

investigation and request any additional information deemed necessary to obtain accurate household information. If an applicant does not cooperate in such investigation or refuses to reply with the requested additional information within 30 days of said request, the applicant shall be removed from the list.

- (6) All applications shall be notarized and certified complete and accurate. Anyone knowingly submitting incomplete, inaccurate, incorrect or false information may be removed from eligibility for very low, low and moderate income dwellings. All information submitted to the Administrative Agent of the purposes of determining applicant eligibility shall be strictly confidential and not considered a public record.
- (7) Prior to the time of availability of a very low, low and moderate income dwelling, the Administrative Agent shall notify by certified mail the top three households on the waiting list for the type of dwelling available, its location and the estimated date it will be available. If a purchaser or tenant cannot be found from the top three households on the waiting list, notice shall be sent to the fourth, fifth, etc., household until a purchaser or tenant is found. The household shall, within 14 days of mailing, notify the Administrative Agent, in writing, of its intent to occupy the dwelling and, if selected, its intent to comply with the requirements of Subsection -M(8), below, within 15 days. Any household which fails to respond to the notice or chooses to reject a specific dwelling by informing the Administrative Agent in writing, shall retain its priority and shall be notified of available dwellings in the future, except that if a household chooses to reject a dwelling or fails to respond three times, it shall be removed from the list and must reapply and re-qualify if it wishes to be placed on the list at a new qualified priority.
- (8) At the time of notice to a household of the availability of an appropriate type of dwelling and if the household notifies the Administrative Agent of its intent to occupy the dwelling and that household is selected for occupancy, each household member shall update the records on file and recertify the accuracy of the information as required herein. Information shall be reviewed and the eligibility status reconfirmed. The household selected shall only at that point proceed to make the legal and financial arrangements to acquire or lease the dwelling.
- (9) If a household selected for occupancy is unable to obtain financing, it shall lose its eligibility for that dwelling, after notice, but shall retain its priority status for a similar appropriate dwelling as other dwellings become available and as long as the household remains eligible. When notified of the availability of another dwelling, updating and recertifying data as outlined in Subsection -M(8) above is required.

Section 7. §193-5, Purchase and Sale of Units, is amended in its entirety, as follows:

§ 193-5. Purchase and Sale of Dwellings.

- A. Both the buyer and seller of low and moderate income dwellings, including the initial seller, shall comply with *N.J.A.C. 5:80-26.5*, Control Periods of Ownership Units; -26.6, Price Restrictions for Ownership Units; -26.7, Buyer Income Eligibility for Ownership Units; -26.8, Limitations on Indebtedness Secured by Ownership Unit; Subordination; -26.9, Capital Improvements to Ownership Units; and -26.10, Maintenance of Restricted Ownership Units, as they may be amended or superseded.
- B. Deed restrictions, restrictive covenants, form of release, payment of recapture amounts, certificates of eligibility, mortgage notes and other property documents for affordable housing shall be as required in *N.J.A.C. 5:80-26.1 et seq.*, as it may be amended or superseded.
- C. No person may buy a restricted dwelling who has not received a Certificate of Eligibility from the Administrative Agent, or the developer's administrative agent for the initial sale, pursuant to the procedures in §193-4.
- D. Deed provisions on sale of rental dwellings. A deed conveying title from an owner of a rental dwelling occupied by very low, low and moderate income families shall include a clause which shall read, "The rental dwelling(s) located in the premises conveyed herein are subject to the terms, conditions, restrictions, limitations and provisions as set forth in an ordinance of the Borough of Berlin entitled 'An Ordinance Establishing Administrative Procedures and Regulations for the Implementation of Low- and Moderate-Income Housing Plans in the Borough of Berlin, in the County of Camden and State of New Jersey,' as amended and supplemented."
- E. Exempt transactions. The following transfer of ownership of a dwelling shall be deemed "non-sales" for the purposes of this chapter:
 - (1) Between husband and wife.
 - (2) Between former spouses ordered as a result of a judicial decree of divorce (and not including sales to third parties).
 - (3) To an heir as a result of inheritance.
 - (4) Through an order of the Superior Court or other court, in a foreclosure proceeding or transfer in lieu of foreclosure after a foreclosure proceeding has commenced.
 - (5) Statement of exemption. To permit the transfer of title under this subsection or to permit the sale, resale or lease of an affordable dwelling, the Administrative Agent shall issue a statement of exemption in recordable form to the person receiving title to the dwelling. A copy of the statement of

exemption shall be given, at the time of closing, to the seller of the dwelling. The statement of exemption issued pursuant to this subsection shall exempt only the specific sale, transfer, resale or rental transaction for which it was issued. It shall not exempt the transaction for the low-income/moderate-income resale/re-rental price restrictions set forth in this chapter.

- (6) The restrictions of resale or re-rental to a purchaser in accordance with this chapter shall apply to all subsequent re-sales or re-rentals of affordable dwellings unless a new statement of exemption is issued pursuant to this Subsection E specifically for a subsequent resale or re-rental transaction. All other terms, provisions and restrictions of this chapter shall remain in full force and effect. Such purchaser, however, shall take title and possession to the affordable dwelling, subject to the terms, restrictions, conditions and provisions of this chapter, including those addressing use, occupancy, improvement and resale as though such purchaser were, in fact, a qualified very low, low and moderate income purchaser.
- (7) Where title is acquired pursuant to Subsection E(1) through -(4) of this section, the cost basis for subsequent resale shall be fixed at the same price as the last preceding nonexempt sale. That price may be adjusted in accordance with the procedures of this chapter through application of the appropriate Consumer Price Index changes since the date of that nonexempt sale.
- (8) Nothing herein shall preclude the Borough of Berlin from purchasing the affordable dwelling and holding, renting or conveying it to a qualified very low, low and moderate income purchaser if such option is exercised prior to the owner accepting a bona fide offer to purchase such dwelling.

Section 8. §193-7, Additional Regulations for Resale, is hereby repealed.

Section 9. §193-6, Violations; remedies, is renumbered §193-7.

Section 10. §193-6, Additional Regulation of Affordable Dwellings, shall be added as follows:

§193-6. Additional Regulation of Affordable Dwellings

A. Affordability Average; Bedroom Distribution.

- (1) In each affordable development, at least fifty percent (50%) of the restricted dwellings within each bedroom distribution shall be low-income dwellings, including very low dwellings and the remainder may be moderate-income dwellings.
- (2) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

- (a) The combined number of efficiency and one bedroom units is no greater than twenty percent (20%) of the total low and moderate-income units;
 - (b) At least thirty percent (30%) of all low and moderate-income units are two bedroom units;
 - (c) At least twenty percent (20%) of all low and moderate-income units are three bedroom units; and
 - (d) The remainder, if any, may be allocated at the discretion of the developer.
 - (e) Age-restricted low and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.
- (3) The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than sixty percent (60%) of median income and the average rent for low and moderate-income units shall be affordable to households earning no more than fifty-two percent (52%) of median income. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low income and moderate-income units, provided that at least ten percent (10%) of all low and moderate-income units shall be affordable to households earning no more than thirty percent (30%) of median income.
 - (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy percent (70%) of median income. Each affordable development shall achieve an affordability average of fifty-five percent (55%) for restricted ownership units. In achieving this affordability average, moderate income ownership units shall be available for at least three different prices for each bedroom type, and low income ownership units shall be available for at least two different prices for each bedroom type.
 - (5) Affordable units shall utilize the same type of heating source as market units within the affordable development.
 - (6) The facade of an affordable housing unit shall be indistinguishable from those of market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall be interspersed with market rate housing to the greatest extent possible given the diversity of housing types in the development.

- (7) For inclusionary developments with a single housing type, the affordable housing units shall have the same tenure as the market housing units.

B. Occupancy Standards.

- (1) In determining the initial rents and initial sales prices for compliance with the affordable average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one person household;
 - (b) A one bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two bedroom unit shall be affordable to a three person household;
 - (d) A three bedroom unit shall be affordable to a four and one-half person household;
 - (e) A four bedroom unit shall be affordable to a six person household.
- (2) For assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one person household;
 - (b) A one-bedroom unit shall be affordable to one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a two person household or to two one-person households.
- (3) In referring certified households to specific restricted units, to the extent feasible and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - (a) Provide an occupant for each unit bedroom;
 - (b) Provide children of different sex with separate bedrooms; and
 - (c) Prevent more than two persons from occupying a single bedroom.

C. Ownership Units.

- (1) Each restricted ownership unit shall remain subject to the requirements of the Uniform Housing Affordability Controls (*N.J.A.C. 5:80-26.1 et seq.*) until the Borough of Berlin elects to release the unit from such requirements pursuant to action taken in compliance with *N.J.A.C. 5:80-26.5(g)*. Prior to such

municipal election, a restricted ownership unit shall remain subject to the requirements of *N.J.A.C. 5-80-26.5*, for a period of at least 30 years.

- (2) Each restricted ownership unit shall remain in compliance with and subject to the requirements of the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.5* for control periods, *N.J.A.C. 5:80-26.6* for price restrictions, *N.J.A.C. 5:80-26.7* for buyer income eligibility, *N.J.A.C. 5:80-26.8* for limitations on indebtedness and subordination, *N.J.A.C. 5:80-26.9* for capital improvements, and *N.J.A.C. 5:80-26.10* for maintenance.

D. Rental Units.

- (1) Each restricted rental unit shall remain subject to the requirements of the Uniform Housing Affordability Controls until the Borough of Berlin elects to release the unit from such requirement pursuant to action taken in compliance with *N.J.A.C. 5:80-26.11(e)*. Prior to such a municipal election, a restricted rental unit shall remain subject to the requirements of *N.J.A.C.5:80-26.11*, for a period of 30 years.
- (2) Each restricted rental unit shall remain in compliance with and subject to the requirements of the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.11* for control periods, *N.J.A.C. 5:80-26.12* for restrictions on rents, and *N.J.A.C. 5:80-26.13* for tenant income eligibility.

E. Phasing. A phasing schedule for inclusionary developments shall be submitted at the time of application for development conforming to the minimum ratios of market to affordable dwellings in the following table:

Percentage of Market Dwellings Completed	Minimum Percentage of Very low, low and moderate income Dwellings That Must Be Completed
25%	0%
25% + 1 dwelling	10%
50% + 1 dwelling	50%
75% + 1 dwelling	75%
90% + 1 dwelling	100%

Where the phasing schedule and bedroom distribution result in a fraction, the number shall be rounded to the next highest whole number.

Section 11. §193-7, Violations; remedies, is hereby amended as follows:

§ 193-7. Violations; remedies.

- A. Notice; sale. In the event of a violation of this section, the Borough shall have the rights stated herein to compel the following actions. Such rights of action shall be

conveyed to each new owner of an income-restricted unit by the Administrative Agent or developer's administrative agent.

- (1) In addition to any other penalty established hereunder or by law, the Borough shall serve a notice of breach upon the owner in the event that the Borough finds that the owner has violated any provisions of this chapter. The notice shall specify the particular infraction(s). Such owner shall have a period of 30 days to either cure such violation or place the dwelling on the market for resale in accordance with the terms of this chapter. The Mayor and Council, in its sole discretion, may extend this time. Failure or refusal of the owner to either cure the violation or place the dwelling on the market for resale in accordance with the terms and restrictions of this chapter and diligently pursue the same as provided herein shall automatically empower and entitle the Borough to immediately commence court action to obtain a judgment against the owner for violation of the terms, restrictions and provisions of this chapter. The owner shall be advised of a possible foreclosure in the notice of violations. Said judgment shall be enforceable as if the same were a judgment on a first purchase money mortgage and shall constitute a lien against the dwelling. Such judgment shall be enforceable at the option of the Borough by means of immediately holding a sheriff's sale at which the dwelling of the violating owner shall be sold (at a price not less than the amount necessary to fully satisfy any first mortgage lien) in full compliance with the terms, restrictions and provisions of this chapter, and the violating owner shall have his or her right to possession terminated as well as his or her title conveyed pursuant to the sheriff's sale.
- (2) The proceeds of the sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien upon the dwelling. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the sheriff's sale. In the event that the proceeds from the sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the deficiency, in addition to any and all costs incurred by the Borough in connection with collecting said deficiency. The remainder, if any, up to a maximum of the amount the owner would be entitled to if he or she were to sell the dwelling as permitted by *N.J.S.A. 5:80-26.1 et seq.*, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a period of two years or until such time as the owner shall make a claim with the Borough for the same. Failure of the owner to claim said sum within the two-year period shall automatically result in a forfeiture of said remainder to the Borough for its use pursuant to the Affordable Housing Fund established in §193-9 of this chapter. Any interest accrued or earned on the remainder while being held in escrow shall belong to and shall be paid to the Borough's Affordable Housing Fund whether the remainder is paid to the owner or forfeited to the Borough. Any excess funds derived over and above the sum due the owner shall be paid over to the Borough's Affordable Housing Fund.

- (3) Title shall be conveyed to the purchaser at the sheriff's sale, subject to the restrictions and provisions of this chapter. The owner determined to be in violation of the provisions of this chapter shall not be entitled to any right of redemption. If there are no bidders (or insufficient amounts bid) at the sheriff's sale, the Borough may acquire title to the dwelling by satisfying the first purchase money mortgage. Failure of the affordable dwelling to be sold at the sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser, which may be referred to the owner by the Borough, with said offer to purchase being equal to the maximum sales price of the affordable dwelling as permitted by the terms and provisions of this chapter.
 - (4) The new owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of this chapter until such time as title is conveyed from the old owner.
- B. Borough's right to cure. The Borough may, at its option, advance and pay all sums necessary to protect, preserve and retain the dwelling as an affordable dwelling, subject to the terms of this chapter. All sums so advanced and paid by the Borough shall become a lien against said dwelling and shall have a higher priority than any lien except the first purchase money mortgage lien and liens by duly authorized government agencies. Such sums may include but are not limited to insurance premiums, taxes, assessments (public or private) and costs of repair necessary to bring the dwelling up to any and all applicable local, state or federal codes and liens which may be or become prior and senior to any first purchase money mortgage as a lien on the dwelling or any part thereof. If, in the event of a default or nonpayment by the owner of an affordable dwelling, any first mortgagee or other creditor of an owner of an affordable dwelling exercises its contractual or legal remedies available, the owner shall notify the Affordable Housing Office and the Mayor and Council, in writing, within 10 days of notification by the first mortgagee or creditor and no later than 10 days after service of any summons and complaint, and the Borough shall have the option to purchase, redeem or cure any default upon such terms and conditions as may be agreeable to all parties in interest and/or to acquire the first purchase money mortgage to the dwelling, thereby replacing the first mortgagee as the first mortgagee of the dwelling. The Borough shall have the same priority of lien as was held by the first mortgagee at the time the Borough acquires such first purchase money mortgage and shall have the right of subrogation with respect to any other claim or lien it satisfies or acquires.
- C. Provisions for purchase money mortgagees.
- (1) The terms and restrictions of this section shall be subordinate only to a first purchase money mortgage lien on any affordable dwelling and in no way shall impair the first mortgagee's ability to exercise the contract remedies available to it in the event of default as set forth in the first purchase money mortgage. The first mortgagee and/or mortgage servicer shall serve written notice upon the Borough within 10 days after the first purchase money mortgage is two