

CHAPTER 51

AN ACT concerning online marketing of affordable housing units and supplementing P.L.1985, c.222 (C.52:27D-301 et al.).

BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

C.52:27D-321.3 Findings, declarations relative to online marketing of affordable housing units.

1. The Legislature finds and declares that:

a. In recent years, housing costs in New Jersey have increased dramatically at rates that have outpaced rises in income, making the State the sixth most expensive in the United States and growing the number of renters and homeowners that are housing cost-burdened, spending a disproportionate percentage of their income on high rent or mortgage payments;

b. To address the Statewide shortage in affordable housing, tens of thousands of affordable housing units have been and will be made available to very low-, low-, and moderate-income families, the elderly, and persons with disabilities in New Jersey through a wide variety of federal and State programs, including those implemented under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.);

c. Current rules designed to implement the "Fair Housing Act" require that the developer or administrative agent of the affordable units affirmatively market their units through newspaper and radio or television, but digital marketing is not explicitly required;

d. Due to the fragmentation of information consumption and the advent of housing search websites, an increasing number of residents are conducting their housing searches online;

e. The manner in which residents are searching for affordable housing and the existing rules for affirmatively marketing affordable units are no longer compatible due to changes in technology and, therefore, necessitate an update to facilitate more effective, streamlined, and fair searches of affordable housing for very low-, low-, and moderate-income residents of New Jersey in the furtherance of the "Fair Housing Act";

f. An infrastructure for hosting the increased postings already exists as the New Jersey Housing Resource Center, an affordable housing listing portal overseen by the New Jersey Housing and Mortgage Finance Agency; and

g. It is, therefore, in the interest of the residents of the State, and necessary for ensuring that the State's municipalities are compliant with their constitutional responsibility to affirmatively afford a reasonable opportunity for low- and moderate-income families to reside in their boundaries, that the agency, developers, and municipalities comply with P.L.2020, c.51 (C.52:27D-321.3 et seq.).

C.52:27D-321.4 Definitions relative to online marketing of affordable housing units.

2. As used in P.L.2020, c.51 (C.52:27D-321.3 et seq.):

"Affirmative marketing plan" means a regional marketing strategy designed to attract buyers, renters, or both to housing units which are being marketed by a developer or sponsor of affordable housing. An affirmative marketing plan shall target eligible persons who are least likely to apply for affordable units in the region.

"Agency" means the Housing and Mortgage Finance Agency established pursuant to section 4 of the "New Jersey Housing and Mortgage Finance Agency Law of 1983," P.L.1983, c.530 (C.55:14K-4).

"Development" means any residential development in which housing for very low-, low-, or moderate-income households is required, including developments receiving credit in a municipal housing element and fair share plan or otherwise approved by the council or court, or in which such housing is required via land use approvals from any municipal land use board.

C.52:27D-321.5 Administration of online portal.

3. The agency shall administer the Housing Resource Center, or a designated successor, as an online portal for income-restricted housing listings and searches.

C.52:27D-321.6 Requirements for implementing marketing plan.

4. a. (1) The owner, developer, property manager, or other administrative entity required to implement the affirmative marketing plan of a newly constructed development where affordable housing units will be leased or sold for the first time shall be required to post a listing on the Housing Resource Center of the available affordable housing units, on or before the earlier of: (1) at least 60 days prior to conducting a lottery of the applicants; or (2) within one day following when the owner, developer, property manager, or other administrative entity provides any information regarding how to apply for units to prospective applicants or solicits any applications from potential applicants through any other means. The posting shall include, at a minimum, the date that the affordable housing units are expected to be completed, the date of the lottery, the number of affordable housing units, an accounting of how many of the affordable housing units will be available to very low-, low-, and moderate-income households, and each bedroom size that will be available.

(2) A lottery shall not take place less than 60 days following posting on the Housing Resource Center. Any posting on the Housing Resource Center shall provide a link to an online fillable form or Portable Document Format (PDF) form of the application for the affordable housing units on the website of the owner, developer, property manager, or other administrative entity and information on how to request a paper copy of the application from the owner, developer, property manager, or other administrative entity.

b. The owner, developer, property manager, or other administrative entity required to implement the affirmative marketing plan of an existing development where one or more affordable housing units becomes available shall post vacancies and waitlist openings for any such unit on the Housing Resource Center and the requirements set forth in the affirmative marketing plan of the municipality where the development is located. The posting shall be made within one day of accepting applications and shall include, at a minimum, the expected date that the affordable housing units will become available, the number of affordable housing units, an accounting of how many of the affordable housing units will be available to very low-, low-, and moderate-income households, and each bedroom size that will be available.

c. (1) From time to time the owner, developer, property manager, or administrative entity required to implement the affirmative marketing plan of an existing development may elect to conduct a new lottery to generate or expand the pool of applicants, provided that applicants already on a waitlist for a particular unit type are not displaced from their place in the queue in the lottery. In such cases, the owner, developer, property manager, or other administrative entity shall be required to post a listing on the Housing Resource Center website at least 60 days prior to conducting the lottery of the applicants, or within one day of when the owner, developer, property manager, or other administrative entity provides any information regarding how to apply for the lottery to prospective applicants or solicits any applications from potential applicants through any other means, whichever is earlier.

(2) A lottery shall not take place less than 60 days following posting on the Housing Resource Center. Any posting on the Housing Resource Center shall provide a link to an online fillable form or Portable Document Format (PDF) form of the application for the affordable housing units on the website of the owner, developer, property manager, or other administrative entity and information on how to request a paper copy of the application from the owner, developer, property manager, or other administrative entity.

d. The owner, developer, property manager, or other administrative entity shall submit evidence of

the listing of their available units and waitlist openings, as required by this section, to the administrative agent for the municipality.

e. (1) The administrative agent for the municipality and the municipal housing liaison shall ensure compliance with the provisions of this section.

(2) The administrative agent for the municipality and the municipal housing liaison shall have the authority to levy fines against the owner of the development for instances of noncompliance, following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.

(3) The Executive Director of the agency may adjust the fine schedule, but shall not adjust the fine schedule until at least 60 months after the effective date of P.L.2020, c.51 (C.52:27D-321.3 et seq.).

(4) All revenue generated from the fines levied pursuant to this section shall be deposited into the municipality's affordable housing trust fund.

(5) A fine shall not be issued pursuant to this subsection unless the administrative agent for the municipality or the municipal housing liaison first provides the owner with written notice no less than two months prior to the date the fine is levied. A fine shall only be issued if the offense has not been cured within that two-month timeframe. Issuance of a written notice or a fine shall not provide exemption to the requirement of conducting a lottery no less than 60 days following posting on the Housing Resource Center.

(6) The administrative agent and the municipal housing liaison shall have the authority to require the owner, developer, property manager, or administrative entity to conduct a new lottery if the provisions of this section are not implemented properly.

f. If a municipality fails to comply with the provisions of this section, then the municipality shall be considered non-compliant with the affirmative marketing plan requirements, except in cases in which the municipality takes appropriate corrective action pursuant to this section that such corrective action shall be construed as remaining in compliance.

g. With respect to the affirmative advertising required through newspaper and radio or television, or other affirmative marketing provisions currently required, such advertising shall not be eliminated under the provisions of P.L.2020, c.51 (C.52:27D-321.3 et seq.), and shall continue as required, including the provisions of the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency.

5. This act shall take effect on the first day of the fourth month next following the date of enactment.

Approved July 1, 2020.