

months in arrears and again within 10 calendar days of the filing of a complaint seeking foreclosure of the first purchase money mortgage held on an affordable dwelling. However, a judgment of foreclosure upon the property shall in no instance terminate the conditions and requirements of this chapter maintaining the dwelling as an affordable, income-restricted residence.

- (2) The obligation of the first mortgagee and servicer to notify the Borough shall cease automatically and immediately upon the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market, unless the rules and regulations or guidelines of the Federal National Mortgage Association are amended so as to not prohibit or exclude placing such obligation upon the holder of the mortgage or its service representative, in which case, an instrument duly evidencing the same must be recorded with the Office of the Clerk, Camden County, New Jersey, before any such obligation shall exist. Provided that the first mortgagee is obligated to give the Borough the above-mentioned notices, the first mortgagee shall also serve written notice of any proposed foreclosure sale upon the Borough at least 30 days prior to the first scheduled date of such sale. The first mortgagee shall serve notice upon the Borough within 30 days of the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market.
- (3) The Borough of Berlin or any instrumentality designated by the Borough shall have the right to purchase any mortgage which is in default at any time prior to the entry of a foreclosure judgment or within the redemption period thereafter. Notification of a default and of the institution of a foreclosure action and of a sheriff's sale shall be served, in writing, upon the Borough Clerk. The Borough of Berlin shall at all times be considered a party in interest and shall have the right to be joined as a party defendant and/or shall have the right to intervene in any foreclosure action seeking foreclosure of a first mortgage and/or shall have the right to redeem and acquire the owner's equity of redemption or to acquire the dwelling from the owner upon such terms and conditions as may be determined by the Borough.
- (4) Surplus funds. In the event of a foreclosure sale by the holder of the first purchase money mortgage, the owner shall be personally obligated to pay to the Borough any excess funds, but only to the extent that such excess funds exceed the difference between what the owner could have resold his dwelling for under this chapter at the time of the foreclosure sale and the amount necessary to redeem and satisfy the first purchase money mortgage debt, including costs of foreclosure and costs of repairs necessary to bring the dwelling up to any and all applicable local, state or federal codes. For the purposes of this subsection, excess funds shall be the total paid to the sheriff in excess of the amount required to pay and satisfy the first purchase money mortgage, including the costs of foreclosure, even if junior creditors actually receive payment from said surplus funds to the exclusion of the owner. The

Borough is hereby given a first priority lien, second only to the first mortgagee for any taxes or public assessments by a duly authorized governmental body up to the full amount of excess funds. This obligation of the owner to pay this full amount to the Borough shall be deemed to be a personal obligation of the owner of record at the time of the foreclosure sale, and the Borough is hereby empowered to enforce this obligation in any appropriate court of law or equity as though the same were a personal contractual obligation of the owner. Neither the first mortgagee nor the purchaser at the foreclosure sale shall be responsible or liable to the Borough for any portion of this excess. The Borough shall deposit any funds received in the Affordable Housing Fund and use it for the purpose as set forth in § 193-9 of this chapter.

**Section 12.** §193-8, Miscellaneous provisions, is hereby amended in its entirety:

**§ 193-8. Miscellaneous provisions.**

- A. Nothing in these rules should be construed to limit the rights and duties of the owner and tenant to maintain the dwelling in accordance with all appropriate New Jersey State codes.
- B. Notwithstanding anything to the contrary in this chapter, any member of a household occupying a dwelling under this chapter and subject to the regulations of the Borough is subject to eviction for any reasons allowed under applicable New Jersey law. The provisions of this chapter are not intended to confer any additional rights or obligations on property owners or tenants other than those mandated by statute or required by the courts of the State of New Jersey or the Council on Affordable Housing.

**Section 13.** §193-9, Borough Affordable Housing Fund, is hereby amended as follows:

**§ 193-9. Borough Affordable Housing Fund**

- A. Establishment of fund. There is hereby established by the Borough of Berlin an interest-bearing account known as the "Berlin Borough Affordable Housing Fund" to be maintained by the chief financial officer of the municipality. This fund shall have as its primary purpose the support of very low, low and moderate income housing program(s) in the Borough of Berlin in furtherance of the mandates of the Constitution of the State of New Jersey. The trustees of the fund shall be the governing body of the Borough of Berlin.
- B. General provisions.

- (1) All moneys generated through the applicable provisions of the Berlin Borough Development Regulations Ordinance codified as Chapter 335 of the Borough Code, this chapter, general appropriations, grants, loans, gifts or other sources for the purpose of supporting very low, low and moderate income housing shall be paid into the fund.
  - (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
    - (a) Payments in lieu of on-site construction of affordable units;
    - (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
    - (c) Rental income from municipally operated units;
    - (d) Repayments from affordable housing program loans;
    - (e) Recapture funds; and
    - (f) Proceeds from the sale of affordable units.
  - (3) The Mayor and Council, in the name of the fund, shall have the right to apply for and receive grants from any source to further the purposes of the fund.
- C. General powers. The Mayor and Council, acting as trustees of the fund, shall have the following powers, provided that the expenditures are consistent with Chapter 193 and the spending plan approved by COAH:
- (1) To authorize the chief financial officer of the Borough to issue bonds and notes, to qualify for tax-exempt status, to invest funds and to expend funds to further the purpose of the fund, restricted only by the laws of the State of New Jersey governing such funds.
  - (2) Where appropriate, to enter into contract, in accordance with applicable statutes, for the construction and maintenance of very low, low and moderate income dwellings.
  - (3) To use the money generated from the fund in the form of either loans or grants or a combination of loans and grants to:
    - (a) Build very low, low and moderate income dwellings itself or contract for the construction of the same;
    - (b) Subsidize the construction of very low, low and moderate income dwellings;

- (c) Subsidize the conversion of non-residential buildings to new affordable dwellings;
  - (d) Subsidize rent or mortgage payments for very low, low and moderate income families;
  - (e) Subsidize or construct infrastructure for the benefit of very low, low and moderate income housing;
  - (f) Subsidize, in whole or in part, rehabilitation of existing substandard housing in Berlin or contract outright for such rehabilitation;
  - (g) Purchase housing for the purpose of maintaining or implementing affordability controls;
  - (h) Purchase market rate housing and resell it to a very low, low or moderate income household after appropriate rehabilitation, if needed, and income restrictions have been put in place;
  - (i) Provide funds to not-for-profit corporations to provide very low, low and moderate income housing;
  - (j) Provide funds to a very low, low or moderate income household in order to prevent foreclosure;
  - (k) Buy land on which very low, low and moderate income housing will be constructed;
  - (l) Implement green building strategies designed to reduce cost of ownership and maintenance in accordance with accepted national or state standards;
  - (m) Provide funds for planning and the administration necessary to implement the Housing Element and Fair Share Plan; and
  - (n) Any other method of advancing affordable housing as permitted pursuant to *N.J.A.C. 5:97-8.7* through *-8.9* and specified in the approved spending plan.
- D. Within seven days from the opening of the trust fund account or change to a different bank, Borough of Berlin shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank of deposit and any bank in successor, and COAH to direct the disbursement of the funds as provided for in *N.J.A.C. 5:97-8.13(b)*.
- E. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the COAH. Funds shall not be expended to reimburse the Borough of Berlin for past housing activities.

- F. In-kind contributions. If a builder requests and the Borough determines it to be in the best interest of the Affordable Housing Program to receive in-kind contributions in lieu of the cash contribution required by the Berlin Development Regulations Ordinance, the Borough may establish the type of in-kind contribution in dwelling dwellings, property, infrastructure or other in-kind contributions acceptable to the Borough, provided that the value is not less than the cash contribution required. Prior to accepting such in-kind contribution, the Borough shall properly notice and hold a public hearing on the matter to determine the equitability of the in-kind contribution compared to the cash contribution required by the Berlin Development Regulations Ordinance, codified as Chapter 335 of the Code of the Borough of Berlin.
- G. Termination of fund. The Borough may terminate the Affordable Housing Fund when it is no longer needed for very low, low and moderate income purposes. Any property owned by the Borough which was purchased with funds from the Affordable Housing Fund shall be sold at market rates and the net proceeds transferred to the Affordable Housing Fund. Any funds on hand not needed to retire outstanding debt or to pay outstanding bills shall be transferred to an organization within the State of New Jersey for the purpose of providing very low, low and moderate income housing, first, in the region of which Berlin is a part and, second, within the state.
- H. Use of funds. The expenditure of all funds shall conform to a spending plan approved by COAH.
- (1) Funds deposited in the housing trust fund may be used for any activity approved by COAH or the court to address the Borough of Berlin's fair share obligation and may be set up as a grant or revolving loan program.
  - (2) Affordability assistance. At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.
  - (3) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - (4) Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty percent (30%) or less of median income.

- (5) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
  - (6) Administrative expenditures. No more than twenty percent (20%) of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- I. The ability for Borough of Berlin to impose, collect and expend development fees shall expire with its substantive certification or judgment of repose unless the Borough of Berlin has filed an adopted Housing Element and Fair Share Plan with COAH or the court, has petitioned for substantive certification or judgment of repose, and has received COAH's approval of its development fee ordinance. If Borough of Berlin fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to *N.J.S.A. 52:27D-320*. Borough of Berlin shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Borough of Berlin retroactively impose a development fee on such a development. The Borough of Berlin shall not expend development fees after the expiration of its substantive certification or judgment of repose.
  - J. The Borough of Berlin may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with *N.J.A.C. 5:96-18*.

**Section 13.** Article II, Passive Housing Rehabilitation, §§193-10 through 193-17, shall be amended to replace the term "Affordable Housing Office" with the term "Administrative Agent".

**Section 14.** Article IV, Municipal Housing Liaison, §§193-31 through 193-33, shall be repealed.

**Section 15.** Article III, Affordable Housing Fees, §§193-18 through 193-23, shall be amended in its entirety, as follows:

### ARTICLE III Affordable Housing Fees

#### § 193-18. Authority and Purpose

- A. In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's adoption of rules.
- B. Pursuant to *N.J.S.A. 52:27D-329.2* and the Statewide Non-Residential Development Fee Act, *N.J.S.A. 40:55D-8.1* through *-8.7*, the NJ Department of Community Affairs is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Department or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- C. This Article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing as set forth in §193-9. This ordinance shall be interpreted within the framework of COAH's rules on development fees, *N.J.A.C. 5:97-8*.

#### § 193-19 Limitations on Enactment

Borough of Berlin shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

#### § 193-20. Residential Development fees

- A. Imposed fees.
  - (1) Within any zoning district, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one-and-a-half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
  - (2) When an increase in residential density pursuant to *N.J.S.A. 40:55D-70d(5)* (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance