consider whether the granting of the stay of eviction would cause an undue hardship to the landlord because of the landlord's financial condition or any other factor relating to the landlord's ownership of the premises.

c. During the time period that the stay is in effect, the tenant shall be entitled to extend the tenancy, subject to reasonable changes proposed to the tenant by the landlord in writing.

d. This section shall not be applicable to a residential health care facility as defined in section N.J.S. 30:11A-1 or to rental premises for seasonal use or rental as defined by chapter 1 of this Title.

Source: 2A:18-59.1; 2A:18-59.2.

COMMENT

This section adopts the provisions of source sections 2A:18-59.1 and 2A:59-2 with some modifications in language. The section clarifies that this stay applies only to holdover tenants of residential rental premises, as specified in proposed subsection a. (2) of 46A:15-2 and not, as does the hardship stay provided in section 46A:18-1, to all tenants of residential rental premises, excepting seasonal tenants.

46A:18-4. Stays for tenant's voluntary move; orders for orderly removal; all rental premises except seasonal use

a. After entry of judgment for possession and issuance of a warrant for eviction or writ of possession pertaining to rental premises as provided in subsection d. of this section, the court may, as it deems equitable and proper under the circumstances, and upon post-judgment application and notice to the landlord, grant one stay of execution of the warrant or enforcement of the writ for a period of no more than seven calendar days from the date of application in order

to enable a residential tenant in distressed circumstances to vacate the rental premises voluntarily.

b. Any order for post-judgment relief under this section shall be the final order in the matter unless the judgment is determined to have been void or the landlord has not complied with any prior orders concerning the same rental premises, in which case the tenant may be entitled to additional relief.

c. Nothing in this section shall preclude a landlord from commencing a separate action for payment of the rent due for the period of the stay granted under this section.

d. This section shall not be applicable to a dwelling unit for seasonal use or rental, as defined in chapter 1 of this Title. The execution of a warrant for eviction from or enforcement of a writ of possession to a dwelling unit for seasonal use or rental may be stayed only upon consent of the landlord.

Source: New.

COMMENT

This section is new and is derived from Rule 6:6-6b. of the Rules Governing the Courts of the State of New Jersey, *The Fair Eviction Notice Act*, N.J.S. 2A:42-10.16, and current landlord-tenant practice. As noted by Mahlon L. Fast, J.S.C. Ret. and author of *Landlord – Tenant and Related Issues in the Superior Court of New Jersey* (3rd Ed. 2008), at page 292, support for this new section may be derived from the Supreme Court in *Housing Authority of Newark v. West*, 69 N.J. 293 (1976), where in dicta, the Supreme Court indicated that a trial court in a summary dispossession action of a public housing tenant has the inherent discretion to stay a warrant of removal (now warrant for eviction) or writ of possession (if in the Law or Chancery Division) for a reasonable time to permit a tenant in distressed circumstances to arrange the tenant's voluntary removal from the premises. The Supreme Court further discussed the availability of this type of stay of eviction to trial courts in *Housing Authority of Morristown v. Little*, 135 N.J. 274, 282 (1994). However, the time frame has now been limited, by court rule, to seven calendar days rather than a "reasonable time".

Should a tenant seek orderly removal under this section subsequent to the execution of the warrant of eviction or writ of possession, the tenant will have a greater burden in persuading the court that the orderly removal "stay" is appropriate.

CHAPTER 19: DISMISSAL OF ACTIONS FOR EVICTION OR POSSESSION; VACATING DEFAULT

46A:19-1. Dismissal of action; failure to prove title

a. If at trial of a summary action to evict a tenant from any rental premises, the plaintiff is unable to prove the right to possession of the rental premises in the event the tenant were to be evicted, without proving title to the real property in which there are the rental premises, the action shall be dismissed or transferred to the Law Division of the Superior Court.

b. Notwithstanding subsection a., a deed or other writing may be offered into evidence for the purpose of showing the right of the plaintiff to proceed or may be received by the court for the purpose of showing the right to possession of the premises for which recovery is sought.

Source: 2A:18-52.

COMMENT

This section adopts the provisions of source section 2A:18-52 with some modifications in language. The courts have determined that the Legislature did not intend for the Special Civil Part to decide disputed land titles and complex equitable issues in a summary proceeding of eviction “in which discovery is not permitted.” See *Carr v. Johnson*, 211 N.J.Super 341,347 (App. Div. 1986); *Hill Manor Apts.v. Brome*, 164 N.J.Super. 295, 309 (Dist. Ct. 1978). With regard to subsection b., N.J.R.E. 1003 allows duplicates of original documents to be admitted in almost every circumstance.

46A:19-2. Dismissal on payment into court of rent and costs; receipt; resumption of lease

a. If the tenant of any rental premises, or any agency or entity on the tenant’s behalf, no later than the day that final judgment is entered in any action for eviction from or possession of the premises for nonpayment of rent under this article, pays or tenders to the landlord or the landlord’s legal representative or to the clerk of the court the entire amount of rent then due, together with the costs of the proceedings, the action shall be dismissed. If paid to the clerk, the receipt of the clerk shall be evidence of such payment and the clerk shall pay the money that has been received promptly to the plaintiff or the plaintiff’s attorney of record.

b. In an action for eviction from or possession of the premises based on non-payment of rent, the landlord’s acceptance of partial payment of the rent due before the entry of a judgment for possession shall not constitute a waiver of the right to evict for non-payment of the balance of the outstanding rent but shall reduce the balance of rent due at the time of trial.

c. In an action for eviction from or possession of the premises based on a ground other than non-payment of rent, the landlord’s acceptance of any portion of the rent after the effective date of a notice to vacate and demand for possession shall constitute a waiver of the breach that is stated in the notice, and dismissal of the action without prejudice.

d. In any action for eviction from or possession of the premises, the landlord’s acceptance of any portion of the rent, after entry of judgment and while defendant is still in possession, voids the judgment for possession unless the payment is made pursuant to court order or agreement between the parties including but not limited to a voluntary agreement to stay execution on the judgment.

Source: 2A:18-55; 2A:42-9.

COMMENT

This section adopts the provisions of source sections 2A:18-55 and 2A:42-9. Although source statute 2A:18-55 states that it applies only to actions instituted under section 2A:18-53(b.), in *Housing Authority of City of Wildwood v. Hayward*, 81 N.J. 311, 316, fn.1 (1979), the New Jersey Supreme Court held that section 2A:18-55 also applied to residential tenancies, thereby including tenancies subject to 2A:18-61.1. The New Jersey Supreme Court also held in *Vineland Shopping Center, Inc. v. DeMarco*, 35 N.J. 459, 469-70 (1961) that a lease provision which, in effect, circumvented 2A:18-55 was unenforceable.

Note the difference between *tendering* payment of rent to the landlord and the *acceptance* of the payment of rent by the landlord. The latter may affect waiver of a tenant’s breach and may void judgment for possession, depending upon when the landlord accepts the payment and the extent of the knowledge attributable to the landlord at time of acceptance. The rationale for this provision is that acceptance of rent is inconsistent with the intent of a plaintiff to have a tenant evicted, and in many cases a tenant needs the funds in order to move, which is consistent with the plaintiff’s wishes. A landlord also has the right to sue the tenant for a money judgment for unpaid rent or to reimburse the landlord for damage to the rental premises.

46A:19-3. Vacating of a judgment permitted by law

Nothing in this article shall preclude a tenant from seeking pursuant to court rule or other applicable law to vacate a judgment by default or a judgment for possession.

Source: New.

COMMENT

This section is new and added for purposes of clarification.

CHAPTER 20: WRONGFUL EVICTIONS FROM RESIDENTIAL RENTAL PREMISES

46A:20-1. Landlord liability for wrongful evictions

a. A landlord shall be liable to a tenant in a civil action for treble damages plus the tenant's attorney fees and costs, and any other appropriate legal or equitable relief, if:

(1) the landlord serves the tenant with notice alleging the landlord seeks to personally occupy the rental premises under subsection g. of 46A:15-1, after which the tenant vacates the rental premises and the landlord arbitrarily fails to personally occupy the rental premises or to effectuate a contract of sale for the rental premises within six months, but instead permits personal occupancy of the premises by another tenant or registration or conversion of the premises by the Department pursuant to The Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21 *et seq.*; or

(2) the landlord who is a purchaser of the rental premises pursuant to a contract that requires the tenant to vacate in accordance with subsection g. of 46A:15-1, after which time the tenant vacates the rental premises, thereafter arbitrarily fails to personally occupy the rental premises within six months, but instead permits personal occupancy of the premises by another tenant or registration or conversion of the premises by the Department pursuant to The Planned Real Estate Development Full Disclosure Act, N.J.S. *et seq.*; or

(3) the landlord serves the tenant with notice alleging that the landlord seeks to permanently board up or demolish the rental premises or to retire permanently the premises from residential use under subsections c. (1) or d. of 46A:15-1, after which time the tenant vacates the rental premises and the landlord, instead, within five years following the date on which the dwelling unit or the premises becomes vacant, permits residential use of the vacated premises; or

(4) the tenant vacates the rental premises after being served by the landlord with an eviction notice which purports:

(a) to compel by law the tenant to vacate the rental premises for cause; or that if the tenant does not vacate the premises, the tenant will be compelled by law to vacate the premises for cause; or

(b) alleges a cause that is clearly not provided by law or that is based upon a lease clause which is contrary to law pursuant to section 46A:4-5; or

(c) misrepresents that, under the facts alleged, the tenant would be subject to eviction.

b. A landlord shall not be liable under subsection a. (4) of this section for alleging any cause for eviction under section 46A:15-1 which, if proven, would subject the tenant to eviction pursuant to this article.

c. A landlord shall not be liable for damages under this section or subject to a more restrictive local ordinance adopted pursuant to section 46A:21-5, if:

(1) title to the premises was transferred to the landlord as owner by means of a foreclosure, execution or bankruptcy sale; and

(2) prior to the sale in subsection c.(1), the tenant vacated the premises after receiving an eviction notice from the former owner pursuant to subsections c. (1) or d. of 46A:15-1 and the former owner retains no financial interest, direct or indirect, in the premises. For the purposes of this section, “former owner” shall include, but not be limited to, any officer or board member of a corporation which was the former owner and any holder of more than 5% equity interest in any incorporated or unincorporated business entity that was the former owner; and

(3) the tenant is provided notice and rights in accordance with section 46A:21-4.

Source: 2A:18-61.6.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:20-2. Landlord liability for failure to advise prospective buyer of rental premises

a. A landlord of rental premises where notice has been given to a tenant pursuant to subsections c. (1) or d. of 46A:15-1, who subsequently seeks to sell, lease or convey the property to another, shall, before executing a lease, deed or contract for such conveyance, advise the prospective buyer or tenant, in writing, that such notice was given and that the owners of the property are subject to the requirements of sections 46A:20-1, 46A:21-2 and 46A:21-3.

b. A landlord who fails to advise a prospective buyer or tenant in accordance with subsection a., is liable for a civil penalty of not less than \$2,500 or more than \$10,000 for each offense, and in addition, damages, plus attorney’s fees and costs of suit, for any loss or expenses incurred by a new owner or tenant as a result of the failure. An action to enforce a penalty against the landlord may be commenced by the Commissioner, the Attorney General or any other person, by a summary proceeding under the Penalty Enforcement Law of 1999, N.J.S.2A:58-10 *et seq.* Jurisdiction for such an action shall be in the Superior Court in the county in which the premises are located. If any person other than the Attorney General or the Commissioner commences the action, any recovery shall be remitted by the court to the person who commences the action.

Source: 2A:18-61.6(c).

COMMENT

This section adopts the majority of the provisions of source section 2A:18-61.6(c) with modifications in language. The remainder of source section 2A:18-61.6(c) is incorporated in proposed section 46A:20-1.

46A:20-3. Landlord liability for reprisal or retaliatory eviction

a. No landlord of residential rental premises to which this section applies shall serve a notice to vacate and demand for possession upon any tenant or commence an action against a tenant to recover possession of the rental premises, whether by eviction proceedings, or otherwise:

(1) as a reprisal for the tenant's efforts to secure or enforce any rights under the lease, or any agreement, or under the laws of the State of New Jersey or its governmental subdivisions, or of the United States; or

(2) as a reprisal for the tenant's good faith complaint to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code or ordinance, or State law or regulation which has as its objective the regulation of premises used for dwelling purposes; or

(3) as a reprisal for the tenant's being an organizer, member, or involved in any activities of a lawful organization; or

(4) because of the tenant's failure or refusal to comply with the terms of the tenancy as altered by the landlord, if the landlord substantially altered the terms of the tenancy as a reprisal for any actions of the tenant set forth in subsections a. (1), (2) or (3) above. "Substantial alteration" includes the refusal to renew a lease or to continue a tenancy of the tenant without good cause.

b. A landlord who violates this section shall be subject to a civil action by the tenant for damages and other appropriate relief, including injunctive and other equitable remedies, as may be determined by the court.

c. In any action brought by a landlord against a tenant to recover possession of premises or units to which this section applies, the action shall be dismissed if the evidence establishes that the notice to vacate and demand for possession or the action to recover possession was intended for any of the reasons set forth in subsections a. (1), (2), (3) or (4) above.

d. This section shall be applicable to all residential rental premises except owner-occupied residential rental premises with not more than two rental units and rental premises for seasonal use or rental.

Source: 2A:42-10.10; 2A:42-10.11; 2A:42-10.13.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:20-4. Rebuttable presumption; notice to vacate or alteration of tenancy as reprisal

a. In any action or proceeding commenced by or against a tenant of residential rental premises to which this section applies, the receipt by the tenant of a notice to vacate and demand for possession or any substantial alteration of the terms of the tenancy without good cause, shall create a rebuttable presumption that such notice or alteration is a reprisal against the tenant for the acts specified in subsections (1), (2), (3) or (4) below if:

(1) the tenant attempts to secure or enforce any rights under the lease or agreement, or under the laws of the State of New Jersey, or its governmental subdivisions, or of the United States; or

(2) the tenant, having brought a good faith complaint to the attention of the landlord and having given the landlord a reasonable time to correct the alleged violation, complains to a governmental authority with a report of the landlord's alleged violation of a health or safety law, regulation, code or ordinance; or

(3) the tenant organizes, becomes a member, or becomes involved in any activities of any lawful organization; or

(4) a judgment under subsection c. of 46A:20-3 is entered for the tenant in a previous action for possession of the rental premises or action for eviction between the parties.

b. No reprisal shall be presumed, however, under this section based upon the failure of a landlord to renew a lease or tenancy when so requested by a tenant if the request is made sooner than 90 days before the expiration date of the lease or tenancy or the renewal date set forth in the lease, whichever later occurs.

c. This section shall be applicable to all residential rental premises except owner-occupied residential rental premises with not more than two rental units and rental premises for seasonal use or rental.

Source: 2A:42-10.12.

COMMENT

This section continues the substance of its source with minor changes in language.

CHAPTER 21: TENANTS DISPLACED FROM RESIDENTIAL RENTAL PREMISES; RELOCATION ASSISTANCE

46A:21-1. Permanent retirement from residential use

a. If a landlord seeks an eviction alleging permanent retirement of the rental premises from residential use pursuant to subsection d. of 46A:15-1 and if, pursuant to land use law, nonresidential use of the premises is not permitted as a principal permitted use or is limited to accessory, conditional or public use, a rebuttable presumption is created that the premises are not and will not be permanently retired from residential use.

b. Residential rental premises that are unoccupied, boarded up or otherwise out of service shall not be deemed retired from residential use for purposes of eviction under subsection d. of 46A:15-1 unless they are converted to a principal permitted nonresidential use and no tenant shall be evicted pursuant to subsection d. of 46A:15-1 if any State or local permit or approval required by law for the nonresidential use is not obtained.

c. Nothing contained in this section shall be deemed to require obtaining a certificate of occupancy for the proposed use prior to an eviction.

Source: 2A:18-61.1b.

COMMENT

This section continues the substance of its source with minor changes in language. Violation of this section may be pursued pursuant to section 46A:20-1 since the certificate of occupancy may not have been issued prior to the eviction, and in fact, may never be issued.

46A:21-2. Five year restriction on application for registration of conversion

a. After notice has been given that the landlord seeks to permanently board up or demolish the premises or seeks to retire permanently the premises from residential use pursuant to subsection c. (1) or d. of 46A:15-1, the Department shall not approve an application for registration of conversion pursuant to The Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21 *et seq.* of any rental premises for a period of five years following the date on which a dwelling unit in the premises becomes vacant.

b. Within five days of the date on which any landlord provides notice of termination to a tenant pursuant to subsection c. (1) or d. of 46A:15-1, the landlord shall provide a copy of the notice to the Department.

Source: 2A:18-61.1c.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:21-3. Maximum authorized rent

a. If a dwelling unit in rental premises in a municipality which has a rent control ordinance in effect is vacated after notice has been given that the landlord seeks to permanently board up or demolish the premises or seeks to retire permanently the premises from residential use pursuant to subsections c. (1) or d. of 46A:15-1, and if at any time thereafter a landlord permits the residential use of the premises, the maximum rent authorized for a dwelling unit in the premises shall not exceed the rent that was last charged for that unit when occupied.

b. Increased costs occurring during the period of vacancy, which are solely the result of the rental premises being vacated, closed and reoccupied, and which do not add services or amenities not previously provided, or which add new services or amenities whose costs significantly reduce the affordability of the premises, shall not be used as a basis for a rent increase pursuant to a municipal rent regulation provision, fair return or hardship hearing before a municipal rent board or any appeal from such determination.

c. Increased costs of new services and amenities create a rebuttable presumption that they significantly reduce the affordability of the premises, if they result in doubling of the rent increases otherwise permitted by law during the period of vacancy.

d. Within five days of the date on which any landlord provides a notice to vacate and demand for possession to a tenant pursuant to subsections c. (1) or d. of 46A:15-1, the landlord shall provide a copy of the notice to the municipal agency responsible for administering the regulation of rents in the municipality. The landlord's notice to the municipal agency shall also include a listing of the current tenants and rents for each dwelling unit in the premises, unless the landlord has previously submitted to the municipal agency a listing which is still current.

Source: 2A:18-61.1d.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:21-4. Rights of former tenants

a. If a dwelling unit is vacated after notice has been given that the landlord seeks to permanently board up or demolish the premises or seeks to retire permanently the premises from residential use pursuant to subsections c. (1) or d. of 46A:15-1, and if at any time thereafter a landlord instead seeks to return the premises to residential use, the landlord shall provide the former tenant:

(1) written notice 90 days in advance of any return to residential use or any agreement for possession of the unit by another party, which notice discloses the landlord's intention to return the unit to residential use including the essential terms of the proposed return to residential use or possession of the unit;

(2) the right to return to possession of the vacated unit, or, if return is not available, the right to possession of affordable housing relocation in accord with the standards and criteria set forth for comparable housing as defined by section 46A:22-1 and, in the case of a conversion, the right to a protected tenancy pursuant to chapter 28 of this Title, if the former tenant would have at the time of the conversion been eligible for a protected tenancy under chapter 28 had the former tenant not vacated the premises.

b. The 90-day notice shall disclose the tenant's rights pursuant to this section and the method for the tenant's response to exercise these rights. A duplicate of the notice shall be transmitted within the first five days of the 90-day period to the rent board in the municipality or, if there is no rent board, to the municipal clerk.

c. A landlord who fails to provide a former tenant a notice of intention to return to residential use pursuant to this section is liable for a civil penalty of not less than \$2,500 or more than \$10,000 for each offense, and in addition, treble damages, plus attorney's fees and costs of suits, for any loss or expenses incurred by a former tenant as a result of the failure. An action to enforce a penalty against the landlord may be commenced by the Commissioner, the Attorney General or any other person, by a summary proceeding under the Penalty Enforcement Law of 1999, N.J.S.2A:58-10 *et seq.* Jurisdiction for such an action shall be in the Superior Court in the county in which the premises are located. If any person other than the Attorney General or the Commissioner commences the action, any recovery shall be remitted by the court to the person who commences the action.

d. In any action under this section, the court shall award, in addition to damages, any other appropriate legal or equitable relief.

e. No landlord shall be liable for a penalty pursuant to this section if the dwelling unit is returned to residential use more than five years after the date the premises are vacated or if the landlord made every reasonable effort to locate the former tenant and provide the notice, including but not limited to, the employment of a qualified professional locator service, where no return receipt is obtained from the former tenant.

f. Notwithstanding subsection a. (3) of 46A:20-1, no damages awarded under this section shall be trebled where possession has been returned in accord with this section.

Source: 2A:18-61.1e.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:21-5. Local ordinances permitted

a. Nothing contained in this chapter shall authorize any civil action to require that dwelling units remain vacant, or limit any defense or challenge to evictions that is otherwise provided by law, or prohibit any provision of a local ordinance which is not less restrictive, except as prohibited pursuant to subsection c. of 46A:20-1.

b. Except as provided in subsection c. of 46A:20-1, local ordinances may facilitate the objectives of this chapter to premises where tenants have received notice pursuant to subsections c. (1) or d. of 46A:15-1 including, but not limited to, any ordinance intended to:

(1) require landlords to obtain and register tenants' current and forwarding addresses;

(2) provide tenants and former tenants who have received notice of termination pursuant to subsections c. (1) or d. of 46A:15-1 basic information about their relevant rights;

(3) provide a municipal registry for former tenants to file current addresses for receiving notice; and

(4) assist in locating former tenants who become entitled to receive notice pursuant to section 46A:21-4.

Source: 2A:18-61.1f.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:21-6. Relocation of displaced tenants; ordinance; violations

a. A municipality may enact an ordinance providing that a residential tenant who receives a notice to vacate and demand for possession as a result of zoning or code enforcement activity for an illegal occupancy under subsection c. (3) of 46A:15-1 or subsection a. (13) (C) of 46A:15-2, shall be considered a displaced person and entitled, subsection to subsection e., to a lump sum relocation assistance payment in an amount equal to six times the tenant's paid monthly rental to be paid by the owner to the tenant before the tenant is displaced, provided that if a court finds that in the case of a code violation that requires enforcement activity, the code violation is primarily attributable to the tenant's conduct, the tenant shall not be entitled to receive any relocation assistance.

b. A municipality that has enacted an ordinance pursuant to subsection a., may pay, from a revolving relocation assistance fund established pursuant to N.J.S.20:4-4.1a, relocation assistance to any displaced person who has not received the required payment from the owner of the rental premises at the time of eviction. All relocation assistance costs incurred by a municipality pursuant to this subsection shall be repaid by the owner to the municipality in the

same manner as relocation costs are billed and collected under subsection a. of N.J.S. 20:4-4.1 and N.J.S. 20:4-4.2. These repayments shall be deposited into the municipality's revolving relocation assistance fund.

c. A municipality that has enacted an ordinance, in addition to requiring reimbursement from the owner for relocation assistance paid to a displaced tenant, may also require the owner to:

(1) pay to the municipality an additional fine for zoning or housing code violations for an illegal occupancy, up to an amount equal to six times the monthly rental paid by the displaced person; and

(2) after affording the owner an opportunity for a hearing on the matter, pay to the municipality for a subsequent violation for an illegal occupancy an additional fine equal to the annual tuition cost of any resident of the illegally occupied unit attending a public school. The tuition cost shall be determined in the manner prescribed for nonresident pupils pursuant to N.J.S. 18A:38-19 and the payment of the fine shall be remitted to the appropriate school district. For the purposes of this subsection, a "subsequent violation for an illegal occupancy" shall be limited to the violations that are new and a result of distinct and separate zoning or code enforcement activities and not any continuing violations for which citations are issued by a zoning or code enforcement agent during the time period required for eviction proceedings to conclude if such proceedings were commenced by the owner. No additional fine shall be imposed for code violations that are primarily attributable to the tenant's conduct.

d. An action to enforce a fine against the owner under this section shall be commenced by the municipality by a summary proceeding under the Penalty Enforcement Law of 1999, N.J.S.2A:58-10 *et seq.* Jurisdiction for such an action shall be in the Superior Court or the municipal court in the county in which the premises are located.

e. The municipal ordinance may provide that an owner shall reduce no more than 50% of the amount of the relocation assistance lump sum payment by the amount of rent due and unpaid from the tenant.

f. For the purposes of this section, the "owner" shall exclude a mortgagee in possession of a building through foreclosure or a municipality that owns a building pursuant to a rehabilitation agreement.

Source: 2A:18-61.1g.

COMMENT

This section adopts the provisions of source section 2A:18-61.1g. with modifications in language and substance. This section enables enactment of a municipal ordinance that considers a tenant receiving a notice of eviction on the grounds of an illegal occupancy because of zoning or code enforcement activity, as set forth in subsection c. (3) of section 46A:15-1 or subsection a.(13) (C) of 46A:15-2, a displaced tenant who is entitled to relocation assistance. The relocation assistance provided by the ordinance is distinct from, and may be provided only if the tenant has not already received relocation assistance provided by, the *Relocation Assistance Law of 1967*, N.J.S. 52:31B-1 *et seq.*, or the *Relocation Assistance Act*, N.J.S. 20:4-1 *et seq.* If the landlord who is an owner of the rental premises does not pay the relocation costs directly to the tenant, all relocation assistance costs paid by the municipality must be reimbursed by the landlord and the landlord may also incur additional fines and penalties. For the purposes of this section, the landlord-owner does not include mortgagees in possession through foreclosure.

Two significant changes should be noted. First, the court determined in *Haddock v. Dept. of Community Development, City of Passaic*, 217 N.J. Super. 592, 601 (App. Div. 1987), *cert. denied*, 198 N.J. 645 (1987) that:

[t]he Legislature could not have intended to approve relocation compensation to persons displaced as a result of Code violations primarily attributable to their own conduct. Thus, the inquiry into lawful occupancy must begin with whether the tenancy is known and accepted by the landlord, but it cannot end there. The tenant must not be the one who primarily causes the violation which leads to the relocation. This concept is also encompassed within the meaning of 'lawful occupancy.' . . . Clearly, neither the Legislature nor the Department of Community Affairs can be deemed to have intended to enact a 'Catch-22' program which afforded relocation benefits to tenants displaced by Code enforcement activities, yet simultaneously deprived them of such benefits because Code violations over which they had no control rendered their tenancies unlawful. We think it equally unreasonable to interpret the governing statutes and regulations in a manner which rewards tenants with cash payments where forced relocation results from their own conduct.

The *Haddock* court further held that "in order to be eligible for relocation benefits as a lawful occupant: (a) the occupancy must be lawful in the sense that it is not the result of a trespass or unauthorized sublease, but one recognized by the owner; and (b) the Code violation must be one not primarily caused by the occupant's own conduct but by factors for which the landlord is liable under N.J.S. 20:4-4.1. In the event, that, as here, condition (a) is satisfied, but there has been no prosecution under N.J.S. 20:4-4.1, an occupancy should be presumed lawful for the purpose of relocation benefits unless it is established by agreement or by administrative hearing that the Code violation was primary attributable to conduct of the tenant." 217 N.J. Super. at 602.

The principal enunciated in *Haddock* has been incorporated into this section. This section now provides that a tenant whose conduct is the primary cause of code enforcement activity under subsection c. (3) of 46A:15-1 shall not be entitled to relocation expenses. The same principle is applied to tenants under subsection a. (13) (C) of 46A:15-2. In addition, a landlord is not fined additionally if the code violation is primarily attributable to the tenant.

In addition, unlike the source statute, this revised section permits the municipal ordinance to allow the landlord to offset no more than 50% of the amount of the relocation assistance to be paid to the tenant by the amount of rent due and owing to the landlord.

46A:21-7. Relocation of displaced tenants; no ordinance; violations

a. If a tenant is displaced because of an illegal occupancy in residential rental premises pursuant to subsection c.(3) of 46A:15-1 or subsection a.(13) (C) of 46A:15-2, and the municipality in which the rental premises is located has not enacted an ordinance under section 46A:21-6, the tenant shall be entitled to a lump sum relocation assistance payment from the owner in an amount equal to six times the monthly rental paid by the displaced tenant, provided that if a court finds that in the case of a code violation requiring enforcement activity, the code violation is primarily attributable to the tenant's conduct, the tenant shall not be entitled to receive any relocation assistance.

b. The owner shall pay the relocation assistance to the displaced tenant five days prior to the issuance of the warrant for eviction of that tenant. The warrant for eviction of the displaced tenant may not be issued except as set forth in subsection c. of this section, provided that nothing in this section shall permit the execution of a warrant any sooner than eight days after the entry of a judgment for possession. Notwithstanding this provision, a judgment for possession may be entered upon conclusion of the trial.

c. If the owner fails to pay the relocation assistance to the displaced tenant within 30 days after entry of the judgment for possession, the municipality may, upon written request of the tenant, advance the payment to the tenant, in which case, the municipality shall petition the court to order:

(1) the reimbursement by the owner to the municipality, within 30 days thereafter, in the amount of the relocation assistance paid by the municipality with interest that shall accrue and be due on any unpaid balance, at the rate of 18% per annum until the amount due and all accrued interest is paid in full; and

(2) the issuance of the warrant for eviction within five days thereafter.

d. If the owner does not pay the displaced tenant, in full, the relocation assistance for which the owner is liable and:

(1) the municipality does not advance to the tenant the relocation assistance payment for which the owner is liable within 30 days after the judgment for possession has been entered, the unpaid balance and all accrued interest commencing from the sixth day after the payment was first due, and, in addition, a fine in the amount of six times the monthly rental paid by the displaced tenant shall be a lien upon the real property on which the dwelling of the tenant was located, for the benefit of that tenant; or

(2) the municipality pays the tenant and reimbursement to the municipality, along with costs and attorney's fees, is not paid by the owner in full within 30 days of the execution of the warrant of eviction of the tenant, the unpaid balance and all accrued interest commencing from the sixth day after the payment was first due, and, in addition, a fine in the amount of six times the monthly rental paid by the tenant, shall be a lien upon the real property on which the dwelling of the tenant is located, for the benefit of the municipality.

e. To perfect the lien under subsections d.(1) or (2), a statement showing the amount and due date of the unpaid balance and identifying the real property by description or by reference to its designation on the tax map of the municipality shall be recorded with the county clerk or the registrar of deeds of the county where the affected property is located, and upon recording, the lien shall have the priority of a mortgage lien. Whenever the unpaid balance and all interest accrued thereon has been fully paid, the displaced residential tenant, the landlord, or the municipality shall promptly cancel or discharge the statement, in writing, at the place of recording.

f. An owner under this section that pays the relocation assistance lump sum payment to the tenant directly may reduce no more than 50% of the amount of the payment by the amount of rent due and unpaid from the tenant. An owner who does not pay the relocation assistance lump sum payment to the tenant directly but is then forced by court order to reimburse the municipality for its payment of relocation assistance to the tenant, shall not be permitted to reduce the amount of the payment by the amount of any rent due and unpaid from the tenant.

g. For the purposes of this section, the owner shall exclude a mortgagee in possession of a building through foreclosure or a municipality that owns a building pursuant to a rehabilitation agreement.

h. This section shall not authorize the enforcement of a lien for actual reasonable moving expenses with respect to any real property, the title to which has been acquired by a municipality and which has been transferred pursuant to a rehabilitation agreement.

Source: 2A:18-61.1h.

COMMENT

This section adopts the provisions of source section 2A:18-61.h. with some modifications in language and meaning. Three significant changes should be noted. First, the same principal in the Comment to proposed section 46A:21-6 involving the tenant's conduct in connection with the illegal or unlawful occupancy also applies here. Unlike the source provision, which was enacted prior to the *Haddock* decision, this section now provides that a tenant whose conduct is the primary cause of a code enforcement activity (not a zoning violation) shall not be entitled to relocation expenses. The same reasoning in *Haddock* applies to this section. This section provides for the

award of relocation expenses for a violation of subsection c. (3) of 46A:15-1 or subsection a. (13) (C) of 46A:15-2 that is not otherwise provided by the *Relocation Assistance Law of 1967*, N.J.S. 52:31B-1 *et seq.*, and the *Relocation Assistance Act*, N.J.S. 20:4-1 *et seq.*

Second, as suggested by Mahlon L. Fast, J.S.C. Ret. and author of *Landlord – Tenant and Related Issues in the Superior Court of New Jersey* (3rd Ed. 2008) the intent of the Legislature is unclear in the current statute regarding whether a landlord in addition to paying interest for a late payment of relocation expenses to a tenant should be prevented from evicting a tenant for an illegal occupancy if payment of the relocation expenses required under this section are not paid. To accommodate these concerns, and to avoid the imposition of a lien, if at all possible, the revision also provides that when an owner does not make the required payment, the municipality may do so and then seek reimbursement, plus interest, from the owner. If, however, the municipality either makes the payment and is not reimbursed within the 30 days or chooses not to make the payment and the owner continues not to make the payment, then a lien shall be imposed on the real property. See subsections d. and e.

Third, new subsection f. provides that so long as the landlord pays the relocation assistance directly to the tenant, the landlord may offset from no more than 50% of the relocation assistance any unpaid rent that is due from the tenant. In *Miah v. Ahmed*, 179 N.J. 511, 527 (2004), the New Jersey Supreme Court concluded that because the statute was silent with respect to a landlord's right to set off the relocation assistance payment, whether setoff should be permitted depended on the equities presented in the case, making room for the Legislature to provide direction on this very issue in a revised statute.

CHAPTER 22: CONVERSIONS FROM RESIDENTIAL RENTAL PREMISES

46A:22-1. Definitions

For the purposes of this chapter:

- a. "Comparable housing or park site" means housing that is:
 - (1) decent, safe, sanitary, and in compliance with all local and State housing codes;
 - (2) available to all persons regardless of race, creed, national origin, ancestry, marital status or sex; and
 - (3) provided with facilities equivalent to that provided by the landlord in the dwelling unit or park site in which the tenant then resides with regard to each of the following:
 - (a) apartment size, including number of rooms, or park site size,
 - (b) rent range,
 - (c) apartment's major kitchen and bathroom facilities, and
 - (d) special facilities necessary for persons with physical disabilities;
 - (4) located in an area not less desirable than the area in which the tenant then resides in regard to each of the following:
 - (a) accessibility to the tenant's place of employment,
 - (b) accessibility of community and commercial facilities, and
 - (c) environmental quality and conditions; and
 - (5) in accordance with additional reasonable criteria which the tenant has requested in writing at the time of making any request under this act.
- b. "Condominium" means a condominium as defined in the Condominium Act, N.J.S. 46:8B-1 *et seq.*

c. "Cooperative" means a housing corporation or association which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by the corporation or association, or to lease or purchase a dwelling constructed or to be constructed by the corporation or association.

Source: 2A:18-61.7.

COMMENT

This section adopts the provisions of source section 2A:18-61.7 with modifications in language. A general definition of "mobile home park" now appears in Title 1 and replaces the definition that formerly appeared in this section.

46A:22-2. Conversion of multiple dwellings into condominium, cooperative or fee simple ownership; notice and rights to tenants

a. Any owner who intends to convert a multiple dwelling as defined in N.J.S. 55:13A-1 *et seq.*, other than a hotel or motel, or a mobile home park, into a condominium or cooperative, or to fee simple ownership of the several dwelling units or park sites, shall serve each affected tenant with the following:

(1) 60 days' notice of the intention to convert which advises the tenant of a right to purchase ownership of the residential rental premises or dwelling unit at a specified price in accordance with this section, and the tenant's other rights as a tenant under this chapter in relation to the conversion of a building or a park to a condominium, cooperative or fee simple ownership;

(2) the notice to vacate and demand for possession required by subsection b. (6) of 46A:16-6 in accordance with the remainder of chapter 16 of this Title;

(3) prior to serving the notice to vacate and demand for possession as set forth in subsection a.(2), the full plan of the conversion; and

(4) the notice of a right to apply for comparable housing in accordance with section 46A:22-5.

b. The notices required in subsection a. (1) (3) and (4) may be combined in one notice.

c. A duplicate of the first such 60-day notice and full plan, or the combined notice referred to in subsection b., shall also be transmitted to the clerk of the municipality at the same time.

d. A tenant in occupancy at the time of the notice of intention to convert shall have the exclusive right to purchase the unit, the shares of stock allocated to the unit or the park site, for the first 90 days after the notice during which time the unit or site shall not be shown to a third party unless the tenant has waived the right to purchase in writing.

Source: 2A:18-61.8; new.

COMMENT

This section continues the substance of its source with minor changes in language. Subsection a. (4) is new but clarifies what is assumed in the source to 46A:22-5, i.e., that the tenant must first be made aware of the opportunity for rental of comparable housing before the tenant may take advantage of that opportunity by requesting the landlord offer it.

46A:22-3. Notice to tenant after master deed or agreement to establish cooperative

a. Any owner who creates an initial tenancy after the master deed or agreement establishing the cooperative is recorded shall provide to the tenant at the time of applying for the tenancy and at the time of establishing any rental agreement a separate written statement as follows:

STATEMENT

THIS BUILDING (PARK) IS BEING CONVERTED TO OR IS A CONDOMINIUM OR COOPERATIVE (OR FEE SIMPLE OWNERSHIP OF THE SEVERAL DWELLING UNITS OR PARK SITES). YOUR TENANCY CAN BE TERMINATED UPON 60 DAYS' NOTICE IF YOUR APARTMENT (PARK SITE) IS SOLD TO A BUYER WHO SEEKS TO PERSONALLY OCCUPY IT. IF YOU MOVE OUT AS A RESULT OF RECEIVING SUCH A NOTICE, AND THE LANDLORD ARBITRARILY FAILS TO COMPLETE THE SALE, THE LANDLORD SHALL BE LIABLE FOR TREBLE DAMAGES AND COURT COSTS.

b. The statement shall also be reproduced as the first clause in any written lease provided to the tenant.

Source: 2A:18-61.9.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:22-4. Tenant evicted to allow conversion; moving expense compensation

Every tenant evicted under subsection f. of 46A:15-1, pertaining to the conversion of two or more dwelling units or park sites from the rental market to a condominium, cooperative or fee simple ownership, unless the tenant also is being evicted for another cause under section 46A:15-1 other than subsection f., shall receive from the owner moving expense compensation in the form of a waiver of payment of one month's rent. This section is not applicable where a court grants a hardship stay pursuant to subsection e. of 46A:22-5.

Source: 2A:18-61.10.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:22-5. Comparable housing rights

a. A tenant receiving a notice to vacate and demand for possession under subsection b. (6) of 46A:16-6 may request within 18 full months thereafter that the landlord offer the tenant the rental of comparable housing or a park site and a reasonable opportunity to examine and rent the comparable housing or park site. The landlord shall offer the tenant the rental of comparable housing or a park site and a reasonable opportunity to examine and rent the comparable housing or park site if requested by the tenant but shall not be obligated to do so if not requested by the tenant.

b. In any proceeding commenced in accordance with subsection f. of 46A:15-1 pertaining to the landlord or owner of the building or mobile home park converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park

sites, or subsection d. of 46A:15-1 pertaining to the landlord or owner seeking to permanently retire the building from residential use or the mobile home park from use as a manufactured housing community, the owner shall prove that the tenant was offered the comparable housing or park site and provided a reasonable opportunity to examine and rent the housing or park site as requested.

c. If a tenant is not offered the comparable housing or park site and provided a reasonable opportunity to examine and rent the housing or park site as requested, the court may authorize one-year stays of eviction with reasonable rent increases until such time as the court is satisfied that the tenant has been offered the comparable housing or park site and provided with a reasonable opportunity to examine and rent the housing or park site as requested pursuant to this section. No more than five stays shall be granted in any case. If the landlord fails to allege within one year of a prior stay that the tenant was offered a reasonable opportunity to examine and rent comparable housing or a park site within such prior year, a one-year stay of eviction shall be automatically renewed by the court subject to the five year limitation, provided that the court shall not authorize any further stays when the owner has also provided the tenant with hardship relocation compensation or waiver of payment of five months' rent.

d. A court with jurisdiction to order a stay pursuant to this section, may invoke any provisions of chapter 28 of this Title and grant to a tenant a protected tenancy period in accordance with chapter 28 upon the court's determination that:

(1) the tenant would otherwise qualify as a senior citizen tenant or disabled tenant or qualified income tenant pursuant to chapter 28 except for the fact that the building in which the dwelling unit is located was converted prior to the effective date of the Senior Citizens and Disabled Protected Tenancy Act, N.J.S. 2A:18-61.22 *et seq.*, or the Tenant Protection Act of 1992, N.J.S. 2A:18-61.42 *et seq.*, now compiled in chapter 28 of this Title; and

(2) the granting of the protected tenancy period as applied to the tenant would not violate due process or fundamental fairness concepts, giving particular consideration to whether a dwelling unit was sold on or before July 27, 1981, [the date that the Senior Citizens and Disabled Protected Tenancy Act took effect, or June 1, 1992, the date that the Tenant Protection Act of 1992, took effect] to a bona fide individual purchaser who intended personally to occupy the unit.

e. A court that declines to grant a protected tenancy status under subsection d., shall nevertheless order a hardship stay as authorized by subsection c. until comparable relocation housing is provided.

Source: 2A:18-61.11.

COMMENT

This section continues the substance of its source with minor language changes. The *Tenant Protection Act of 1992*, now compiled along with the *Senior Citizens and Disabled Protected Tenancy Act* in chapter 28 of this Title, was not enacted at the time of the source provision. Hence, language referring to the *Tenant Protection Act of 1992* was added in this section.

46A:22-6. Rules and regulations

a. The Department shall adopt rules and regulations setting forth procedures required to be followed by landlords in providing tenants a reasonable opportunity to examine and rent

comparable housing, including setting forth procedures and the information required to be disclosed to tenants regarding the procedures, the rights and responsibilities of tenants pertaining to comparable housing, and the plans and proposals of landlords which may affect a tenant in order to maximize the tenant's ability to exercise those rights.

b. Any rules and regulations adopted under this section shall only be applicable to tenants and owners of a building or mobile home park, dwelling units or park sites of which are being, or about to be, converted from the rental market to a condominium, cooperative or fee simple ownership, or to any mobile home park being permanently retired from the rental market.

Source: 2A:18-61.12.

COMMENT

This section continues the substance of its source with minor changes in language.

ARTICLE 6

LANDLORD REMEDIES (OTHER THAN EVICTION)

CHAPTER 23: ACTION FOR RENT OR DAMAGES

46A:23-1. Action for rent

A landlord to whom rent is due may commence an action for the amount of rent due. The action is independent of a summary eviction proceeding, and may be filed concurrently with, or at any time before or after, an action seeking possession of the rental premises or eviction of the tenant, in accordance with the eviction article of this Title.

Source: 2A:42-11; new.

COMMENT

This section continues the substance of its source with some changes in language. Language has also been added to clarify that the suit for rent is independent from a summary eviction proceeding and may be filed before, with, or after commencement of an eviction action, subject to the mandatory joinder provisions of the Rules Governing the Courts of New Jersey in the event a prior action was commenced in the Law Division.

46A:23-2. Action against tenant holding over; actual damages

a. If a tenant of residential rental premises gives the landlord written notice of termination of the lease by a date certain and thereafter fails to vacate the premises by that date, the landlord may recover from the tenant actual damages that are incurred by the landlord, together with the costs of any action.

b. If a tenant of nonresidential rental premises remains in the premises beyond the original lease term and fails to comply with the tenant's affirmative obligations in the lease governing the renewal or extension of the lease term, or otherwise impermissibly continues to occupy the premises after the lease term has expired, the landlord may recover from the tenant the actual damages that are incurred by the landlord, together with the costs of any action, unless the lease provides for a different remedy, in which case the lease shall govern. Nothing provided in this subsection shall preclude the tenant and landlord from agreeing to extend the original lease term.

Source: 2A:42-5; 2A:42-6; new.

COMMENT

This section eliminates double rent as a remedy for a residential holdover tenant's failure to vacate the premises in accordance with the tenant's own notice to terminate the tenancy. Rather, under the revised section, a landlord may seek actual damages. With regard to nonresidential tenants, however, the lease governs, and the landlord is not limited to seeking actual damages if the lease provides otherwise.

To avoid confusion, the terms "notice to quit", used in the source statute, have been replaced with the terms "notice of termination of the lease" (not to be confused with "notice to vacate" which are the terms now used to replace "notice to quit" in the eviction article of this Title when the notice is served by the landlord seeking to evict a tenant.) Technically, a "notice to quit" is a notice served by a landlord upon the tenant (not vice versa) in order for the landlord to terminate the tenancy and regain possession of the rental premises under certain circumstances. Moreover, a tenant may not use this section to terminate the tenancy or to shorten an otherwise longer lease term in violation of the tenant's lease. For an understanding of the historical interplay of source sections 2A:42-5 and 2A:42-6, note the discussion in *200 Washington St. Corp. v. Beltone Hearing Service*, 32 N.J. Super. 81 (Law Div. 1954.)

Notably, under the source statute, section 2A:42-5, although the failure of a residential tenant to vacate the premises on the date the tenant designates is a basis for a landlord's action for damages caused by the tenant's conduct, it is not a "good cause" for eviction under current law. See, *Chapman Mobile Homes, Inc. v. Huston*, 226 N.J. Super.405 (Law Div. 1988.) Subsection b. continues the substance of the source sections as they pertain to nonresidential tenancies but eliminates the automatic double rent penalty unless the lease provides such a penalty.

CHAPTER 24: DISTRAINT

46A:24-1. Application

This chapter shall be applicable to nonresidential rental premises only.

Source: 2A:33-1.

COMMENT

The remedy of distraint may only be used for nonresidential rental premises as provided in the source provision.

46A:24-2. Property subject to distraint

A landlord may distraint the personal property in or upon the rental premises belonging to a tenant. "Personal property" is any tangible, movable property, including goods and chattels. "Personal property" does not include the tenant's personal clothing; publicly owned property; proprietary information, however stored; or any intangible property.

Source: 2A:33-3; 2A:33-6; new.

COMMENT

This section significantly changes source section 2A:33-6 in order to describe, in modern terms, property that is distrainable. Reference to the distraint of straying domestic animals has been omitted from the revision. Reference to the exception from distraint of \$500 of the tenant's personal property (from source section 2A:33-3) now is referred to in proposed section 46A:25-5. The imposition of a penalty for impounding together property distrained at one time (a part of 2A:33-2) and the distraint of cattle or other domestic animals found straying and causing damage to property of any person other than their owner (2A:33-4) no longer have relevance and are not included in the revision.

Notably, the Uniform Commercial Code (N.J.S. 2A:9-109) does not apply to a landlord's lien, *other than an agricultural lien*. (emphasis added.) An "agricultural lien" is defined at N.J.S. 2A:9-102 (a) (5) as an "interest in farm products: (A) which secures payment or performance of an obligation for . . . (ii) rent on real property leased by a debtor in connection with its farming operation." The term "farm products" includes crops grown, growing, or

to be grown, including, among other things, livestock, born or unborn. Accordingly, references to crops and livestock in the current statute (part of 2A:33-6) have been omitted from the revision.

References to the time limitations for distraint now appear in section 46A:24-3.

Finally, “proprietary information” is not included as distrainable property. The term “proprietary information”, is not defined here but should be understand as the term is used in other sections of the statutes e.g., the criminal code and tax provisions (where the term also is not defined). Landlords may wish to refrain from distraining computers unless the landlord can extricate from the computer, and not distraint, any applications or data that may contain confidential or personal information.

46A:24-3. Time limitations

a. Subject to the requirements of subsection b., a landlord may distraint for rent due within the six months immediately preceding the distraint.

b. Rent may be distrained for after it becomes due, but in no event shall the landlord at one time distraint for more than one year’s rent arrears. If the tenant vacates the rental premises, the distraint shall be made within 30 days after the tenant vacates.

Source: 2A:33-7; 2A:33-8.

COMMENT

This section continues the substance of its sources with some changes in language. With regard to the time frame for distraint, even if the landlord is unaware that the tenant has vacated until after the 30 days have expired, the landlord is not without recourse. Any property remaining in the rental premises after that time may be sold in accordance with the provisions regarding abandoned tenant property.

46A:24-4. Procedure for seeking distraint; order to show cause

a. Except as provided in subsections b. and c., a landlord seeking to distraint a tenant’s property shall proceed in the Superior Court, prior to seizing the property, by an application for an order to show cause supported by a verified complaint or affidavit in accordance with the Rules Governing the Courts of the State of New Jersey. On the return date of the order to show cause, the court shall, in accordance with this chapter, authorize the distraint and determine the property to be seized, impounded and sold, or grant such other emergent relief as is fair and equitable to the parties, pending a final hearing.

b. A landlord may, without prior judicial approval, seize and impound property of a tenant that expressly waives due process rights with regard to the property. The waiver may be made in a written lease or other writing signed by the tenant. Prior to selling the seized property, the landlord shall file in the Superior Court, an application for an order to show cause supported by a verified complaint or affidavit in accordance with the Rules Governing the Courts of the State of New Jersey. On the return date of such order to show cause, the court shall determine the property to be sold. The sale shall be conducted in accordance with section 46A:24-6.

c. A landlord who reasonably believes the tenant will imminently remove or destroy the property before judicial approval can be obtained may seize and impound the tenant’s property without a prior court order only if the landlord (i) provides concurrent notice of the seizure and the tenant’s right to a post-deprivation hearing under this chapter to the tenant, by personal service or service by next day commercial courier requiring a signature upon receipt, or by posting the notice at the rental premises in a conspicuous place, and (ii). files in the Superior

Court, prior to selling the seized property, an application for an order to show cause supported by a verified complaint or affidavit in accordance with the Rules Governing the Courts of the State of New Jersey. On the return date of such order to show cause, the court shall determine the property to be sold, or grant such other emergent relief as is fair and equitable to the parties, pending a final hearing. Upon the tenant's request, the court, within 10 days after seizure, may hold a hearing to determine whether an order allowing the landlord to continue to hold the seized property should be entered.

Source: New.

COMMENT

Although current sections 2A:33-5 and 2A:33-9 require or contemplate court intervention in order to distraint, the proposed section is new and should correct the constitutional deficiencies identified by the New Jersey Supreme Court in *Callen v. Sherman's, Inc.*, 92 N.J. 114 (1983.) This new section, which is based on R. 4:52-1(a), requires that notice and a hearing occur prior to distraint, unless the tenant has waived due process rights or the landlord learns of the imminent removal of the personal property.

The waiver of due process in the lease must be clear. The *Callen* court determined that the waiver was not "clear" where the lease "merely provided that the landlord could reenter the premises following default by the tenant and that the landlord could pursue 'other remedies . . . as may be permitted by law.' . . . The right of reentry does not authorize a landlord to deprive the tenant of the use of his property until the rent is paid."

Moreover, the *Callen* court noted that "[i]n the extraordinary case, *e.g.*, where the landlord learns that a tenant is loading his goods onto a truck to avoid a just claim, the landlord may still resort to self-help. The need for relief in these circumstances is so compelling that a landlord need not seek judicial approval before availing himself of the statute. A post-deprivation hearing . . . will satisfy the need for due process . . ." (Citations omitted.)

46A:24-5. Impound and inventory of distrainted property; up to \$500 exemption

a. Property that is distrainted by court order, in accordance with subsection a. of 46A:24-4, shall be seized and impounded by an enforcement officer in the county where the rental premises are located. Property that is distrainted without court action, in accordance with subsection b. of 46A:24-4, shall be seized and impounded by the landlord and then maintained and sold in accordance with the lease or this chapter. Property that is distrainted prior to court action, in accordance with subsection c. of 46A:24-4, shall be seized and impounded by the landlord and thereafter turned over to an enforcement officer for sale in accordance with court order.

b. Impounding shall occur either by padlocking the rental premises or otherwise securing the property in a location that is most convenient for that purpose within the same county. All distrainted property seized at one time shall be impounded together unless otherwise ordered by a court.

c. Immediately after impounding the tenant's property, the property shall be inventoried by an enforcement officer either in accordance with subsection a. of 46A:24-4, as provided by court order, or, in accordance with subsections b. or c. of 46A:24-4, at the request of the landlord. The inventory shall include an evaluation of each item inventoried and the value of an item shall be the price estimated to be that for which the item would be sold at public sale. If the landlord fails to request the preparation of the inventory within two business days of seizure and impounding, the tenant may make a written request directly to the enforcement officer for the property to be inventoried and evaluated. A court order may require an appraisal in addition to or in place of an evaluation by the enforcement officer, in which case an independent professional

appraisal shall be conducted in accordance with the order. The enforcement officer shall provide copies of the inventory, and appraisal, if applicable, to the landlord, tenant and their counsel, if any.

d. From the inventory, the tenant, or in the tenant's absence or if the tenant fails to do so within 10 days after the inventory is taken, the tenant's attorney, representative, or the enforcement officer on behalf of the tenant, shall select property valued at \$500. The selected property shall be exempt from sale and returned to the tenant or the tenant's representative immediately.

Source: 2A:33-2; 2A:33-3; 2A:33-9; 2A:33-11; 2A:33-12; 2A:33-13.

COMMENT

This section continues the substance of its source with some changes in language. References to the word "family" in the source section have been changed to the word "representative" because the distraint remedy applies to nonresidential premises only. The court may determine, and may so order, that an appraisal is necessary prior to sale of the tenant's personal property.

46A:24-6. Sale of remaining distrained property

Property remaining after the tenant's selection in accordance with subsection d. of 46A:24-5 shall be sold by an enforcement officer by any method specified in a lease or other agreement between the landlord and the tenant, or by court order. The sale proceeds shall be distributed in accordance with section 46A:24-9.

Source: 2A:33-10; new.

COMMENT

The source section provides for a sale "at public venue the property so distrained" and a sale of the distrained property "for the best price that can be secured towards satisfaction of the rent and charges of distress, appraisement and sale, leaving the overplus, if any, with the sheriff or constable for the owner's use." The proposed section provides options for the sale not provided for in the current statute. Distribution of the sale proceeds is addressed in proposed section 46A:24-9.

46A:24-7. Third parties to enter property

The enforcement officer shall make arrangements for anyone viewing, appraising, buying or removing the impounded property, for a purpose in accordance with this chapter, to enter the premises where the property is impounded for that purpose.

Source: 2A:33-11.

COMMENT

This section continues the substance of its source with minor language changes.

46A:24-8. Seizure of property locked up; breaking and entering

a. An enforcement officer, in accordance with a court order may break open and enter during the hours of 8:00 a.m. to 6:00 p.m. a locked or otherwise secured location where property has been placed by a tenant to prevent its distraint. If the place where the property is secured is a residence, the landlord, by sworn testimony in court, shall first demonstrate the existence of a reasonable ground to suspect that the property is located at the residence.

b. Nothing in this subsection shall limit the ability of a landlord, in accordance with subsection b. of 46A:24-4, from further securing the premises without actually breaking open and entering the premises. In the event of a dispute between landlord and tenant under this subsection, any access thereafter to the rental premises shall be subject to court order.

Source: 2A:33-22; new.

COMMENT

This section continues the substance of its source with some changes in language. Subsection b. is added to clarify that although a landlord is not permitted to break open and enter the rental premises as an enforcement officer would be, the landlord is not precluded from further securing the premises with, for example, an additional lock or by a private guard service. A dispute arising from further securing the premises, however, must be resolved by court order.

46A:24-9. Distribution of proceeds; further distraints permitted

a. Upon the sale of the distrained property, the proceeds of sale shall be applied by the enforcement officer in the following order:

(1) payment of the reasonable charges of the impounding, appraisal and sale;

(2) payment of the amount of the lien to any lienholder determined by a court or agreed to by the landlord and the tenant to have a superior interest to the landlord in the distrained property;

(3) payment of the amount of rent due the landlord as determined by the court, or as agreed to by the landlord and the tenant, subject to the limitations prescribed by this chapter;

(4) payment of the amount of the lien to any lienholder determined by a court to have a subordinate interest to the landlord in the distrained property; and

(5) return of any overage to the tenant.

b. If the value of the property distrained does not satisfy the full value of the rent arrears, further distraints may be made for the remainder that is due in a manner and within the limitations provided by this chapter and approved by the court.

Source: 2A:33-5; 2A:33-10; 2A:33-15; new.

COMMENT

This section continues the substance of its source but changes significantly some of the language and provides additional guidance with regard to the disposition of the proceeds from the distraint that is consistent with case law pertaining to the disposition of sale proceeds generally.

46A:24-10. Objection to sale; claim of interest in distrained property

Any person, other than a landlord or tenant, who claims an interest in distrained property, or who objects to the sale or other disposition of distrained property, may:

a. file a written objection with the clerk of the court that issued the order pursuant to section 46A:24-6, and deliver a copy of the objection to the enforcement officer, and to the landlord and tenant or to their respective attorneys if an action is pending, in which case the enforcement officer shall not sell or dispose of the property until further order of the court; or

b. if there is no court order, commence an action in the county where the property is impounded, naming the landlord and tenant as defendants, to enjoin the sale until the objection can be heard.

Source: New.

COMMENT

This proposed section relies in part upon provisions pertaining to executions generally, *i.e.*, N.J.S. 2A:17-29 and 2A:17-31. However, provision has been made for when there is no court order pursuant to section 46A:24-6.

46A:24-11. Fees for enforcement officers, appraisers

Enforcement officers and appraisers that aid in the execution of this chapter shall be entitled to the fees provided for by law or Title 22A of the New Jersey Statutes.

Source: 2A:33-14.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:24-12. Damages recoverable for failure to comply with this chapter

If the landlord fails to follow the procedures required by this chapter, the aggrieved party may recover actual damages, together with the costs of any action. If the failure is willful, the aggrieved party may recover double the amount of damages, together with the costs of any action. No damages are recoverable for the inadvertent distraint of property that is not distrainable provided the landlord acts to release or return the property as soon as the nature of the property is known.

Source: 2A:33-18.

COMMENT

This section is derived from its source but deviates from it. The focus of the penalty is now on the failure to comply with this chapter rather than on committing an “irregular or unlawful act”.

46A:24-13. Damages recoverable for removal or concealing property subject to distraint

A landlord may recover actual damages resulting from the actions of a tenant who, with the intent to delay, hinder or defraud the landlord, removes or conceals property subject to distraint. If the landlord can demonstrate that the tenant’s actions were willful, the landlord may recover from the tenant double damages together with the costs of any action.

Source: 2A:33-21.

COMMENT

This section continues the substance of its source with some changes in language. In order to be consistent with the other source provisions pertaining to damages, costs are added as part of the recovery.

46A:24-14. Reclaiming seized property

a. A tenant may apply to the court to reclaim seized property that has not been sold if the property has been seized in violation of this chapter or is otherwise wrongfully seized.

b. A third party may apply to the court to reclaim seized property which belongs to the third party, or in which the third party has rights superior to those of the landlord.

Source: New.

COMMENT

This section is new. Section a. allows a tenant to reclaim property which could not be used to satisfy a landlord's claim for rent arrears. Subsection b. allows third parties, including secured creditors whose rights may be superior to that of the landlord, to enforce their rights.

46A:24-15. Apportionable rent

Any person entitled to a portion of the rent that is legally or equitably apportionable between concurrent owners, landlords, or their representatives, may distrain in the same manner as if entitled to the full amount.

Source: 2A:33-23.

COMMENT

This section continues the substance of its source with some changes in language. The word "concurrent" replaces the word "successive".

CHAPTER 25: LIEN OR RIGHT TO PREFERENCE IN PAYMENT FOR RENT

46A:25-1. Application

This chapter shall be applicable to nonresidential rental premises only.

Source: New

COMMENT

This section is new. Although the statutory language does not restrict the use of the current landlord's "lien" to nonresidential premises (N.J.S. 2A:42-1 *et seq.*), the actual use of the lien, as reflected in the case law, is so limited. This chapter therefore applies only to nonresidential rental premises.

46A:25-2. Landlord's lien for rent

A landlord of nonresidential rental premises shall be entitled to a lien in the amount of unpaid rent arrears to the extent of the tenant's interest in distrainable personal property in or upon the rental premises. The lien shall attach from the date the property is seized in the process of distraint, in accordance with chapter 24 of this Title.

Source: New.

COMMENT

This section is new. The landlord's "lien", as provided by chapter 42 of Title 2A, is considered "inchoate" and not really a lien at all; it is rather a statutory right to preference in payment over other creditors until distraint or other process by an enforcement officer. *See Hartwell v. Hartwell Co., Inc.*, 167 N.J. Super 91, 97 (Ch. Div. 1979). However, a landlord's remedy of distraint implies the landlord's entitlement to a lien for rent arrears. In *Schwartz v. Maguire*, 130 N.J. Eq. 152, 154 (Ct. of Chancery 1941), *modified on other grounds*, 131 N.J. Eq. 578 (E. & A. 1942), where the receiver appointed for the tenant sought to set aside a distraint, the court said "[a] landlord's claim for unpaid rent is not a lien . . . but will ripen into a lien when a distraint is actually made. [Citation omitted.] A

landlord's lien, so perfected, has priority to the claims of general creditors provided the distraint was made prior to receivership.”

46A:25-3. Landlord's right to preference in payment over unsecured creditors

a. If an unsecured creditor levies against the tenant's distrainable personal property in or upon the rental premises, by execution, attachment or other process, the landlord may exercise a right to a preference in payment over any unsecured creditor for the unpaid rent arrears, not to exceed one year's rent.

b. The right to preference shall have the power of distraint from the date the landlord serves the enforcement officer with written notice of a claim for unpaid rent, including the amount of the rent arrears. The enforcement officer shall not sell the tenant's personal property during a period of 10 days after the levy, in order to give the landlord an opportunity to make a claim. If served with a landlord's claim during the 10-day period, the enforcement officer shall pay the landlord the amount of the claim (subject to the one-year limitation) plus the cost of the enforcement officer's process either prior to, or from the proceeds of, the sale, after which the enforcement officer may levy and execute on behalf of the unsecured creditor.

c. If the rent arrears exceed one year's rent, payment of one year's rent to the landlord shall satisfy the landlord's lien and right to preference.

d. The enforcement officer shall not remove any of the tenant's personal property from the rental premises except during normal business hours and with prior notice to the landlord and to the tenant, or, in the tenant's absence, to a person over the age of 18 years at the premises from where the removal will take place.

Source: 2A:42-1; 2A:42-2; 2A:42-3; new.

COMMENT

This section merges source sections 2A:42-1 and 2A:42-2, pertaining to the landlord's "inchoate lien". The "lien" derived from the source statutes is really a right to preference in payment over competing creditors for the amount of the unpaid rent. The right has the power of distraint once the landlord gives the enforcement officer notice of the rent claim. The revised language reflects the true nature of the landlord's right to preference. The source statutes, chapter 42, date back at least to Paterson's Laws (1795).

46A:25-4. Contractual lien for rent

Nothing in this chapter shall preclude a landlord from:

a. acquiring a security interest in the tenant's distrainable personal property to satisfy any and all rent arrears, whether or not in excess of one year's rent, by express provision in a lease or other contract, or

b. perfecting such security interest in accordance with the Uniform Commercial Code, N.J.S. 12A:9-101, *et seq.* at the time of commencement of the lease or thereafter so as to be entitled to preference over other secured or unsecured creditors.

Source: New.

COMMENT

This new provision clarifies that a contractual lien for rent is not precluded by the statutory lien. If perfected at the time of commencement of the lease, a contractual security interest in the tenant's property for rent due should obviate sections 2A:44-165 through 2A:44-168 (collectively known as the Loft Act). The Loft Act

provides for a commercial landlord's lien against a tenant manufacturer's machinery, and was enacted in 1933 to address an "evil of sufficient magnitude to warrant the exercise of [the State's] police powers for the protection of landlords of manufacturing establishments against subsequently created chattel mortgages". See *Gibraltar Factors Corporation v. Slapo*, 23 N.J. 459 (1957), *appeal dismissed*, 355 U.S. 13 (1957). The relevance of the Loft Act is unclear now that "manufacturing establishments" are fewer in number in New Jersey and the need to protect landlords from the financial pitfalls of tenant manufacturers over other types of tenants may be less important.

Regardless of the type of tenant and the nature of the tenant's personal property, a contractual lien perfected under the UCC at least at the time of commencement of the lease would give the landlord a preference over most other secured and unsecured creditors. The UCC's inapplicability to a 'landlord's lien' (see N.J.S. 12A:9-109(d) (1)) refers to a landlord's right to a preference in payment under N.J.S. 2A:42-1 and not to a lien that derives from a security interest by virtue of a contract between a landlord and tenant.

46A:25-5. Lien on assignor's goods; assignment for benefit of creditors

a. If a tenant makes an assignment of personal property in or upon the rental premises for the benefit of creditors, the landlord shall be entitled to a lien in the amount of unpaid rent arrears to the extent of the tenant's interest, not exceeding one year's rent. The lien shall attach as of the date of the assignment.

b. The lien shall be first paid by the assignee, before payment of any other creditors, out of the personal property of the tenant which was in or on the rental premises at the time of the assignment. If the tenant or its assignee removes personal property from the rental premises after the assignment, the landlord, within 40 days after its removal, may distrain the removed personal property in accordance with chapter 24.

Source: 2A:19-31; 2A:19-32; new.

COMMENT

This section continues the substance of its sources with some changes in language. The source sections are part of a series of provisions pertaining to assignments for the benefit of creditors.

References in source section 2A:19-32 to removal of the tenant's personal property by "any other person" and to the landlord's right to "seize . . . goods and chattels in whosoever hands the same may be found . . . whether the rent by the terms of the lease be due or not . . ." are deleted in the revision because these references are inconsistent with sections 46A:25-5 and 46A:24-3. Under section 46A:25-5, the landlord cannot seize the tenant's personal property from a secured creditor who has removed the property prior to the landlord's distraint, and under section 46A:24-3, a landlord can only distrain for rent due within the six months immediately preceding the distraint.

CHAPTER 26: ACTION FOR DAMAGE, DESTRUCTION OR MATERIAL ALTERATION OF RENTAL PREMISES

46A:26-1. Application

This chapter shall be applicable to residential and nonresidential rental premises.

Source: New

COMMENT

This section is new. The archaic action for "waste" applied to both residential and nonresidential premises. An action for damage, destruction or material alteration to the rental premises also applies to residential and nonresidential rental premises. Also see Comment to section 46A:26-2.

46A:26-2. Damage to or destruction of rental premises

A tenant shall not cause by gross negligence or intentional conduct any damage to or destruction of the rental premises that is not in accordance with the lease or not reasonably implied from the parties' conduct.

Source 2A:65-2; new.

COMMENT

This section is substantially new although it is derived from its source statute. Sections 46A:26-2 and 46A:26-3 continue the substance of the source provision, but, significantly, separate the archaic concept of "waste" into two contemporary concepts: first, the grossly negligent or willful destruction of the rental premises; and second, the major alteration or change to the very nature of the rental premises or the real property in which the rental premises are contained. Section 46A:26-3 is modeled, in part, on §803 of McKinney's Consolidated Laws of New York, pertaining to alterations or replacements of structures. Notably, the source provision also addresses tenants in dower or curtesy, or for life, which tenancies are not dealt with in this revision.

In addition, current section 2A:65-7 -- which prohibits a civil action for waste as the result of an accidental fire, unless otherwise provided in the lease -- is recommended for deletion. This provision existed historically because of the common law responsibility of the tenant for the damages resulting from fire, whether by negligence or accident. The scope of this responsibility was first limited by statute prior to the statutes of Marlbridge. When the common law action for waste was codified in the statutes of Marlbridge, a tenant's exemption from liability for accidental fire was also preserved. With the proposed revision only grossly negligent or intentional conduct is actionable, thus eliminating any reason to continue to preserve this exception from the archaic common law. In addition, proposed section 46A:26-4 provides for an offset against damages in the amount of any insurance proceeds recovered by the landlord, which should lessen the burden of all forms of accidental damage to the premises whether caused by fire or other catastrophe.

A general comment about "waste" and its modern counterpart language appears at the end of section 46A:26-3.

46A:26-3. Material alteration or change in the nature or character of the rental premises

a. A tenant shall not materially alter or change the nature or character of the rental premises or the real property in which there are the rental premises if doing so will violate the lease or any other agreement regulating the conduct of the owner of the rental premises or restricting the use of the real property;

b. If no lease or other agreement expressly prohibits the alteration or change in the nature or character of the rental premises or the real property in which there are the rental premises, a tenant may materially alter or change the nature or character of the rental premises or the real property if the tenant:

(1) provides a form of security to the landlord, in accordance with chapter 13 of this Title;

(2) serves upon the landlord, within 30 days prior to commencement of the alteration or change, written notice of the intention to make such alternation or change and specifying its nature; and

(3) establishes that the alteration or change, when completed, will not reduce the market value of the rental premises or the real property and would likely be made by a prudent landlord or owner under the circumstances.

Source: 2A:65-2; new.

COMMENT

Sections 46A:26-2 and 46A:26-3 continue the substance of the source provision, but, significantly, separate the archaic concept of "waste" into two contemporary concepts: first, the grossly negligent or willful destruction of the rental premises; and second, the major alteration or change to the very nature of the rental premises or the real property in which the rental premises are contained. Section 46A:26-3 is modeled, in part, on §803 of McKinney's Consolidated Laws of New York, pertaining to alterations or replacements of structures.

The source section is part of a series of provisions pertaining to “waste” which date from 1795 (Paterson’s Laws) but are derived from the ancient British Statutes of Marlbridge (1267) and Gloucester (1278). The former permitted a remedy at law against tenants committing or suffering waste, which had not existed at common law. The latter was subsequently passed to provide for a writ of waste in the chancery court against tenants for a term of years, tenants in dower, by curtesy or tenants for life. The punishment for violation of the statute was treble damages and that “the place or thing wasted should be recovered.” Though not discussed here, remedies for waste were subsequently expanded to apply to joint tenants and tenants in common.

The archaic concept of “waste”, intended for the most part to protect future owners of the land in question, applied against tenants of estates created by law as distinguished from tenancies created though the act of the owner of the premises. In the latter case, the protection of the freehold was left to the party creating the partial estate and if “the landlord make no provision, by express agreement, against waste, he is in those cases (independently of statute) without remedy, and is left to suffer the consequences of his neglect.” *Camden Trust Co. v. Handle*, 132 N.J. Eq. 97, 99 (1942) (citing *Minor & Wurts on Real Property*, section 390). Acts of “waste” included the cutting and carrying away of timber, the destruction of meadow or pasture land by digging up the soil or overflowing it with water, or the “permitting of property to fall into nonrepair.”

More modern case law has interpreted the concept of “waste” as destruction of the structure of the rental premises or an alteration to the rental premises which changes its nature and character even though the value of the premises are thereby increased. In determining whether there has been “waste”, the courts consider whether the tenant’s conduct extended beyond what was fairly implied by the lease and contemplated by the parties. The term, itself, however, is deemed anachronistic and therefore is eliminated entirely from the revision.

Nothing in this chapter shall derogate or limit any other remedies or actions to which a landlord of nonresidential or residential rental premises is entitled. See section 46A:1-2.

Provisions of the source statute that pertain to remedies of an heir, a co-tenant, or a person with a remainder or reversionary interest in the rental premises, are not included in the revision, *i.e.*, specifically, sections 2A:65-4; 2A:65-5 and 2A:65-6.

46A:26-4. Violation; damages

a. Upon a finding for the landlord in an action commenced for a violation of section 46A:26-2, the landlord may recover actual damages and, in the case of a willful violation, punitive damages in the court’s discretion, together with the costs of any action.

b. Upon a finding for the landlord in an action commenced for a violation of section 46A:26-3, the landlord may recover, together with the costs of any action, at the landlord’s election, damages based on:

(1) the actual cost of restoring the property to its original condition, or;

(2) the difference between the fair value of the rental premises before the alteration or change and the fair value of the rental premises subsequent to the alteration or change.

c. An offset for any insurance proceeds recovered by the landlord or for the landlord’s benefit for the offending conduct shall be applied against any award of damages permitted under this section.

d. In addition to or in lieu of any damages permitted under this section, a landlord may recover injunctive relief in accordance with the Rules Governing the Courts of the State of New Jersey.

Source: New.

COMMENT

This new section eliminates the recovery of treble damages, as provided in N.J.S. 2A:65-3, and sets forth the standards by which actual damages may be measured, depending upon whether the tenant’s conduct is damage or destruction to the rental premises or material alteration and change in the nature or character of the rental premises or the real property. Subsection c. provides for an offset against any damage award in the amount of any insurance proceeds collected, and subsection d. provides for injunctive relief. The reference to the defendant losing

“the thing or place wasted” that appears in N.J.S. 2A:65-3 is not carried into the revision because of the *Anti-Eviction Act* and general principles of contract law that prohibit such an automatic forfeiture.

CHAPTER 27: ABANDONED TENANT PROPERTY

46A:27-1. Application

a. This chapter may be invoked with regard to residential or nonresidential rental premises.

b. This chapter shall not be applicable to:

(1) property as defined in and which must be disposed of in accordance with N.J.S. 46:30B-1 *et seq.*, the Uniform Unclaimed Property Act;

(2) motor vehicles;

(3) personal property of the tenant that is expressly relinquished to the landlord, which shall be treated as abandoned property in accordance with N.J.S. 46:30C-1 *et seq.*

Source: 2A:18-83; 2A:18-84; new.

COMMENT

This section continues the substance of its source with some changes in language. In addition, reference is now made to N.J.S. 46:30C-1 *et seq.*, in new subsection c. to distinguish this chapter from that statute.

46A:27-2. Applicability of certain nonresidential lease provisions

If a provision in a lease for nonresidential premises controls notice, storage and the manner of sale or disposal of the tenant’s property, the lease provision, and not the provisions of this chapter on those subjects, shall be applicable. A lease provision regarding the distribution of proceeds from the sale of abandoned tenant property shall not supersede this chapter with regard to the distribution of those proceeds.

Source: 2A:18-72.

COMMENT

This section differs from its source section in one significant respect. The proposed section allows a lease provision to supersede the requirements of the chapter as to most important issues, but not as to the distribution of proceeds. Under the current law, *In re Dollar Rons II, LLC*, 2008 WL 1767064 (D.N.J. 2008), the court held that where the lease specifically provided that the landlord could sell or dispose of the tenant’s property within 5 days after the tenant quit, vacated or abandoned the premises, without paying the tenant any of the proceeds of sale, the landlord could sell the tenant’s inventory without applying any of the sale proceeds to rent owed or to the tenant’s trustee in bankruptcy. The result of this holding is that in certain cases, the landlord may have a windfall at the expense of the tenant’s creditors. By limiting the scope of this provision, that result is avoided.

46A:27-3. Landlord’s right to dispose of certain property left upon premises

A landlord who reasonably believes that a tenant left personal property, including manufactured or mobile homes, at the rental premises with no intention of asserting any further claim to the property, may presume the property is abandoned by the tenant and dispose of the property in the manner provided by this chapter, only if notice is first given to the tenant, as required by section 46A:27-4 and

(1) a warrant for removal has been executed and possession of the premises has been restored to the landlord or the landlord reasonably believes that the tenant has permanently vacated the premises; or

(2) the tenant has given written notice of voluntary relinquishment of possession of the premises.

Source: 2A:18-72.

COMMENT

This section continues the substance of its source with some changes in language. See also section 46A:27-2, which addresses the applicability of the chapter when there is a lease governing nonresidential rental premises. Note that, in accordance with N.J.S. 39:10-15.1, if a manufactured home is sold or otherwise disposed of pursuant to this chapter, the Chief Administrator of the Motor Vehicles Commission shall issue, upon proof of purchase, a certificate of ownership to the purchaser, with no encumbrances listed.

46A:27-4. Notice requirements

Before disposing of the property, the landlord shall send written notice to the tenant, in the manner provided by section 46A:27-5, which states that:

a. the property is considered abandoned by the tenant and must be removed from the rental premises, or from the place where the property is stored in which case the address of the storage facility shall be provided, by the following dates:

(1) in the case of any property other than a manufactured or mobile home, within 30 days after delivery of the notice, or within 33 days after the date of mailing, whichever comes first; or

(2) in the case of a manufactured or mobile home, within 75 days after delivery of the notice, or within 78 days after the date of mailing, whichever comes first; and

b. any property not removed by the dates provided may be:

(1) sold at a public or private sale;

(2) destroyed or otherwise disposed of if the landlord reasonably determines that the cost of storage and conducting a public sale or the cost of the separation of the personal property by value and conducting a public sale of only the valuable items would probably exceed the amount of the proceeds of the sale of the property; or

(3) separated by value, the valuable items sold, and the remainder destroyed or otherwise disposed of by the landlord; and

c. the landlord must make the property available without payment of any rent arrears if the rental premises are residential and the tenant claims the property by the dates provided.

Source: 2A:18-74.

COMMENT

This section continues the substance of its source with changes in language. Language is added to address the fact that the cost of the actual sorting of the property by its value may be prohibitive to the landlord. The provisions permit a tenant to remove personal property within the stated period; it is a minimum period and the landlord may allow a greater period in the notice.

46A:27-5. Delivery of notice

a. The landlord shall send the required notice, addressed to the tenant, to the last known business or residence address of the tenant (which may be the address of the rental premises) and at any alternate address or addresses known to the landlord. In the case of nonresidential premises, the notice may be sent to an address provided in the lease for the delivery of copies of notices.

b. The notice shall be sent by:

(1) regular mail, in an envelope endorsed "Please Forward"; and

(2) either personal delivery, registered mail, certified mail (return receipt requested) or commercial courier whose regular business is delivery service (required signature requested).

c. If the personal property subject to disposal is a manufactured or mobile home, a copy of the notice shall also be sent simultaneously and in the same manner as in subsection b. to the Chief Administrator of the Motor Vehicles Commission and to all lienholders whose security interests in the property have been recorded with the Motor Vehicles Commission. If the landlord has knowledge of a person with an interest in the property, other than the tenant, a copy of the notice shall also be sent in the same manner as in subsection b. to that person.

Source: 2A:18-73.

COMMENT

This section continues the substance of its source with changes in language. The reference to "received first class mail" has been eliminated from the statute. Instead, provision has been made for sending the notice by regular mail *and* by one of the following: personal delivery, registered mail, certified mail, or commercial courier service. Subsection c. adds language to protect third parties, known to the landlord, who have interests in the property.

46A:27-6. Storage; reasonable charges; reimbursement from tenant

a. After the notice is sent to the tenant in accordance with this chapter, the landlord shall store all of the tenant's personal property in a safe and secure place on or off the rental premises, and shall exercise reasonable care for the property, except that the landlord may promptly dispose of perishable food and allow an animal control agency or humane society to remove any pets or livestock.

b. The tenant shall pay the landlord's reasonable cost of removal of the property from the premises, storage charges and costs incidental to storage for the period the tenant's personal property is in the landlord's safekeeping. The charges shall not be greater than the fair market value of such costs in the locale of the rental property.

c. A landlord shall not be responsible for any loss to a tenant resulting from storage of property in compliance with this chapter unless the loss was caused by the landlord's deliberate or negligent act or omission.

Source: 2A:18-75; 2A:18-77.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:27-7. Tenant response; lienholder response; failure to act

After the notice required under this chapter is sent to the tenant, the tenant's property shall be conclusively presumed to be abandoned by the tenant unless:

(1) the tenant responds to the landlord within the time frame specified in the notice and removes the property within that timeframe or within 15 days after a written response, whichever is later; or

(2) in the case of a manufactured or mobile home, a lienholder responds to the landlord, in writing, regarding a security interest therein, indicating the intent either (i) to remove the property or (ii) to pay rent as a condition of leaving the property, and does (i) or (ii) within the time specified by the notice or within 15 days after the written response, whichever is later.

Source: 2A:18-76.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:27-8. Abandoned property; disposal

Property conclusively presumed to be abandoned in accordance with section 46A:27-7 shall be disposed of, in whole or in part, by the landlord in any of the following ways:

a. at a public or private sale conducted in accordance with N.J.S.12A:9-601, *et seq.*, the Uniform Commercial Code;

b. by destruction or other disposal if the landlord reasonably determines that the cost of storage and conducting a public sale would probably exceed the proceeds of the sale of the property; or

c. by the sale of certain items and the destruction or other disposal of the remaining property in accordance with subsections a. and b.

Source: 2A:18-78.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:27-9. Right of landlord; nonresidential property

Nothing in this chapter shall diminish the right of a landlord of a nonresidential property to use distraint in accordance with sections chapter 24 of this Title or make preferential claims in accordance with chapter 25 of this Title.

Source: 2A:18-79.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:27-10. Net proceeds of sale; deductions by landlord

a. Within 30 days after a sale of the tenant's property, the landlord shall return to the tenant by personal delivery or commercial courier whose regular business is delivery service, with a required signature requested, any proceeds of sale, along with an itemized accounting,

after deduction of the reasonable costs of notice as required by section 46A:27-5, storage, removal of the property, disposal and sale and any unpaid rent and charges not covered by the security deposit.

b. If the tenant cannot be located, the remaining proceeds shall be deposited with the administrator pursuant to the Uniform Unclaimed Property Act, N.J.S. 46:30B-1 *et seq.*

Source: 2A:18-80.

COMMENT

This section continues the substance of its source with some changes in language. A reasonable timeframe of 30 days to return the sale proceeds after the landlord's deductions has been added to the statute. Reference to depositing the remaining proceeds with the court and, if unclaimed, the eventual escheat of those proceeds to the State has been deleted. The new proposed statute refers to deposit of the remaining proceeds with the administrator under the *Uniform Unclaimed Property Act*, N.J.S. 46:30B-1 *et seq.*

46A:27-11. Compliance in good faith; complete defense

A good faith effort to comply with all the requirements of this chapter shall constitute a complete defense in any action brought by a tenant against a landlord for loss or damage to personal property disposed of pursuant to this chapter.

Source: 2A:18-81.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:27-12. Tenant relieved of liability; landlord's failure to comply

If a landlord fails to make a good faith effort to comply with this chapter, the tenant shall be relieved of any liability for reimbursement to the landlord for storage and removal costs and shall be entitled to recover up to twice the tenant's actual damages. If a landlord makes a good faith effort to comply with this chapter, the landlord's liability to a tenant, if any, shall be no more than the value of the abandoned property.

Source: 2A:18-82.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:27-13. Abandoned property not a bulk sale

The transfer of ownership of abandoned tenant property in accordance with a lease and the sale of abandoned property in accordance with a lease or this chapter shall not be deemed a sale, transfer or assignment in bulk of any part or whole of the landlord's or tenant's business assets.

Source: New.

COMMENT

This new section clarifies that the abandonment of tenant property in accordance with a lease may not be deemed a transfer or sale that triggers the application against the landlord of any law affecting bulk transfers.

ARTICLE 7

PROTECTED TENANCIES - SENIOR CITIZEN TENANTS AND DISABLED TENANTS; QUALIFIED INCOME TENANTS

CHAPTER 28: TENANCIES OF RESIDENTIAL RENTAL PREMISES PROTECTED FROM CONVERSION

46A:28-1. Definitions

For the purposes of this chapter:

a. “Application for registration of conversion” means an application for registration filed with the Department in accordance with The Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21 *et seq.*

b. “Annual household income” means (i) in the case of senior citizen tenants or disabled tenants, the total income from all sources during the last full calendar year for all members of the household who reside in the tenant’s dwelling unit when the tenant applies for protected tenancy status, regardless of whether the income is subject to taxation by any taxing authority; or (ii) in the case of qualified income tenants, the total income from all sources during the last full calendar year or the annual average of that total income during the last two calendar years, whichever is less, of the tenant and all members of the tenant’s household who are residing in the tenant’s dwelling unit when the tenant applies for protected tenancy, regardless of whether the income is subject to taxation by any taxing authority.

c. “Conversion” means conversion as defined in the Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-23.

d. “Conversion recording” means the recording with the appropriate county officer of a master deed for a condominium or a deed to a cooperative corporation for a planned residential development or separable fee simple ownership of the dwelling units.

e. “Convert” means to convert one or more buildings or a mobile home park containing in the aggregate not less than five dwelling units or mobile home sites or pads from residential rental use to condominium, cooperative, planned residential development or separable fee simple ownership of the dwelling units or of the mobile home sites or pads.

f. “County rental housing shortage” means a certification issued by the Commissioner that there has occurred a significant decline in the availability of rental dwelling units in the county due to conversions, provided that the Commissioner shall not issue any such certification unless during the immediately preceding 10 year period the aggregate number of rental units subject to registrations of conversion during any three consecutive years in the county (i) exceeds 10,000 and (ii) in at least one of those three years, exceeds 5,000.

g. “Disabled tenant” means a tenant who is, on the date of the conversion recording for the building in which the tenant’s dwelling unit is located, totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, including blindness, or a tenant who has been honorably discharged or released from active service in any branch of the United States Armed Forces and who is rated as having a 60% disability or higher as a result of that service pursuant to a federal law administered by the United States Veterans’ Act, provided that the dwelling unit (i) has been the

principal residence of the disabled tenant for at least one year immediately preceding the conversion recording or (ii) is the principal residence of the disabled tenant under the terms of a lease for a period of more than one year. For the purposes of this definition, "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lenses; an eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less.

h. "Index" means the annual average over a 12-month period beginning September 1 and ending August 31 of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), All Items Series A, of the United States Department of Labor (1957-1959 = 100), for either the New York, NY-Northeastern New Jersey or the Philadelphia, PA-New Jersey region, according as either shall have been determined by the Commissioner to be applicable in the locality of a property undergoing conversion.

i. "Protected tenancy period" means, except as otherwise provided in this chapter, (i) in the case of senior citizen tenants and disabled tenants as defined in this chapter, the 40 years following the conversion recording for the building in which is located the dwelling unit of the senior citizen tenant or disabled tenant, or (ii) in the case of qualified tenants as defined in this chapter, all that time following the conversion recording for a building during which a qualified tenant in that building continues to be a qualified tenant and continues to occupy a dwelling unit therein as a principal residence.

j. "Qualified county" means any county with (i) a population in excess of 500,000 and a population density in excess of 8,500 per square mile, according to the most recent federal decennial census or (ii) a county rental housing shortage.

k. "Qualified income tenant" means a tenant, residing in a qualified county, who has (i) applied for protected tenancy status on or before the date of registration of conversion by the Department, or within one year of the effective date of The Tenant Protection Act of 1992, N.J.S. 2A:18-61.40 *et seq*, which is June 1, 1992, whichever is later; and (ii) occupied the premises as a principal residence for at least 12 consecutive months next preceding the date of application; and (iii) demonstrated annual household income that does not at the time of application exceed the maximum qualifying income as determined pursuant to subsection c. of 46A:28-3, except that this income limitation shall not be applicable to any tenant who is age 75 or more years or to a disabled tenant as defined in this chapter.

l. "Registration of conversion" means an approval of an application for registration by the Department in accordance with The Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21 *et seq*.

m. "Senior citizen tenant" means a tenant who is at least 62 years of age on the date of the conversion recording for the building in which the tenant's dwelling unit is located, or if the tenant should die after the owner files the conversion recording, the surviving spouse, domestic partner or civil union partner of the tenant provided the surviving spouse, domestic partner or civil union partner is at least 50 years of age at the time of the filing and further provided that the building: (i) has been the principal residence of the senior citizen tenant or the spouse, domestic partner or civil union partner, for at least one year immediately preceding the conversion recording or the death; or (ii) is the principal residence of the senior citizen tenant or the spouse

or domestic partner or civil union partner under the terms of a lease for a period of more than one year.

n. “Tenant in need of comparable housing” means a tenant who is not a qualified tenant or a senior citizen tenant or a disabled tenant as defined by this chapter.

Source: 2A:18-61.24; 2A:18-61.42.

COMMENT

This section adopts the provisions of the source with minor language changes. This section and the remainder of the entire chapter combines and integrates the *Senior Citizen and Disabled Protected Tenancy Act*, N.J.S. 2A:18-61.22 *et seq.* with the *Tenant Protection Act of 1992*, N.J.S. 2A:18-61.40 *et seq.*, in one place while preserving the distinctions between the two separate acts.

Source provisions N.J.S. 2A:18-61.22 *et seq.* protects senior citizen tenants and disabled tenants in residential rental premises subject to conversion. Source provisions N.J.S. 2A:18-61.40 *et seq.*, protects tenants who reside in qualified counties, as defined in this chapter (taken from the source), and who meet certain other eligibility requirements, also as now set forth in this chapter (taken from the source). Under the provisions of the latter source statute, an owner wishing to convert a rental property located in a qualified county into either a condominium or cooperative property must notify, through the local administering agency, the tenants and provide them with appropriate application forms for the protected tenancy afforded by the statute. Under both source statutes, and as reflected in this chapter, the Department may not accept any application for the registration of a conversion for any building subject to the statutes unless proof is provided that the tenants of the building have been notified.

The definition of “administrative agency” that appears in the current *Tenant Protection Act of 1992* but not in the current *Senior Citizen and Disabled Protected Tenancy Act* (no definition for “administrative agency” appears in that source statute), is not carried over to this section because the purpose of and process of designating an administrative agency, with regard to both source statutes, are set forth in new section 46A:28-4.

46A:28-2. Applicable to conversion of structures containing not less than five dwelling units; not applicable until conversion recording

a. Subject to subsections b. and c., this chapter shall be applicable only to the conversion of buildings or structures or mobile home parks containing, in the aggregate, five or more dwelling units or mobile home sites or pads for residential use to condominium, cooperative, planned residential development or separable fee simple ownership of the dwelling units or the mobile home sites or pads.

b. The protected tenancy status authorized by this chapter shall not be applicable to any eligible or qualified tenant until such time as the owner has filed the conversion recording.

c. The protected tenancy status shall automatically be applicable as soon as a tenant receives notice of eligibility or qualification and the landlord files the conversion recording. However, the conversion recording shall not be filed until after the registration of conversion.

Source: 2A:18-61.30; 2A:18-61.49.

COMMENT

This section continues the substance of its source with language changes. As suggested by the Department of Community Affairs, subsection a. adds a section pertaining to applicability that is taken from the definition of “convert” in the *Senior Citizen and Disabled Protected Tenancy Act* because no provision specifies in that Act or the *Tenant Protection Act of 1992* that the offer of protected tenancy is only required to be given for the conversion of structures containing not less than five dwelling units or mobile home sites or pads.

46A:28-3. Protected tenancy status

a. **Senior citizen tenants or disabled tenants.** Each eligible senior citizen tenant or disabled tenant, as defined in this chapter, shall be granted a protected tenancy status with respect to that tenant's dwelling unit upon conversion of the building or structure in which the unit is located. The protected tenancy status shall be granted upon proper application and qualification pursuant to this chapter. Each senior citizen tenant or disabled tenant in need of comparable housing may remain in the tenant's dwelling unit upon conversion of the building in which the unit is located until the owner of the building has complied with chapter 22 of this Title.

b. **Qualified income tenants.** Each qualified income tenant, as defined in this chapter, shall be granted a protected tenancy status with respect to that tenant's dwelling unit upon conversion of the building or structure in which the unit is located. The protected tenancy status shall be granted upon proper application and qualification pursuant to this chapter. Each qualified income tenant in need of comparable housing may remain in the tenant's dwelling unit upon conversion of the building in which the unit is located until the owner of the building has complied with chapter 22 of this Title.

c. For purposes of determining qualified income status for *qualified income tenants* under subsection b., the base figures for calculating the maximum qualifying income, which shall be adjusted by the percentage change, if any, in the applicable index that has occurred since June 1, 1992, whenever an application for protected tenancy is filed or termination of a previously granted protected tenancy is sought pursuant to subsection b. of 46A:28-12, are:

- (1) in a household comprising one person, \$31,400;
- (2) in a household comprising two persons, \$38,500;
- (3) in a household comprising three persons, \$44,800;
- (4) in a household comprising four persons, \$50,300;
- (5) in a household comprising five persons, \$55,000;
- (6) in a household comprising six persons, \$58,900;
- (7) in a household comprising seven persons, \$62,000; and
- (8) in a household comprising eight or more persons, \$64,300.

Source: 2A:18-61.25; 2A:18-61.43; 2A:18-61.44.

COMMENT

This section continues the substance of its source with minor language changes. According to the Department, the per capita income and maximum thresholds (as referred to in subsection c.) are updated each year using the CPI-W for New York (northern counties) and Philadelphia (southern counties) and these updated figures are disseminated to all municipal clerks via GovConnect and are also available on the Department's website.

46A:28-4. Administrative agency to administer chapter provisions

a. **Senior citizen tenants and disabled tenants.** For purposes of effectuating the provisions of this chapter pertaining to senior citizen tenants and disabled tenants, the governing body of the municipality shall authorize a municipal board, agency or officer to act as its

administrative agency or enter into a contractual agreement with a county office on aging or a similar agency to act as its administrative agency. In the absence of such authorization or contractual agreement, the provisions of this chapter pertaining to senior citizen tenants and disabled tenants shall be administered by a municipal board whose principal responsibility concerns the regulation of residential rents or, if no such board exists, by the municipal clerk.

b. **Qualified income tenants.** For purposes of effectuating the provisions of this chapter pertaining to qualified income tenants, each municipal governing body in a qualified county shall designate a municipal board, agency or officer to act as its administrative agency or enter into a contractual agreement with an appropriate county to act as its administrative agency. In the absence of such authorization or contractual agreement, the provisions of this chapter pertaining to qualified income tenants shall be administered by the board, agency or officer authorized by subsection a.

Source: 2A:18-61.26; 2A:18-61.45.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-5. Notification to administrative agency by owner prior to conversion

a. **Senior citizen tenants and disabled tenants.** The owner of a building in which there are residential premises rented by senior citizen tenants or disabled tenants who seeks to convert the premises, shall notify the administrative agency responsible for administering the provisions of this chapter pertaining to senior citizen tenants and disabled tenants, of the owner's intention to file an application for registration of conversion with the Department prior to the filing. The owner shall also supply the agency with a list of every tenant residing in the premises, with stamped envelopes addressed to each tenant and with a sufficient number of copies of the notice to tenants as set forth in section 46A:28-6, and application forms for the protected tenancy status.

b. **Qualified income tenants.** The owner of a building in which there are residential premises rented by qualified income tenants who seeks to convert the premises, shall notify the administrative agency responsible for administering the provisions of this chapter pertaining to qualified income tenants, of the owner's intention to file an application for registration of conversion with the Department prior to the filing. The owner shall also supply the agency with a list of every tenant residing in the premises, with stamped envelopes addressed to each tenant and with a sufficient number of copies of the notice to tenants as set forth in section 46A:28-6, and application forms for the protected tenancy status.

Source: 2A:18-61.27; 2A:18-61.46.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-6. Notice to protected tenants from administrative agency

Within 10 days after receiving a list of tenants from the owner:

a. with regard to senior citizen tenants and disabled tenants, the administrative agency shall notify each senior citizen residential tenant and each disabled residential tenant in writing

of the owner's intention and of the applicability of this chapter and provide each tenant with a written application form. The notice to the tenant shall be substantially in the following form:

NOTICE

THE OWNER OF YOUR APARTMENT HAS NOTIFIED (*insert name of municipality*) OF THE OWNER'S INTENTION TO CONVERT TO A CONDOMINIUM OR COOPERATIVE. THE LEGISLATURE HAS PROVIDED THAT, IF YOU ARE A SENIOR CITIZEN, 62 YEARS OF AGE OR OLDER, OR DISABLED, YOU MAY BE ENTITLED TO A PROTECTED TENANCY PERIOD. PROTECTED TENANCY MEANS THAT YOU CANNOT BE EVICTED BECAUSE OF THE CONVERSION. YOU MAY BE ELIGIBLE:

(1) IF YOU ARE 62, OR WILL SOON BE 62, OR IF YOU ARE DISABLED; AND

(2) IF YOU HAVE LIVED IN YOUR APARTMENT FOR AT LEAST ONE YEAR OR IF THE LEASE ON YOUR APARTMENT IS FOR A PERIOD OF MORE THAN ONE YEAR; AND

(3) IF YOUR HOUSEHOLD INCOME IS LESS THAN (*insert current income figure for county as established by Section 46A:28-8a. of this chapter*).

IF YOU WISH THIS PROTECTION, SEND IN THE APPLICATION FORM BY (*insert date 60 days after municipality's mailing*) TO THE (*insert name and address of administrative agency*). FOR FURTHER INFORMATION CALL (*insert phone number of administrative agency*) OR (*insert phone number of Department of Community Affairs*).

IF YOU DO NOT APPLY YOU CAN BE EVICTED BY YOUR LANDLORD UPON PROPER NOTICE.

or

b. with regard to qualified income tenants the administrative agency shall notify each qualified income residential tenant in writing of the owner's intention and of the applicability of this chapter and provide each tenant with a written application form. The notice to the tenant shall be substantially in the following form:

NOTICE

THE OWNER OF YOUR APARTMENT HAS NOTIFIED (*insert name of municipality*) OF THE OWNER'S INTENTION TO CONVERT TO A CONDOMINIUM OR COOPERATIVE.

UNDER STATE LAW YOU MAY BE ENTITLED TO A PROTECTED TENANCY. PROTECTED TENANCY MEANS THAT YOU CANNOT BE EVICTED BECAUSE OF THE CONVERSION.

YOU MAY BE QUALIFIED:

(1) IF YOU HAVE LIVED IN YOUR APARTMENT FOR A YEAR AND

(2) IF YOUR HOUSEHOLD INCOME IS LESS THAN (*insert current maximum qualifying income established under section 46A:28-3c.*), OR

YOU ARE DISABLED OR ARE AT LEAST 75 YEARS OLD.

IF YOU THINK YOU MAY QUALIFY, SEND IN THE APPLICATION FORM BY (*insert date 60 days after municipality's mailing*)

TO THE (*insert name and address of administrative agency*)

EVEN IF YOU DO NOT QUALIFY, YOU HAVE THE RIGHT TO REMAIN IN YOUR APARTMENT UNTIL YOUR LANDLORD HAS COMPLIED WITH LAWS REGARDING THE OFFER OF COMPARABLE HOUSING.

FOR FURTHER INFORMATION CALL..... (*insert phone number of administrative agency*)

OR " (insert phone number of Department of Community Affairs)

c. The Department shall not accept any application for registration of conversion for any building unless included in the application is proof that the agency or officer notified the senior citizen tenants or disabled tenants, or qualified income tenants, as the case may be, prior to the application for registration. The proof shall be by affidavit or in such other form as the Department shall require.

d. In any municipality where the administrative agency administering the protected status of senior citizen tenants and disabled tenants is the same as the agency administering the protected status of qualified income tenants, as provided in this chapter, the notices required by this section may be combined in a single mailing.

Source: 2A:18-61.27; 2A:18-61.46.

COMMENT

This section continues the substance of its source with minor language changes. Subsection d. is adopted from source section 2A:18-61.46 but applies to both source sections.

46A:28-7. Procedures for determining eligibility or qualification for protected tenancy status

a. **Senior citizen tenants or disabled tenants.** Within 30 days after receipt of an application for protected tenancy status by a senior citizen tenant or disabled tenant, the administrative agency shall make a determination of eligibility.

b. **Qualified income tenants.** Within 30 days after receipt of an application for protected tenancy status by a qualified income tenant, the administrative agency shall make a determination of qualification.

c. The administrative agency pursuant to subsection a. or b. may require that the application include documents and information as may be necessary to establish that the tenant is eligible or qualified for a protected tenancy status under this chapter and shall require the application to be submitted under oath.

d. The Department may by regulation adopt forms to be used in applying for protected tenancy status under this chapter, for notification of eligibility or ineligibility or qualification or denial, and for conveying to the denied applicant the information concerning the applicant's rights to continued tenancy and offer of comparable housing. The Department may also adopt such other regulations for the procedure of determining eligibility and qualification as it deems necessary.

Source: 2A:18-61.28; 2A:18-61.47.

COMMENT

This section continues the substance of portions of its source with minor language changes and the addition of subsections.

46A:28-8. Grounds for determining eligibility for protected tenancy status; eligibility notice provided

a. **Senior citizen tenants or disabled tenants.** A senior citizen tenant or disabled tenant shall be eligible for protected tenancy status and the administrative agency shall send written notice of eligibility to each senior citizen tenant or disabled tenant if the tenant:

(1) applied for protected tenancy status on or before the date of registration of conversion by the Department; and

(2) qualifies as an eligible senior citizen tenant or disabled tenant pursuant to this chapter; and

(3) has occupied the premises as a principal residence for at least one year or has a lease for a period longer than one year; and

(4) has an annual household income that does not exceed an amount equal to three times the county per capita personal income, as last reported by the Department of Labor and Workforce Development on the basis of the U.S. Department of Commerce's Bureau of Economic Analysis data, or \$50,000.00, whichever is greater. The Department shall adjust the county per capita personal income if there is a difference of one or more years between (i) the year in which the last reported county per capita personal income was based and (ii) the last year in which the tenant's annual household income is based. The county per capita personal income shall be adjusted by the Department by an amount equal to the number of years of the difference above times the average increase or decrease in the county per capita personal income for three years, including in the calculation the current year reported and the three immediately preceding years.

b. **Qualified income tenants.** A qualified income tenant shall be qualified for protected tenancy status and the administrative agency shall send written notice of qualification to each qualified income tenant who is resident of the county, if the tenant:

(1) applied on or before the date of registration of conversion by the Department; and

(2) has an annual household income that does not exceed the maximum amount permitted for qualification, or is exempt from that income limitation by reason of age or disability; and

(3) has occupied the premises as the tenant's principal residence for at least 12 consecutive months next preceding the date of application.

c. The administrative agency pursuant to subsection a. shall send a notice of denial with reasons to any tenant whom it determines to be ineligible and the owner shall be notified of those tenants who are determined to be eligible and ineligible. The administrative agency pursuant to subsection b. shall send a notice of denial with reasons to any tenant whom it determines not to be qualified and the owner shall be notified of those tenants who are determined to be qualified or not qualified. The notice to the tenant under subsections a. or b. shall also inform the tenant of the tenant's right to remain in the dwelling unit until the owner has complied with the requirements of chapter 22 of this Title pertaining to comparable housing and included an explanation of the meaning of "comparable housing" as used in the eviction article of this Title.

Source: 2A:18-61.28; 2A:18-61.47.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-9. Registration of conversion; approval after proof of notice of eligibility to tenants

a. **Senior citizen tenants or disabled tenants.** With respect to senior citizen tenants or disabled tenants, no registration of conversion shall be approved until the Department receives proof that the administrative agency has made determinations in compliance with this chapter and notified all tenants who applied for protected tenancy status as senior citizen tenants or disabled tenants of their eligibility or lack of eligibility, within the time frame prescribed in the notice required by subsection a. of 46A:28-6. The proof shall be by affidavit or in any other form as required by the Department.

b. **Qualified income tenants.** With respect to qualified income tenants, no registration of conversion for a building located in a qualified county shall be approved until the Department receives proof that the administrative agency has made determinations in compliance with this chapter and notified all tenants who applied for protected tenancy status as qualified income tenants of their qualification or denial of qualification, within the time frame prescribed in the notice required by subsection b. of 46A:28-6. The proof shall be by affidavit or in any other form as required by the Department.

Source: 2A:18-61.29; 2A:18-61.48.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-10. Rent increase restrictions

a. With regard to all protected tenants, in a municipality which does not have a rent control ordinance in effect, no evidence of increased costs, including but not limited to any increase in financing or carrying costs, that are solely the result of the conversion and do not add services or amenities not previously provided, may be used as a basis to establish the unconscionability of a rent increase under subsection a. (2) of 46A:15-1.

b. With regard to all protected tenants, in a municipality which has a rent control ordinance in effect, a rent increase for a tenant with a protected tenancy status, or for any tenant to whom a demand for possession pursuant to subsection b.(6) of 46A:16-6 has been given, shall not exceed the increase authorized by the ordinance for rent controlled units. Increased costs that are solely the result of a conversion, including but not limited to any increase in financing or carrying costs, and do not add services or amenities not previously provided, may not be:

(1) passed directly through to any protected tenant as surcharges or pass-throughs on the rent;

(2) used as the basis for a rent increase for any protected tenant, or

(3) used as a basis for an increase in a fair return or hardship hearing with regard to any protected tenant before a municipal rent board or on any appeal from such determination.

Source: 2A:18-61.31; 2A:18-61.52.

COMMENT

This section continues the substance of its source with minor changes in language. With regard to the application of increased costs, the word “shall” used in the source statute, has been replaced with the word “may” in the revised sections. The word “unreasonable”, used in the source statute with regard to a rent increase, has been replaced with the word “unconscionable” in the revised subsection a. at the request of commenters and consistent with case law.

46A:28-11. Termination of protected tenancy; grounds

a. **Senior citizen tenants or disabled tenants.** The administrative agency shall terminate the protected tenancy status of a senior citizen or disabled tenant immediately upon finding that the tenant's annual household income, or the average of the tenant's annual household income for the current year computed on an annual basis and the tenant's annual household income for the two preceding years, whichever is less, exceeds an amount equal to three times the county per capita personal income, as last reported by the Department of Labor and Workforce Development on the basis of the U.S. Department of Commerce's Bureau of Economic Analysis data, or \$50,000.00, whichever is greater. The Department shall adjust the county per capita personal income to be used in this subsection if there is a difference of one or more years between (i) the year in which the last reported county per capita personal income was based and (ii) the last year in which the tenant's annual household income is based. The county per capita personal income shall be adjusted by the Department by an amount equal to the number of years of the difference above times the average increase or decrease in the county per capita personal income for three years, including in the calculation the current year reported and the three immediately preceding years.

b. **Qualified income tenants.** The administrative agency shall terminate the protected tenancy status of a qualified income tenant if the tenant's annual household income exceeds the maximum amount permitted for qualification.

c. **All protected tenants.** The administrative agency shall terminate the protected tenancy status of a senior citizen tenant, a disabled tenant, or a qualified income tenant, immediately upon finding that the dwelling unit is no longer the principal residence of the tenant.

Source: 2A:18-61.32; 2A:18-61.50.

COMMENT

This section continues the substance of its source with minor language changes. In addition, what was once known in the source statute as the New Jersey Department of Labor and Industry is now known as the Department of Labor and Workforce Development. The change in name is reflected in the revision.

46A:28-12. Termination of protected tenancy; eviction; alternative eligibility

a. Upon the termination of the protected tenancy status of any tenant under this chapter, that tenant may be evicted from the dwelling unit pursuant to the eviction article of this Title, except that all timeframes set forth in any notices or demands for possession in accordance with chapter 16 of this Title shall be calculated and extend from the date of the expiration or termination of the protected tenancy period, or the date of the expiration of the last lease entered into with that tenant during the protected tenancy period, whichever is later, provided that any qualified income tenant who is also protected as a senior citizen tenant or disabled tenant under

this chapter shall continue to be protected under the provisions of this chapter pertaining to senior citizen tenants and disabled tenants and any senior citizen or disabled tenant who is also protected as a qualified income tenant under this chapter shall continue to be protected under the provisions of this chapter pertaining to qualified income tenants.

b. If the administrative agency determines pursuant to this chapter that a tenant is no longer qualified for the tenant's then current protected tenancy status, the administrative agency shall proceed in the case of the senior citizen tenant or disability tenant, to determine the qualification of that tenant as a qualified income tenant, or in the case of the qualified income tenant, to determine the eligibility of that tenant as a senior citizen tenant or disability tenant. If the administrative agency or officer does not also administer the provisions governing the alternative protected tenancy status being considered, the administrative officer shall refer the case to the appropriate administrative agency for such determination. If the tenant is found to be eligible for a different kind of protected tenancy status, a protected tenancy status shall be continued for that tenant. The protected tenancy status of the tenant shall remain in full force pending determination of the tenant's eligibility for an alternative protected tenancy status.

Source: 2A:18-61.32; 2A:18-61.50.

COMMENT

This section adopts the provisions of the source sections with minor changes in language.

46A:28-13. Obligation to investigate status of qualified income tenant

Upon presentation to an administrative agency of credible evidence that a tenant is no longer qualified or eligible for a protected tenancy status under this chapter, the administrative agency shall proceed, in accordance with such regulations and procedures as the Department shall adopt and prescribe for use in such cases, to investigate and make a determination as to the continuance of the tenant's then current protected tenancy status.

Source: 2A:18-61.50.

COMMENT

This section continues the substance of its source with minor language changes. However, the source section applies only to qualified income tenants and it appears that the same principle should apply to senior citizen tenants and disabled tenants. Accordingly, the proposed revision applies to all protected tenancies.

46A:28-14. Termination upon purchase of unit

In the event that a senior citizen tenant or a disabled tenant or a qualified income tenant purchases the dwelling unit that the tenant occupies, the protected tenancy status shall terminate immediately upon the purchase.

Source: 2A:18-61.33; 2A:18-61.51.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-15. Informing prospective purchasers of conversion

Any public offering statement for a conversion as required by The Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21 *et seq.*, shall clearly inform the prospective purchaser of the provisions of this chapter, including but not limited to, the provisions concerning eviction, rent increases and leases, and the protection of senior citizen tenants, disabled tenants and qualified income tenants and the needs of those tenants for comparable housing. Any contract or agreement for sale of a converted unit shall contain a clause in 10-point bold type or larger that the contract or agreement is subject to the terms of this chapter concerning eviction and rent increases, and the protection of senior citizen tenants, disabled tenants and qualified income tenants and the needs of those tenants for comparable housing, and an acknowledgement that the purchaser has been informed of these terms.

Source: 2A:18-61.34; 2A:18-61.53.

COMMENT

This section continues the substance of its source with minor modifications in language, including the addition of language in N.J.S. 2A:18-61.53, but not in N.J.S. 2A:18-61.34, pertaining to comparable housing.

46A:28-16. Municipal fee for services required by this chapter

A municipality is authorized to charge an owner a fee which may vary according to the size of the building to cover the cost of providing the services required by this chapter.

Source: 2A:18-61.35; 2A:18-61.54.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-17. Actions for eviction of qualified income tenants; unaffected by this chapter

Nothing in this chapter shall be deemed to prevent a court from evicting a qualified income tenant from a dwelling unit that is located in a qualified county or a senior citizen or disabled tenant from any dwelling unit for good cause under chapter 15 of this Title shown not to be related to conversion of the building to a condominium or cooperative under subsection h. of 46A:15-1 so long as the eviction complies with the eviction article of this Title.

Source: 2A:18-61.57.

COMMENT

This section continues the substance of its source section with minor modifications in language, including the addition of language in N.J.S. 2A:18-61.57, but not in the *Senior Citizen and Disabled Protected Tenancy Act*, pertaining to being able to evict on grounds other than conversion of the rental premises. The application of the source provision to senior citizen tenants and disabled tenants seems consistent with the legislative intent of the *Anti-Eviction Act*.

46A:28-18. Rules; regulations

The Commissioner is authorized to adopt regulations to implement this chapter in accordance with the Administrative Procedure Act, N.J.S. 52:14B-1 *et seq.*

Source: 2A:18-61.38; 2A:18-61.59.

COMMENT

This section continues the substance of its source with minor language changes.

46A:28-19. Liberal construction of chapter

This chapter shall be liberally construed to effectuate its purposes.

Source: 2A:18-61.39.

COMMENT

This section adopts the source section but applies it to the entire chapter rather than applying it solely to the *Senior Citizens and Disabled Protected Tenancy Act* as the source provides.

ARTICLE 8

RECEIVERSHIP AND COURT-APPOINTED ADMINISTRATION OF SUBSTANDARD RESIDENTIAL RENTAL PREMISES

CHAPTER 29: RECEIVERSHIP

46A:29-1. Definitions

For purposes of this chapter:

"Agency" means the New Jersey Housing and Mortgage Finance Agency established under N.J.S.55:14K-4;

"Building" means any building or structure and the land appurtenant thereto in which at least half of the net square footage of the building is used for residential purposes; and shall not include any one to four unit residential building in which the owner occupies one of the units as a principal residence;

"Code" means any housing, property maintenance, fire or other public safety code applicable to a residential building, whether enforced by the municipality or by a State agency;

"Lienholder" or "mortgage holder" means any entity holding a note, mortgage or other interest secured by the building or any part thereof;

"Owner" means the holder or holders of title to a residential building;

"Party in interest" means: (1) any mortgage holder, lien holder or secured creditor of the owner; (2) any tenant living in the building; (3) any entity designated by more than 50 % of the tenants living in the building as their representative; (4) the public officer; or (5) a non-profit entity providing community services in the municipality in which the building is located;

"Plaintiff" means a party in interest or a qualified entity that files a complaint pursuant to 46A:29-2 of this chapter;

"Public officer" means an officer of the municipality appropriately qualified to carry out the responsibilities set forth in this chapter and designated by resolution of the governing body of the municipality in which the building is located, except that in municipalities organized under

the "mayor-council plan" of the Optional Municipal Charter Law, N.J.S. 40:69A-1 *et seq.*, the public officer shall be designated by the mayor;

"Qualified entity" means any person or entity registered with the Department on the basis of having demonstrated knowledge and substantial experience in the operation, maintenance and improvement of residential buildings;

"Tenant" means a household that legally occupies a dwelling unit in a residential building.

Source: 2A:42-116.

COMMENT

Sections 46A:29-1 through 46A:29-28 are derived in their entirety, other than to correct awkward or irrelevant language and gender-specific references, from the *Multifamily Housing Preservation and Receivership Act*, currently found at N.J.S. 2A:42-114 through 2A:42-142. This section continues the substance of its source with minor changes in language.

46A:29-2. Summary action to appoint receiver

a. A summary action to appoint a receiver to take charge and manage a building may be commenced by a party in interest or qualified entity in the Superior Court in the county where the building is located. The receiver shall be under the direction and control of the court and shall have full power over the property and may, upon appointment and subject to this chapter, commence and maintain proceedings for the conservation, protection or disposal of the building, or any part thereof, as the court deems proper.

b. A building shall be eligible for receivership if it meets one of the following criteria as proved by plaintiff:

(1) as of the date of the filing of the complaint with the court, the building endangers the health and safety of the tenants in violation of any State or municipal code, and for at least 90 days preceding the date of the filing of the complaint, the violation or violations have persisted, unabated; or

(2) the building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint, or six separate times in the two years prior to the date of the filing of the complaint, and the owner has failed to oppose the relief sought in the complaint, consistent with section 46A:29-7.

c. A court, upon a determination that the conditions set forth in subsection b. (1) or b. (2) have been met shall appoint a receiver with the powers as are authorized in this chapter or which, in the court's determination, are necessary to remove or remedy any condition that is a serious threat to the life, health or safety of the building's tenants or occupants.

Source: 2A:42-117.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-3. Contents of complaint

a. A complaint filed with the court shall include:

(1) a statement of the grounds for relief;

(2) documentation of the conditions that form the basis for the complaint; and

(3) evidence that the owner received notice of the conditions that form the basis for the complaint, and failed to take adequate and timely action to remedy those conditions.

b. With respect to a building in which there are nonresidential premises, including but not limited to commercial or office floor space, the complaint shall provide explicit justification for the inclusion of the nonresidential premises in the scope of the receivership order. If the explicit justification is absent, the court shall exclude the nonresidential premises from the scope of the receiver's duties and powers.

c. The complaint may include a recommendation of the receiver to be appointed.

Source: 2A:42-118.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-4. Service of complaint; notice

a. The plaintiff shall serve the complaint and any accompanying affidavits or certifications upon:

(1) the parties in interest;

(2) the current owner of the property; and

(3) the mortgage holders and lienholders of record determined by a title search and in accordance with the Rules Governing the Courts of the State of New Jersey.

b. Unless a tenant has been provided with written notice to the contrary or the plaintiff has knowledge to the contrary, the business address at which the owner or the owner's agent is served shall be the address the owner provides the Commissioner when registering the property under section N.J.S. 55:13A-12.

c. On or before the tenth day prior to service of the complaint, the plaintiff shall mail to the public officer and the agency by registered mail or certified mail, return receipt requested, notification of its intent to commence an action under this chapter. If no municipal officer has been designated by the municipality for the purposes of this chapter, the plaintiff shall mail the notice to the municipal clerk.

Source: 2A:42-119.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-5. Receipt of notice; determination of ownership

a. Immediately upon receipt of notice from a plaintiff in a receivership proceeding pursuant to this chapter, the agency shall determine whether the building is owned by a limited

partnership established pursuant to an allocation of low income housing tax credits by the agency or any other project over which the agency has regulatory control.

b. If the building is owned by such a limited partnership, the agency shall, within 30 days of receiving the notice, provide a copy to each limited partner of the limited partnership by registered mail or certified mail, return receipt requested.

c. A limited partner in a limited partnership established pursuant to an allocation of low income housing tax credits by the agency shall have the same rights and remedies under this chapter as a lienholder.

Source: 2A:42-120.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-6. Summary proceeding; intervention

a. The court shall act in a summary manner upon any complaint submitted pursuant to section 46A:29-2.

b. At the discretion of the court, any party in interest may intervene in the proceeding and be heard with regard to the complaint, the requested relief or any other matter which may come before the court in connection with the proceedings.

c. Any party in interest may present evidence to support or contest the complaint at the hearing.

Source: 2A:42-121.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-7. Grounds for dismissal of complaint

a. The court may dismiss the complaint if:

(1) the owner opposes the relief sought in the complaint brought under subsection b. (2) of section 46A:29-2, and demonstrates by a preponderance of the evidence that repairs of an appropriate standard of workmanship and materials were made in a timely fashion to correct each of the violations cited, and that the overall level of maintenance and provision of services to the building is of adequate standard; or

(2) the complaint is brought by a tenant of the building which is the subject of the complaint and that tenant is in default of any material obligation under New Jersey landlord-tenant law; or

(3) the court finds that the preponderance of the violations that are the basis of a complaint brought under subsection b. (2) of section 46A:29-2 are of a minor nature and do not impair the health, safety or general welfare of the tenants or neighbors of the property.

b. Within 10 days of filing the complaint, the plaintiff shall file a notice of lis pendens with the county recording officer of the county where the building is located.

Source: 2A:42-122.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-8. Appointment of receiver; abatement plan; payment of taxes, liens and maintenance expenses

a. If the court determines, after its summary hearing, that the grounds for relief set forth pursuant to section 46A:29-3 have been established, the court may appoint a receiver and grant such other relief as may be determined to be necessary and appropriate. The court shall select as the receiver the mortgage holder, lienholder or a qualified entity, as defined pursuant to section 46A:29-1. If the court cannot identify a receiver, the court may appoint any party who, in its judgment, may not have registered with the Department pursuant to section 46A:29-28, but otherwise fulfills the qualifications of a qualified entity.

b. If the court determines, after its summary hearing, that the grounds for relief set forth pursuant to section 46A:29-3 have been established, but the owner presents a plan in writing to the court demonstrating that the conditions leading to the filing of the complaint will be abated within a reasonable period, which plan is found by the court to be reasonable, then the court may enter an order providing that in the event the conditions are not abated by a specific date, including the completion of specific remedial activities by specific dates, or if the conditions recur within a specific period established by the court, then an order granting the relief as requested in the complaint shall be granted. As a condition of the order, the court may require the owner to post a bond in such an amount that the court, in consultation with the party bringing the complaint and the public officer, determines to be reasonable, which shall be forfeited if the owner fails to meet the conditions of the order.

c. Any sums advanced or incurred by a mortgage holder or lienholder acting as receiver pursuant to this section for the purpose of making improvements to the property, including court costs and reasonable attorneys' fees, may be added to the unpaid balance due the mortgage holder or lienholder subject to interest at the same rate set forth in the note or security agreement.

d. Nothing in this section shall be deemed to relieve the owner of the building of any obligation of the owner or any other person for the payment of taxes or other municipal liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the appointment of the receiver.

e. The appointment of a receiver shall not suspend any obligation of the owner as of the date of the appointment of the receiver for payment of operating or maintenance expenses associated with the building, whether or not billed at the time of appointment. Any such expenses incurred after the appointment of the receiver shall be the responsibility of the receiver.

Source: 2A:42-123.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-9. Denial of mortgage holder or lienholders rights or remedies

Notwithstanding any provision in this chapter to the contrary, a court may, in its discretion, deny a lienholder or a mortgage holder any or all rights or remedies afforded lienholders and mortgage holders under this chapter, if the court finds that the owner of the

building owns or controls more than a 50% interest in, or effective control of, the lienholder or mortgage holder, or that the familial or business relationship between the lienholder or mortgage holder and the owner precludes a separate interest of the lienholder or mortgage holder.

Source: 2A:42-124.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-10. Submission of plan by receiver

a. Within 60 days following the order appointing a receiver pursuant to section 46A:29-8, the receiver shall submit to the court a plan for the operation and improvement of the building. A copy of the plan shall also be provided to the owner, all parties in interest that participated in the hearing, and the clerk of the municipality in which the building is located.

b. The receiver's plan shall:

(1) enumerate the insurance coverage to be purchased by the receiver, including but not limited to surety bonds in an amount sufficient to guarantee compliance with the terms and conditions of the receivership and in accordance with rules and regulations adopted by the Commissioner pursuant to section 46A:29-28 of this chapter;

(2) to the extent feasible, take into account a recent appraisal of the property, as well as income and expense statements for at least the preceding two years which shall be provided by the owner, to the extent the information is available, in an expeditious manner; and

(3) include the following:

(A) an estimate of the cost of the labor, materials and any other costs that are required to bring the property up to applicable codes and standards and abate any nuisances that gave rise to the appointment of the receiver;

(B) an estimate of the income and expenses of the building and property after the completion of the repairs and improvements;

(C) the cost of paying taxes and other municipal charges; and

(D) the terms, conditions and availability of any financing that is necessary in order to allow for the timely completion of the work outlined in subsection (3) (a) of this section.

c. If the receiver's plan was submitted at the time of the hearing, the receiver thereafter may amend the plan, and submit a revised plan to the court pursuant to this section.

d. The court shall approve or disapprove the plan with or without modifications and, in any proceeding involving the receivership, may consult with the Commissioner.

Source: 2A:42-125.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-11. Bond, surety, insurance posted by the receiver

a. Upon appointment, the receiver shall post a bond or other surety or insurance in accordance with the plan approved by the court pursuant to section 46A:29-10.

b. The receiver shall immediately thereafter take possession of the building and any other property subject to the receivership order and, subject to court approval of the bond, surety or insurance, be authorized to exercise all powers delegated by this chapter, except that the receiver shall not undertake major non-emergent improvements to the property prior to approval of the receiver's plan by the court.

Source: 2A:42-126.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-12. Removal of receiver

A receiver may be removed by the court at any time upon the request of the receiver or upon a showing by a party in interest that the receiver is not carrying out its responsibilities under this chapter. The court may hold a hearing prior to removal of a receiver under this section.

Source: 2A:42-126.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-13. Filing, continuation of foreclosure unaffected by appointment of receiver

a. Neither the filing of a complaint nor the appointment of a receiver under this chapter shall stay the filing or continuation of an action to foreclose a mortgage or lien on the building or to sell the property for delinquent taxes or unpaid municipal liens.

b. In the event that the ownership of the building changes as a result of the foreclosure while a receiver is in possession, including possession by the municipality pursuant to a tax foreclosure action, the property shall remain subject to the receivership and the receiver shall remain in possession and shall retain all powers delegated by the action unless and until the receivership is terminated under this chapter.

Source: 2A:42-127.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-14. Powers and duties of receiver

The receiver shall have all powers and duties necessary or desirable for the efficient operation, management and improvement of the building in order to remedy all conditions constituting grounds for receivership under this chapter. Such powers and duties shall include the power to:

a. take possession and control of the building, appurtenant land and any personal property of the owner used with respect to the building, including any bank or operating account specific to the building;

b. collect rents and all outstanding accounts receivable, subject to the rights of lienholders except where affected by court action pursuant to this chapter;

c. pursue all claims or causes of action of the owner with respect to the building and other property subject to the receivership;

d. contract for the repair and maintenance of the building on reasonable terms, including the provision of utilities to the building; provided that:

(1) if the receiver falls within the definition of a contracting unit pursuant to N.J.S. 40A:11-2, a contract entered into by the receiver shall not be subject to any legal advertising or bidding requirements, but the receiver shall solicit at least three bids or proposals, as appropriate, with respect to any contract in an amount greater than \$2,500;

(2) if the receiver enters into contracts or agreements with tenants or persons who are members of the receiver entity, the contracts or agreements shall be appropriately documented and included in the receiver's expenses under this chapter; and

(3) if the receiver contracts for any service with an entity with which it has an identity of interest relationship, the receiver shall first disclose that relationship to the court, the owner and the parties in interest;

e. borrow money and incur debt in order to preserve, insure, manage, operate, repair, improve, or otherwise carry out its responsibilities under the terms of the receivership;

f. purchase materials, goods and supplies to operate, maintain, repair and improve the building;

g. enter into new rental contracts and leases for vacant units and renew existing contracts and leases on reasonable terms for periods not to exceed one year;

h. affirm, renew or enter into contracts for insurance coverage on the building;

i. retain and, subject to court approval, pay legal, accounting, appraisal and other professionals to aid in carrying out the purposes of the receivership;

j. evict or commence eviction proceedings against tenants for good cause in accordance with the eviction article of this Title when necessary and prudent, notwithstanding the condition of the building; and

k. sell the building in accordance with this chapter.

Source: 2A:42-128.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-15. Responsibilities of receiver in possession of the building

While in possession of the building, the receiver shall:

a. maintain, safeguard, and insure the building;

b. apply all revenue generated from the building consistent with the purposes of this chapter and the provisions of the plan submitted to and approved by the court; provided that in the case of an officer or agent of a municipality acting as a receiver pursuant to N.J.S.54:5-53.1, no revenue shall be applied to any arrears in property taxes or other municipal liens until or unless the municipal officer or agent finds that any material conditions found to exist by the court pursuant to section 46A:29-8 have been abated, and that the building has remained free of any such conditions for a period of no less than six months of that certification;

c. implement the plan and, to the extent the receiver determines that any provision of the plan cannot be implemented, submit amendments to the plan to the court, with notice to the parties in interest and the owner;

d. submit reports as the court may direct and provide a copy of those reports to the parties in interest and the owner. The reports may include:

(1) a copy of any contract entered into by the receiver regarding repair or improvement of the building, including any documentation required under section 46A:29-14;

(2) a report of the lease and occupancy status of each unit in the building, and any actions taken with respect to any tenant or lease;

(3) an account of the disposition of all revenues received from the building;

(4) an account of all expenses and improvements;

(5) the status of the plan and any amendments thereto;

(6) a description of actions proposed to be taken during the next six months with respect to the building; and

(7) itemization of any fees and expenses that the receiver incurred for which it is entitled to payment pursuant to section 46A:29-17, which were not paid during the period covered by the report, or which have remained unpaid since the beginning of the receivership.

Source: 2A:42-129.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-16. Authorization to borrow money and incur indebtedness

a. The receiver may borrow money and incur indebtedness in order to preserve, insure, manage, operate, repair, improve, or otherwise carry out its responsibilities under the terms of the receivership.

b. With the approval of the court, after notice to the owner and all parties in interest, the receiver may secure the payment of any borrowing or indebtedness under subsection a. of this section by a lien or security interest in the building or other assets subject to the receivership.

c. Where the borrowing or indebtedness is for the express purpose of making improvements to the building or other assets subject to the receivership, the court, after notice to the owner and all parties in interest, may authorize the receiver to grant a lien or security interest not in excess of the amount necessary for the improvements with priority over all other liens or mortgages, except for municipal liens. Prior to granting the receiver's lien priority over other

liens or mortgages, the court shall find (1) that the receiver sought to obtain the necessary financing from the senior lienholder, which declined to provide such financing on reasonable terms; (2) that the receiver sought to obtain a voluntary subordination from the senior lienholder, which refused to provide such subordination; and (3) that lien priority is necessary in order to induce another lender to provide financing on reasonable terms. No lien authorized by the court shall take effect unless recorded in the recording office of the county in which the building is located.

d. For the purposes of this section, the cost of improvements shall include reasonable non-construction costs such as architectural fees or building permit fees customarily included in the financing of the improvement or rehabilitation of residential property incurred by the receiver in connection with the improvements.

Source: 2A:42-130.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-17. Expenses and fees; liability

a. The receiver shall be entitled to necessary expenses and to a reasonable fee, to be determined by the court. The expenses incurred by a receiver in removing or remedying a condition pursuant to this chapter shall be met by the rents collected by the receiver or any other moneys made available for those purposes.

b. Nothing in this chapter shall be deemed to relieve the owner of the building of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.

c. The activities of the receiver being appropriate and necessary to carry out a public purpose, the personnel, facilities, and funds of the municipality may be made available to the receiver at the discretion of the municipality for the purpose of carrying out the duties as receiver. The cost of those services shall be deemed a necessary expense of the receiver, and the receiver shall reimburse the municipality to the extent that funds are reasonably available for that purpose.

d. If the party in interest bringing a receivership action pursuant to section 46A:29-2 is the public officer, the municipality shall be entitled to its costs in filing an application and reasonable attorneys' fees, to be determined by the court, which may be a lien against the premises and collectible as otherwise provided under law.

Source: 2A:42-131.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-18. Release of municipal liens

Upon the receiver's request following notice by the receiver to the owner of the property, any municipality may, by order of the county board of taxation, release any outstanding municipal liens on any property subject to a receivership order under this chapter. In responding to such requests, the board shall balance the effect of releasing the lien on the municipality's finances with its effect on the preservation of the building as sound affordable housing. The

owner of the property shall be personally liable for payment of the tax or other municipal charge secured by the lien.

Source: 2A:42-132.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-19. Order for sale of building

Upon application of the receiver, the court may order the sale of the building if it finds that:

a. notice was given to each current record owner of the building, each mortgagee or lienholder of record, and any other party in interest;

b. the receiver has been in control of the building for more than one year at the time of application and the owner has not successfully petitioned for reinstatement under section 46A:29-23; and

c. the sale would promote the sustained maintenance of the building as sound, affordable housing, consistent with codes and safety requirements.

Source: 2A:42-133.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-20. Application to court; proposal for sale of building

In its application to the court, the receiver shall specify the manner in which it proposes the building to be sold, which alternatives shall include, but not be limited to a sale as follows:

a. on the open market to an entity qualified to own and operate multifamily rental property;

b. at a negotiated price to a not-for-profit entity qualified to own and operate multifamily rental property;

c. to an entity for the purpose of conversion of the property to condominium or cooperative ownership pursuant to the provisions of The Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21, provided that that option shall not be approved except in writing by a majority of the tenants of the building, and that, notwithstanding any provision of The Planned Real Estate Development Full Disclosure Act, N.J.S.45:22A-21, no tenant in residence prior to the date the plan of conversion is approved by the court shall be subject to eviction by reason of that conversion; or

d. in the case of a one to four family building, to a household, including an existing tenant, that will occupy one of the units as an owner occupant.

Source: 2A:42-134.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-21. Owner of party in interest may seek dismissal of application to sell property; authorization to sell free and clear of liens, claims and encumbrances

a. Upon application by the receiver to sell the property the owner or any party in interest may seek to have the receiver's application to sell the property dismissed and the owner's rights reinstated upon a showing that the owner meets all of the conditions set forth in section 46A:29-24 and such other conditions that the court may establish. In setting the conditions for reinstatement, the court shall invite recommendations from the receiver.

b. In connection with the sale, the court may authorize the receiver to sell the building free and clear of liens, claims and encumbrances in which event, all such liens, claims and encumbrances, including tax and other municipal liens, shall be transferred to the proceeds of sale with the same priority as existed prior to resale in accordance with section 46A:29-22.

Source: 2A:42-135.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-22. Distribution of proceeds from sale

Upon approval by the court, the receiver shall sell the property on such terms and at such price as the court shall approve, and may place the proceeds of sale in escrow with the court, except that unpaid municipal liens shall be paid from the proceeds of the sale. The court shall order a distribution of the proceeds of sale after paying court costs in the following order of priority, after which the remaining proceeds shall be remitted to the owner:

- a. the reasonable costs and expenses of sale actually incurred;
- b. municipal liens pursuant to N.J.S. 54:5-9;
- c. repayment of principal and interest on any borrowing or indebtedness incurred by the receiver and granted priority lien status pursuant to subsection c. of section 46A:29-16;
- d. other valid liens and security interests, including governmental liens, in accordance with their priority, including any costs and expenses incurred by the municipality as a receiver, but with respect to non-governmental liens, those duly recorded prior to the filing of the lis pendens notice by the receiver;
- e. any fees and expenses of the receiver not otherwise reimbursed during the pendency of the receivership in connection with the sale or the operation, maintenance and improvement of the building and documented by the receiver as set forth in paragraph (7) of subsection d. of section 46A:29-15;
- f. any costs and expenses incurred by parties in interest in petitioning the court for receivership; and
- g. any accounts payable or other unpaid obligations to third parties from the receivership.

Source: 2A:42-136.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-23. Petition for termination of receivership and reinstatement of owner's rights

a. The owner may petition for termination of the receivership and reinstatement of the owner's rights at any time by providing notice to all parties in interest, unless the court shall establish a minimum duration for the receivership in the order appointing the receiver, which shall not exceed one year. The owner shall provide timely notice of the petition to the receiver and to all parties in interest. The court shall schedule a hearing on any such petition.

b. Prior to holding a hearing on the owner's petition, the court shall request a report from the receiver with its recommendations for action with respect to the owner's petition.

Source: 2A:42-137.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-24. Grounds for granting petition

a. After reviewing the receiver's recommendations and holding a hearing, the court may grant the owner's petition if it finds that:

(1) the owner's petition offers credible assurances that those elements of the plan which remain will be achieved by the owner within the time frame consistent with the plan submitted by the receiver and approved by the court;

(2) the owner has paid or deposits with the court all funds required to meet all obligations of the receivership, including all fees and expenses of the receiver, except as provided in subsection c. of this section;

(3) the owner agrees to assume all legal obligations, including repayment of indebtedness incurred by the receiver for repairs and improvements to the building resulting from the receivership;

(4) the owner has paid all municipal property taxes, other municipal liens, and costs incurred by the municipality in connection with bringing the receivership action;

(5) the owner posts a bond or other security in an amount determined to be reasonable by the court in consultation with the receiver and the public officer, but not in excess of 50% of the fair market value of the property, which shall be forfeited in the event of any future code violation materially affecting the health or safety of tenants or the structural or functional integrity of the building. Forfeiture shall be in the form of a summary proceeding initiated by the municipal officer, who shall provide evidence that such a code violation has occurred and has not been abated within 48 hours of notice, or such additional period of time as may be allowed by the court for good cause, and shall be in the amount of 100 % of the cost of abating the violation for the first violation, 150 % of the cost of abating the violation for the second violation, and 200% of the cost of abating the violation for any subsequent violation. The owner may seek approval of the court to be relieved of this requirement after five years, which shall be granted if the court finds that the owner has maintained the property in good repair during that period, that no material violations affecting the health and safety of the tenants have occurred during that period, and that the owner has remedied other violations in a timely and expeditious fashion; and

(6) the reinstatement of the owner is in the interest of the public, taking into account the prior history of the building and other buildings within the municipality currently or previously controlled by the owner.

b. The court may waive the requirement for a bond or other security for good cause, where it finds that such a waiver will not impair the rights or interests of the tenants of the building.

c. The court may establish additional requirements as conditions of reinstatement of the owner's rights as it determines reasonable and necessary to protect the interest of the tenants and the residents of the neighborhood.

d. Where the owner has conveyed the property to another entity during the pendency of the receivership, and the petition for reinstatement is brought by the new owner, the new owner shall be subject to this section, unless the court finds compelling grounds that the public interest will be better served by a modification of any of these provisions; provided that where the new owner is a lienholder that obtained the property through foreclosure, or through grant of a deed in lieu of foreclosure, that owner shall not be subject to this section, but may seek to terminate the receivership by filing a petition for termination of the receivership pursuant to section 46A:29-26.

Source: 2A:42-138.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-25. Reinstatement of owner's rights; receiver to monitor property as condition of reinstatement; failure to comply with conditions

a. The court may require as a condition of reinstatement of the owner's rights that the receiver or other qualified entity remain in place as a monitor of the condition and management of the property for such period as the court may determine, and the court may require such reports at such intervals as it deems necessary and appropriate from the monitor. The court may require the owner to pay a fee to the monitor in such amount as the court may determine.

b. In the event of the owner's failure to comply with the conditions established for reinstatement of the owner's rights, or evidence of recurrence of any of the conditions for receivership set forth in section 46A:29-2, the receiver, monitor or any party in interest may petition the court for reinstatement of the receivership at any time, which may be granted by the court in a summary manner after notice to the parties and a hearing, if requested by any of the parties. If the court reinstates the receivership, the entire bond or other security shall be forfeited and shall be provided to the receiver for the operation and improvement of the property.

Source: 2A:42-139.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-26. Termination of receivership

a. Upon request of a party in interest or the receiver, the court may order the termination of the receivership if it determines:

(1) the conditions that were the grounds for the complaint and all other code violations have been abated or corrected, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been fulfilled;

(2) the mortgage holder or lienholder has requested the receivership be terminated and has provided adequate assurances to the court that any remaining code violations or conditions that constituted grounds for the complaint will be promptly abated, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been or will promptly be fulfilled, in which case, any money incurred or advanced by a mortgage holder or lienholder pursuant to this section, including court costs and reasonable attorneys' fees, may be added to the unpaid balance due the mortgage holder or lienholder, with interest calculated at the same rate set forth in the note or security agreement.

(3) a new owner who was formerly a mortgage holder or lienholder and who has obtained the property through foreclosure or through grant of a deed in lieu of foreclosure has requested that the receivership be terminated and has provided adequate assurances to the court that any remaining code violations or conditions that constituted grounds for the complaint will be promptly abated, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been or will promptly be fulfilled, in which case, the former owner of the property shall be personally liable for payment to the new owner of any costs incurred by the new owner to cover the obligations, expenses and improvements of the receiver.

(4) the building has been sold and the proceeds distributed in accordance with section 46A:29-22; or

(5) the receiver has been unable after diligent effort to present a plan that can appropriately be approved by the court or is unable to implement a plan previously approved by the court or is unable for any other reason to fulfill the purposes of the receivership.

b. In all cases under this section, the court may impose such conditions on the owner or other entity taking control of the building upon the termination of receivership that the court deems necessary and desirable in the interest of the tenants and the neighborhood in which the building is located, including but not limited to those that may be imposed on the owner under section 46A:29-24; except that a new owner who was formerly a mortgage holder or lienholder, or an affiliate thereof, and who has obtained the property through foreclosure or through grant of a deed in lieu of foreclosure and who demonstrates sufficient financial responsibility to the court shall not be required to post a bond.

Source: 2A:42-140.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:29-27. Fund for making grants or loans to receivers

a. Subject to the availability of money in the New Jersey Affordable Housing Trust Fund, established pursuant to N.J.S. 52:27D-320, as amended, the Department may set aside from that fund up to four million dollars per year to establish a Preservation Loan Revolving Fund for the purpose of making grants or loans to receivers to implement plans which are consistent with rules and regulations adopted by the Commissioner pursuant to section 46A:29-28.

b. The Department shall establish terms for providing loans from the Preservation Loan Revolving Fund, including below market interest rates, deferred payment schedules, and other provisions that will enable these funds to be used effectively for any of the purposes of receivership in situations where a receiver cannot borrow funds on conventional terms without imposing hardship on the tenants or potentially impairing the purposes of the receivership.

c. The Department may make grants or loans, as the case may be, from the Preservation Loan Revolving Fund in connection with any property that is under receivership pursuant to this chapter in order to further the purposes of this chapter.

d. In making grants under this section, the agency shall seek to assist a small number of entities that are geographically distributed among those areas with the greatest need in order to develop a high level of capacity and benefit from economies of scale in the conduct of property management and receivership activities.

Source: 2A:42-141.

COMMENT

This section continues the substance of its source with minor changes in language. The source statute provided for the creation of a fund to make grants or loans to receivers commencing in the fiscal year the source statute became effective, which was 2004. The fund was first created from the Neighborhood Preservation Nonlapsing Revolving Fund established in 1975 pursuant to N.J.S. 55:27D-320. In 2008, the statute was amended to, among other things, clarify the purpose of the Neighborhood Preservation Nonlapsing Revolving Fund and change its name to the New Jersey Affordable Housing Trust Fund. The Trust Fund is designated in the source statute as the “repository of all State funds appropriated for affordable housing purposes. . .”

46A:29-28. Rules and regulations

a. The Commissioner shall adopt rules and regulations concerning registration of qualified entities, including but not limited to setting forth minimum amounts of insurance coverage, by category, to be maintained on buildings under their control by receivers appointed pursuant to the this chapter, and the governing of surety bonds which a receiver shall execute and file guaranteeing compliance with the terms and conditions of the receivership and any other provisions of this chapter.

b. The Commissioner may provide for a waiver or adjustment of any of these requirements upon finding that the requirement would prevent an entity that is otherwise fully qualified to act as a receiver from being appointed receiver, so long as that entity can demonstrate a sufficient level of financial responsibility.

Source: 2A:42-142.

COMMENT

This section continues the substance of its source with minor changes in language.

CHAPTER 30: COURT-APPOINTED ADMINISTRATION

46A:30-1. Definitions

For purposes of this chapter:

a. "Public officer" means an officer, board or body, or more than one, authorized by the governing body of a municipality to supervise the physical condition of dwellings within such municipality pursuant to this chapter.

b. "Owner" means the holder or holders of the title in fee simple.

c. "Party in interest" means any individual, association or corporation who has an interest of record in, and is in actual possession of, a dwelling, and any person authorized to receive rents payable for housing space in a dwelling.

d. "Dwelling" means and includes all rental premises or units used for dwelling purposes except owner-occupied premises with not more than two rental units.

e. "Housing space" means that portion of a dwelling rented or offered for rent for living or dwelling purposes in which cooking equipment is supplied, and includes all privileges, services, furnishings, furniture, equipment, facilities, and improvements connected with the use or occupancy of such portion of the property. The term does not mean or include public housing or dwelling space in any hotel, motel or established guest house, commonly regarded as a hotel, motel or established guest house, as the case may be, in the community in which it is located.

f. "Substandard dwelling" means any dwelling determined to be substandard by the public officer.

g. "State Housing Code" means the code adopted by the Department of Community Affairs pursuant to 46A:32-1 *et seq.*

h. "Utility company" means a public utility, as defined in N.J.S. 48:2-13, or a municipality, county, water district, authority or other public agency, which provides electric, gas or water utility service.

Source: 2A:42-86.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-2. Deposit of rents into court

a. A public officer or any tenant of a dwelling may commence an action for a judgment directing the deposit of rents into court and their use for the purpose of remedying conditions in substantial violation of the standards of fitness for human habitation established under the State or local housing codes or regulations; or

b. A public officer, or a tenant whose utility service is diverted, or a utility company may commence an action for a judgment directing the deposit of rents into court and their use for correcting any wrongful diversion of utility service in a dwelling.

c. The place of trial of the proceeding commenced in accordance with subsections a. or b. shall be within the county where the real property or a portion thereof for which the rents are

paid is located, except that in cases involving real property located in municipalities in counties of the first class that have established full-time municipal housing courts, the proceedings may be brought in the municipal housing court of the municipality in which the property is located.

Source: 2A:42-87.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-3. Grounds for action

a. A public officer or any tenant occupying a dwelling may commence an action as provided in this chapter upon the ground that there exists in the dwelling or housing space a lack of heat or running water or light or electricity or adequate sewage disposal facilities, or any other condition in substantial violation of the standards of fitness for human habitation established under the State or local housing or health codes or regulations, or any other condition dangerous to life, health or safety.

b. A public officer, a tenant whose utility service has been diverted or a utility company providing electric, gas or water utility service to a dwelling may commence an action as provided in this chapter upon the grounds that:

(1) an owner or other party has wrongfully diverted electric, gas or water utility service from a tenant of the dwelling, or used electric, gas or water utility service that is being charged to the tenant, without the tenant's consent, and

(2) that the owner has been notified in writing, by certified mail, return receipt requested, by a public officer, a tenant whose utility service has been diverted, or a utility company, of the wrongful diversion or lack of consent for the use and the owner has failed to take necessary action to correct or eliminate the wrongful diversion or use within 30 days of receipt of the notice. If an owner fails or refuses to accept a notice sent by certified mail, the date of receipt shall be deemed to be the third day after mailing, provided the notice was sent to the owner at an address to which the owner's utility bills or municipal tax bills are sent.

Source: 2A:42-88.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-4. Commencement of action; service and notice of petition

a. A proceeding as provided by this chapter shall be commenced by the service and notice of a petition. A notice of petition may be issued only by a judge or a clerk of the court.

b. Notice of the proceeding shall be given to a non-petitioning tenant occupying the dwelling by affixing a copy of the petition upon a conspicuous part of the subject dwelling.

Source: 2A:42-89.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-5. Contents of petition

The petition shall:

a. set forth material facts showing the existence in the dwelling or housing space of one or more of the following:

(1) a lack of heat, running water, light, electricity or adequate sewage disposal facilities;
or

(2) a wrongful diversion of electric, gas, or water utility service by the owner or other party from the tenant of the dwelling without the consent of the tenant; or

(3) the use by the owner or other party in the dwelling without the tenant's consent of electric, gas, or water utility service that is being charged to the tenant; or

(4) any other condition in substantial violation of the standards of fitness for human habitation established under the State or local housing or health codes or regulations; or

(5) any other condition dangerous to life, health or safety.

b. set forth that the facts shown in subsection a. of this section have been brought to the attention of the owner or any individual designated by the owner as the owner's authorized representative or agent and that the owner has failed to take any action within a reasonable period.

c. set forth that the petitioner is a tenant of the subject dwelling or is the public officer of the municipality in which the subject dwelling is located, or, in a case involving wrongful diversion or use of utility services without the tenant's consent, that the petitioner is a public officer, a tenant whose utility service has been wrongfully diverted or used without consent, or a utility company providing utility services to the dwelling.

d. set forth a brief description of the nature of the work required to remove or remedy the condition and an estimate as to the cost.

e. set forth the amount of monthly rent due from each petitioning tenant.

f. state the relief sought.

Source: 2A:42-90.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-6. Defenses to action

It shall be a sufficient defense to the action if the owner or any mortgagee or lienor of record establishes that:

a. any condition alleged in the petition did not in fact exist or has been removed or remedied; or

b. any alleged condition was caused maliciously or by a misuse or non-customary use by a petitioning tenant or tenants or any petitioner's family members.

c. any tenant or resident of the dwelling has refused entry by the owner or the owner's agent to the premises for the purpose of correcting any alleged condition.

Source: 2A:42-91.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-7. Judgment; deposit of rents with clerk of court

a. The court shall proceed in a summary manner and shall render a judgment either:

(1) dismissing the petition for failure to affirmatively establish the allegations or because of the affirmative establishment by the owner or a mortgagee or lienor of record of a defense specified in this chapter; or

(2) directing that:

(A) any rent due from the petitioner on the date of the entry of the judgment and any rent due from other tenants on the dates of service of the judgment on all other tenants occupying the dwelling, shall be deposited with the clerk of the court;

(B) any rent due in the future from the petitioner and from other tenants occupying the dwelling shall be deposited with the clerk as they become due;

(C) the deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy any condition alleged in the petition;

(D) upon the completion of the work in accordance with the judgment, any surplus shall be turned over to the owner, together with a complete accounting of the rent deposited and the costs incurred; and granting such other and further relief as the court deems just and proper; and

b. A certified copy of the judgment shall be served personally upon each non-petitioning tenant occupying the dwelling; or if personal service on any non-petitioning tenant cannot be made with due diligence, service on that tenant shall be made by affixing a certified copy of the judgment on the entrance door of that tenant's dwelling and, in addition, within one day thereafter, sending a certified copy by registered mail, return receipt requested, to that tenant.

Source: 2A:42-92.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-8. Deposits of rent with court; right to collect rent from tenant void

a. Any owner of the dwelling or party in interest with a right to collect rent from any petitioning tenant of the dwelling, may not collect rent from any petitioner on or after the date of entry of the judgment, or from any non-petitioning tenant of the dwelling on or after the date of service of the judgment on the non-petitioning tenant as provided in subsection b. of 46A:30-7, to the extent that the tenant has deposited rent with the clerk of the court in accordance with the judgment.

b. Any rent received by the owner or a party in interest shall be deposited immediately with the clerk of the court.

c. It shall be a valid defense in any action or proceeding against any tenant to recover possession of real property for the nonpayment of rent to prove that the rent alleged to be unpaid was deposited with the clerk of the court in accordance with a judgment entered under this section.

Source: 2A:42-92.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-9. Order permitting performance of work in lieu of judgment

a. If, after a trial, the court determines that the facts alleged in the petition have been established, that no defense specified in this chapter has been established, and that the facts alleged in the petition warrant the granting of the relief sought, the owner or any mortgagee or lienor of record or party in interest in the property may apply to the court to be permitted to remove or remedy the conditions specified in the petition.

b. The court, in lieu of rendering judgment as provided in this chapter, may issue an order permitting work to be performed within a time fixed by the court if the person making the application:

(1) demonstrates the ability to undertake the work required promptly; and

(2) posts security for the performance of the work within the time, and in the amount and manner deemed necessary by the court.

c. If, after the issuance of an order pursuant to subsection b. of this section, but before the time fixed in such order for the completion of the work, it appears to the petitioner that the person permitted to do the work is not proceeding with due diligence, the petitioners may apply to the court on notice to those persons who have appeared in the proceeding for a hearing to determine whether judgment should be rendered immediately as provided in subdivision d. of this section.

d. If, upon a hearing authorized in subsection c., the court determines that the owner, mortgagee, lienor or party in interest is not proceeding with due diligence, or has failed to complete the work in accordance with the order, the court shall render a final judgment, appointing an administrator as authorized in this chapter, which directs the administrator to apply the security posted to the cost of removing or remedying the condition specified in the petition. If the amount of the security is insufficient to remove or remedy the condition, the final judgment shall direct the deposit of rent with the clerk, as authorized by this chapter, to the extent of the deficiency. If the security exceeds the amount required to remove or remedy the condition, the final judgment shall direct the administrator to file with the court, upon completion of the work, a full accounting of the amount of the security and the expenditures made, and to turn over the surplus to the person who posted the security, together with a copy of the accounting.

e. In implementing a judgment rendered pursuant to this chapter, the court may appoint an administrator who may be a public officer of the municipality where the subject dwelling is located, an incorporated or unincorporated entity, or other suitable person, except that no owner, mortgagee or lienor of the subject dwelling may be appointed an administrator of the dwelling. Subject to the court's direction, the administrator appointed may receive from the clerk the

amounts of rent or security deposited with the clerk as may be necessary to remove or remedy the condition specified in the judgment.

Source: 2A:42-93.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-10. Accounts of receipts and expenditures; presentation or settlement; notice

a. The court shall require the keeping of written accounts itemizing the receipts and expenditures under an order issued pursuant to this chapter, which shall be open to inspection by the owner, any mortgagee or lienor or party in interest.

b. Upon motion of the court or the administrator or of the owner, or any mortgagee or lienor of record or party in interest, the court may require a presentation or settlement of the accounts. Notice of a motion for presentation or settlement of the accounts shall be served on the owner, any mortgagee or other lienor of record who appeared in the proceeding or any party in interest.

Source: 2A:42-94.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-11. Compensation of administrator; bond

The court may allow from the rent or security on deposit a reasonable amount for the services of an administrator appointed under this chapter. The administrator shall furnish a bond, the amount and form of which shall be approved by the court, and the cost of which shall be paid from the money so deposited.

Source: 2A:42-95.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:30-12. Waiver of provisions of chapter

A provision of a lease or other agreement whereby a tenant, resident or occupant of a dwelling waives any provision of this chapter for the benefit of such person, is against public policy and unenforceable.

Source: 2A:42-96.

COMMENT

This section continues the substance of its source with minor changes in language.

ARTICLE 9

RENT PROTECTION

CHAPTER 31: NOTICE OF RENT PROTECTION EMERGENCY FOR RESIDENTIAL RENTAL PREMISES

46A:31-1. Notice of rent protection emergency

a. The Governor may, whenever declaring a state of emergency, determine whether the emergency will or is likely to affect significantly the availability and pricing of rental housing in the areas included in the declaration.

b. If the Governor determines that unconscionable rental practices are likely to occur unless the protections afforded under this chapter are invoked, the Governor may issue a “Notice of Rent Protection Emergency” at any time during the declared state of emergency.

Source: 2A:18-61.62.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:31-2. Effect of Issuance of notice of rent protection emergency

a. Whenever the Governor issues a “Notice of Rent Protection Emergency”, within a zone that includes the area declared to be in a state of emergency and, if indicated in the Notice, also extends a distance not to exceed 10 miles in all directions from the outward boundaries of the area, there shall be:

(1) a presumption of unreasonableness given to any notice of increase in rental charges that is provided, subsequent to the date of the declaration, by a landlord to a tenant occupying residential rental premises, when the proposed percentage increase in rent is greater than twice the rate of inflation as indicated by increases in the CPI for the immediately preceding nine-month period; and

(2) a limitation on the amount of rent that may be charged a tenant undertaking a new lease for residential rental premises during the duration of the declaration. The amount of rent that may be charged shall be limited to the product of the fair market rental value of the premises prior to the emergency conditions and two times the rate of inflation as determined by the increase in the CPI for the immediately preceding nine-month period.

b. For the purposes of this section, “CPI” means the annual average over a 12-month period beginning September 1 and ending August 31 of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), All Items Series A, of the United States Department of Labor (1957-1959 = 100), for the New York, NY-Northeast New Jersey region.

c. If the landlord believes that the limitations on increases in rental charges imposed by the Notice of Rent Protection Emergency prevent the landlord from realizing a just and reasonable rate of return on the landlord’s investment, the landlord may file an application with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety for the purpose of requesting permission to increase rental charges in excess of the increases authorized under the Notice. In evaluating the application, the Director of the Division of

Consumer Affairs shall consider the purposes intended to be achieved by this chapter and the Notice, and the amount of rental charges required to provide the landlord with a just and reasonable return, as well as promulgate rules and regulations in accordance with the Administrative Procedure Act, N.J.S. 52:14B-1 *et seq.* to effectuate the purpose of this chapter.

d. Subsections a. (1) and (2) of this section shall:

(1) supplement and not replace, any existing local, State, or Federal restrictions on rent increases for any dwelling units in residential buildings located within the zone described in those subsections, and

(2) only apply to dwelling units for which there is a lowering of the maximum allowable rent increase or of the maximum reasonable rent increase; and

(3) cease to apply upon the expiration of the state of emergency, or upon the rescission of either the declaration of the state of emergency or the Notice of Rent Protection Emergency.

Source: 2A:18-61.63.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:31-3. Report of violation; investigation; penalties

a. A tenant or prospective tenant may report a violation of this chapter to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety who shall then investigate any complaint within 10 days of receipt of the complaint.

b. If the Director of the Division of Consumer Affairs determines that a violation of this chapter has occurred, the Director:

(1) may assess a penalty against the landlord in an amount equal to six times the monthly rental sought to be imposed upon a tenant in contravention of the Notice of Rent Protection Emergency; or

(2) seek any penalties for violations of The Senior Citizens Fraudulent Claims Act, N.J.S. 56:8-1 *et seq.*, P.L. 1960, c.39, as amended.

c. Notwithstanding the provisions of subsections a. and b. of this section, a tenant may petition a court to terminate a lease in violation of this chapter.

Source: 2A:18-61.64.

46A:31-4. Violation of senior consumer fraud

Any violation of this chapter shall be considered a violation of The Senior Citizens Fraudulent Claims Act, N.J.S. 56:8-1 *et seq.*, P.L. 1960, c.39, as amended.

Source: 2A:18-61.65.

COMMENT

This section continues the substance of its source with minor changes in language.

CHAPTER 32: MUNICIPAL RENT REGULATION OF SUBSTANDARD MULTIPLE DWELLINGS

46A:32-1. Definitions

For the purposes of this chapter:

- a. "Public officer" means the officer, officers, board or body authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinances and by this chapter.
- b. "Owner" means the holder or holders of the title in fee simple.
- c. "Parties in interest" means all individuals, associations and corporations who have interests of record in a multiple dwelling, and who are in actual possession thereof and any person authorized to receive rents payable for housing space in a multiple dwelling.
- d. "Multiple dwelling" means and includes any building or structure and land appurtenant thereto in which there are three or more apartments or rented or offered for rent to three or more tenants or family units.
- e. "Housing space" means that portion of a multiple dwelling rented or offered for rent for living or dwelling purposes in which cooking equipment is supplied, and includes all privileges, services, furnishings, furniture, equipment, facilities, and improvements connected with the use or occupancy of such portion of the property. The term shall not mean or include public housing or dwelling space in any hotel, motel or guest house, commonly regarded as a hotel, motel or guest house, as the case may be, in the community in which it is located.
- f. "Substandard multiple dwelling" means any multiple dwelling determined to be substandard by the public officer.

Source: 2A:42-75.

COMMENT

This section continues the substance of its source with minor changes in language. The Bureau of Housing in the State Department of Conservation and Economic Development no longer exists. The Department of Community Affairs, Bureau of Homeowner Protection, is now responsible for implementation of this chapter.

The recodification of the source statutes incorporated in this chapter does not affect the municipal right to rent control as determined by the Supreme Court in *Inganamort v. Borough of Fort Lee*, 62 N.J. 521 (1973) or the exemption from rent regulation for new construction that appears in chapter 33.

46A:32-2. Authority to adopt ordinance regulating rents and possession of space in substandard multiple dwellings; provisions

Whenever a municipality finds that the health and safety of its residents are impaired or threatened by the existence of substandard multiple dwellings, the municipality may adopt an ordinance setting forth such a finding and providing for the regulation of rents and the possession of rental space in substandard multiple dwellings. Such ordinance shall provide that:

- a. a public officer be designated or appointed to exercise the powers prescribed by the ordinance.
- b. whenever it appears by preliminary investigation that a multiple dwelling is substandard the public officer shall cause a complaint to be served upon the owner of and parties

in interest in the multiple dwelling, stating the reasons the multiple dwelling is deemed to be substandard and setting a time and place for hearing before the public officer. The owners and parties in interest shall be given the right to file an answer and to appear and give testimony. The rules of evidence shall not be controlling in hearings before the public officer.

c. if, after notice and hearing, the public officer determines the multiple dwelling under consideration is substandard, the public officer shall set forth written findings and issue and cause to be served upon the owner or other person entitled to receive the rent an order requiring that the repairs, alterations or improvements necessary to bring the property up to minimum standards be made within a reasonable time.

d. failure to complete such repairs, alterations or improvements within a reasonable time as fixed by the public officer shall be cause to impose rent control on the substandard multiple dwelling.

e. in establishing maximum rents which may be charged for housing space in a multiple dwelling subject to rent control, the permissible rent shall be sufficient to provide the owner or other person entitled to receive the rent with a fair net operating income from the multiple dwelling. The net operating income shall not be considered less than fair if it is 20% or more of the annual income in the case of a multiple dwelling in which there are less than five dwelling units or is 15% or more in the case of a multiple dwelling in which there are five or more dwelling units. In determining the fair net operating income, the public officer shall consider the following items of expense: heating fuel, utilities, payroll, janitorial materials, real estate taxes, insurance, interior painting and decorating, depreciation, and repairs and replacements and additions to furniture and furnishings which expenses shall be deducted from the annual income derived from the multiple dwelling. All items of expense and the amount of annual income shall be certified by the owner or other person entitled to receive the rent on forms provided by the public officer.

f. The imposition of rent control on any substandard multiple dwelling shall not operate to impair leases existing at the time of the adoption of an ordinance under this chapter, but shall take effect at the expiration of the term of any such lease and shall remain in effect thereafter so long as the multiple dwelling is subject to rent control.

g. It shall be unlawful for any person to demand or receive any rent in excess of the maximum rent established for housing space in multiple dwelling subject to rent control or to demand possession of the space or evict a tenant for refusal to pay rent in excess of the established maximum rent. The owner or other person entitled to receive the rent shall not be prevented, however, from obtaining possession of housing space from a tenant as a result of the tenant's violation of law or contract in accordance with the eviction article of this Title.

h. Whenever the public officer finds that a multiple dwelling subject to rent control is no longer substandard, the public officer shall so inform the governing body and the rent control provided by this chapter on the multiple dwelling shall be removed.

Source: 2A:42-77.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:32-3. Registration of owners and management of multiple dwellings

Any ordinance adopted under this chapter may provide for the registration of the owners and management of every multiple dwelling in the municipality with the clerk of the municipality upon forms prescribed by and furnished by the municipality. Every registration form shall include the name and address of the owner and of an agent in charge of the premises residing in the municipality.

Source: 2A:42-78.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:32-4. Promulgation of state housing code

Any State Housing Code promulgated by the Department of Community Affairs, Bureau of Homeowner Protection, or its predecessor agency, shall be effective in any municipality adopting an ordinance under this chapter.

Source: 2A:42-76.

COMMENT

This section continues the substance of its source with modifications; the source provided that a state housing code was to be provided within 60 days following the effective date of the act and set forth the scope of the standards for the code.

CHAPTER 33: EXEMPTION OF NEWLY-CONSTRUCTED MULTIPLE DWELLINGS FROM MUNICIPAL RENT REGULATION

46A:33-1. Definitions

For the purposes of this chapter:

a. "Completion of construction" means issuance of a certificate of occupancy pursuant to section 15 of the State Uniform Construction Code Act, N.J.S. 52:27D-133;

b. "Constructed" means constructed, erected or converted but excludes rehabilitation of premises rented previously for residential purposes without an intervening use for other purposes for a period of at least two years prior to conversion. Mere vacancy shall not be considered an intervening use for the purposes of this subsection;

c. "Constructed for senior citizens" means constructed under a governmental program restricting occupancy of at least 90% of the dwelling units to senior citizens and any members of their immediate households or their occupant surviving spouses, or constructed as a retirement subdivision or retirement community as defined in the Retirement Community Full Disclosure Act, N.J.S. 45:22A-1 *et seq.*;

d. "Multiple dwelling" means any building or structure and land appurtenant thereto in which there are four or more dwelling units, other than dwelling units constructed for occupation by senior citizens, rented or offered for rent to four or more tenants or family units;

e. "Period of amortization" means the time during which the principal amount of the mortgage loan and interest thereon would be paid entirely through periodic payments, whether or not the term of the mortgage loan is for a shorter period concluding with a balloon payment; and

f. "Senior citizens" means persons 62 years of age or older.

Source: 2A:42-84.1.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:33-2. Applicability of municipal rent control ordinances

a. In any municipality which has enacted or which hereafter enacts a rent control or rent leveling ordinance, other than under the authority of chapter 32 of this Title, those provisions of the ordinance which limit the periodic or regular increases in base rentals of dwelling units shall not apply to multiple dwellings constructed pursuant to a construction permit issued on or after June 25, 1987, for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the multiple dwelling, or for 30 years following completion of construction, whichever is less.

b. In the event that there is no initial mortgage financing, the period of exemption from a rent control or rent leveling ordinance shall be 30 years from the completion of construction.

Source: 2A:42-84.2.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:33-3. Notice of exemption to tenants

The owner of any multiple dwelling exempted from a rent control or rent leveling ordinance pursuant to this chapter, shall, prior to entering into any lease for any premises located in the multiple dwelling, give the prospective tenant a written statement that the multiple dwelling in which the premises is located is exempt from rent control or rent leveling for such time as may remain in the exemption period. Each written lease offered to a prospective tenant for any dwelling unit therein during the period the multiple dwelling is exempted shall contain a provision notifying the tenant of the exemption. If the lease is not in writing, the owner shall give the tenant notice of the exemption in writing.

Source: 2A:42-84.3.

COMMENT

This section continues the substance of its source with minor changes in language.

46A:33-4. Filing of owner's claim of exemption

a. The owner of any multiple dwelling claiming an exemption from a rent control or rent leveling ordinance pursuant to this chapter shall file with the municipal construction official, at least 30 days prior to the issuance of a certificate of occupancy for the newly constructed multiple dwelling, a written statement of the owner's claim of exemption from an ordinance under this chapter, including a statement of the date upon which the exemption period shall commence, such information as may be necessary to effectively locate and identify the multiple

dwelling for which the exemption is claimed, and a statement of the number of rental dwelling units in the multiple dwelling for which the exemption is claimed.

b. The owner shall, at least 30 days prior to the date of the termination of the exemption period afforded pursuant to this chapter, file with the municipal construction official a notice of the date of termination of the exemption period for the affected multiple dwelling.

Source: 2A:42-84.4.

COMMENT

This section continues the substance of its source with minor changes in language.