



FROM THE PRESIDENT'S DESK...



Ross J. Switkes, Esq.

Dear Friends and Colleagues,

Somehow, fall has arrived. Kids are back to school, temperatures are dropping, and NFL football is back on Sundays. Fall also serves as the launch for our exciting scheduling that brings us to the New Year.

Earlier this month, we partnered with Judge Lougy and his colleagues on the Court for the annual Opening Ceremony and Memorial Service where we remembered our colleagues that we lost, and recognized the critical importance of our legal community and roles of the judiciary and bar. The following week, we hosted our annual Law Clerk Luncheon which provided us with the privilege of welcoming the new class of clerks to Mercer County and connecting with the future

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professionals in our field. A week later, we gathered at our Judges and Law Clerks Dinner where Judge Lougy introduced the new clerks to the bar. The evening was memorable and welcomed arguably the largest crowd on record, which is no surprise considering the camaraderie the event always brings and the worthy award recipients we honored. Congratulations again to our 2026 Rising Leader Award recipient, Chinsu Shajan, and the Harry P. O'Malley award honoree, Leslie Chappo. You are both well-deserving and it was an honor to celebrate you.

Looking ahead, we encourage you all to attend our events through the end of the year and beyond. Our various offerings will include:

- Xtreme CLE event on October 21 and 22, providing an opportunity to satisfy CLE requirements over two days of meaningful and educational panels.
- On November 12, we will be hosting our annual November General Membership Meeting, and amongst other recognitions, will vote on our new slate of officers and trustees: Kevin Moore (secretary), and Trustees – Neethi Vasudevan, Domenic Sanginiti, Lou Ragone, John Boyle, and Elissa Schragger. We will also recognize our Nizolek Award Winner, Honorable Philip S. Carchman, P.J.A.D. (Ret.), and Community Partner, Princeton Brain, Spine & Orthopedics. This evening will also feature a silent auction that will benefit our Foundation. I encourage everyone to participate in or contribute to the auction.
- Finally, in December, we will gather again for our holiday reception and recognize Judges that have retired this year.

I hope to see you all at these exciting events, and thank you for all that you do for our organization and the profession. It is a privilege to serve as your President.

NEW TO MERCER COUNTY BAR ASSOCIATION!

WE WELCOME THE FOLLOWING NEW MEMBERS...

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Gordon Estes, Esq.	Casewell LLC
Derek Garrard, Esq.	ABC Legal
Lauren M. Graf, Esq.	Law Office of Rachel S. Cotrino LLC
Steven D. Janel, Esq.	Law Offices of Steven D. Janel
Kurt Perhach, Esq.	Elm Ridge Legal Consulting LLC

Upcoming Events & Meetings

All Attorneys Are Invited To Attend Bench Bar Meetings

2026 Xtreme CLE

Wednesday, October 21, 2026 | Thursday, October 22, 2026

- This 2-day program will be held virtually

November Awards Dinner and Silent Auction

Thursday, November 12, 2026 | 5:30 p.m.

- The Boathouse at Mercer Lake

Holiday Party & Toy Drive

Thursday, December 3, 2026 | 5:30 p.m.

- Trenton Country Club

Lawyers Care

Thursday, November 19, 2026 | 5:00 p.m.

- This program will be held virtually via Zoom



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Szaferman Lakind is pleased to welcome

HON. THOMAS W. SUMNERS JR.

Retired Chief Judge, New Jersey Superior Court, Appellate Division
as Of Counsel

Judge Sumners brings more than 18 years of distinguished judicial service and decades of experience in the New Jersey legal community. He joined the New Jersey Superior Court in 2008, serving in the Civil and Criminal Divisions before being assigned to the Appellate Division in 2014. In May 2023, Chief Justice Stuart Rabner designated him Chief Judge of the Appellate Division, a position he held until his retirement in 2026.

During his tenure on the Appellate Division, Judge Sumners handled a broad range of civil, criminal, family, and administrative matters. Over approximately a decade on the appellate bench, he authored nearly 1,000 opinions, including more than 70 published opinions.

Before joining the bench, Judge Sumners built an extensive career in private practice and public service. His private practice experience included serving as a founding partner of a Trenton-based law firm with a statewide practice. He also held several leadership positions within New Jersey's legal community, including Chair of the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee, Chair of the New Jersey Lawyers' Fund for Client Protection, and Treasurer of the Mercer County Bar Association.

Judge Sumners earned his undergraduate degree from Lafayette College and his law degree from Rutgers School of Law–Newark. His experience in private practice, as a trial and appellate judge, and ultimately as Chief Judge of the Appellate Division provides a unique perspective on New Jersey law and the judicial process.

"We are exceptionally proud that Judge Sumners chose Szaferman Lakind for the next chapter of his distinguished career," said Brian G. Paul, Co-Managing Partner. "He has earned the respect of New Jersey's legal community for his judgment, integrity, and deep understanding of the law. His extraordinary experience as a practicing attorney, trial judge, and Chief Judge of the Appellate Division brings a unique perspective that will be an enormous asset to our attorneys and clients."

"After many rewarding years on the bench and in private practice, I am excited to begin this next chapter with Szaferman Lakind," said Judge Sumners. "I have long respected the firm and the reputation its attorneys have built throughout New Jersey. I look forward to working alongside them and drawing on the experience I have gained throughout my career to assist the firm and its clients."

As Of Counsel, Judge Sumners will draw on his extensive knowledge of New Jersey law, appellate practice, and the judicial process. His return to private practice also marks a return to the Mercer County legal community, where he practiced for many years and previously served as an Officer in the Mercer County Bar Association.



2026 Judges & Law Clerks Dinner & Membership Meeting Thursday, September 24, 2026

On September 24, 2026, the MCBA hosted the annual Judges & Law Clerks dinner and membership meeting at Mercer Oaks. The MCBA was proud to award Leslie E. Chappo, Esq. of Central Jersey Legal Services the Harry P. O'Malley award and Chinsu Shajan, Esq. of Stark & Stark the Rising Leader Award.

Thank you to our event sponsors, Hamilton Law Firm, Central Jersey Legal Services Inc., Hartman Duff, Hill Wallack LLP and Oswald & Zoschak.

We also send a thank you to our loyal corporate sponsors, Princeton Brain Spine and Orthopedics, LawFirm IT, Stark & Stark, Szaferman Lakind, WSFS Bank/Bryn Mawr, M&T Bank and Renzi Legal Resources.



















Community Projects Committee Corner

Submitted by Nicholas Kant, Esq.

Volunteering at the Maker's Place

On Thursday, August 27, 2026, several members of the MCBA's Community Projects Committee volunteered at the Maker's Place, a diaper bank and resource center in Trenton, New Jersey. The Maker's Place distributes free disposable diapers for families with children at their "Diaper Depot," and also distributes diapers and feminine hygiene products at various events and locations in Mercer County.

The Maker's Place was launched in July 2018 with a vision to become a resource center that connects neighbors with neighbors in diverse and inclusive communities, by responding to the gifts and aspirations of people living in poverty. Originally intended to collect 10,000 diapers for a community birthday party for one year-olds, the Maker's Place launched its "Diaper Depot," a diaper distribution program that gives away thousands of free diapers each month to families who struggle to provide enough diapers for their children.

The Maker's Place continues to collect and distribute diapers, as part of a collaborative community-based effort to address Trenton's high infant mortality rate. As a growing resource center, it partners with local churches, non-profits, and community groups for broader community development initiatives.

At present, the Maker's Place rents or borrows space for its diaper depot storage and operations at Trinity United Methodist Church in Ewing while pioneering models for mobile or "pop-up" diaper distributions, to give away diapers at partner locations across the city of Trenton.

The MCBA's Community Projects Committee sponsored a donation drive for the Maker's Place earlier this year at the MCBA's February 19 Installation & General Membership Meeting. The Committee thanks everyone who donated at that event.

Callie Crowder is the Executive Director at The Maker's Place. She worked for over 18 years as a CPA, and is in her second career heading up this nonprofit. She truly cares about the community and is a great ambassador for the Maker's Place. The Community Projects Committee visited the charity's building back in February in connection with the earlier donation drive. It is located across the street from TCNJ. Callie is great about giving a tour whenever volunteers come by. The tour really shows that many people in the community are much less fortunate than the attorney members of the MCBA. Many people cannot afford diapers for their children or themselves (the Maker's Place also has adult diapers), and/or cannot afford feminine hygiene products.

The Maker's Place is doing a lot of work to obtain, sort, and distribute these products. The community is lucky to have organizations like this, with people like Callie, who truly put hard work and time into helping those who are less fortunate. The Community Projects Committee plans to work with the Maker's Place more in the future. If you are looking for a good local charity to donate your time or money to, please check out the Maker's Place.

Because of the location, many TCNJ students volunteer there at lunchtime during the school year. So, the Community Projects Committee helped out on a summer day when the students were away. The Community Projects Committee thanks the busy members of the Committee who took time out of their days to come and help out.





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DIVORCE IN THE DIGITAL AGE

An Article by: Angelina Sferra, Esq.

Divorce has always involved deeply personal and emotional issues. Today, however, many aspects of daily life are documented digitally. As a result, digital evidence has become increasingly important in family law cases.

Digital Communication Can Become Important Evidence

Relevant evidence may include text messages, emails, photos, videos, direct messages, banking records, GPS data, online purchase histories, and communications through parenting apps.

Like traditional documents, these records may be subject to discovery if they are relevant to the issues before the court.

Social Media Can Influence More Than You Realize

Photos showing expensive vacations or major purchases may be relevant in financial disputes, while posts about parenting or daily activities could be examined in custody matters. Still, individuals involved in divorce should think carefully before posting online and attorneys should make clients aware of the potential implications of their posts.

Financial Records Are Increasingly Digital

Digital records often help identify marital assets, verify income, trace expenditures, and document financial transactions.

Communication Matters Throughout the Divorce Process

Because these messages may later be reviewed in court, it is wise to communicate respectfully and focus on practical issues rather than reacting emotionally.

Deleting Information Is Rarely the Answer

Deleting messages or social media posts does not necessarily remove them permanently. Once litigation is pending—or reasonably anticipated—individuals generally have a duty to preserve relevant evidence.

As technology evolves, so do the legal issues surrounding digital evidence. Artificial intelligence, encrypted messaging platforms, wearable devices, location tracking, smart home technology, and cloud storage continue to expand the types of information that may become relevant in family law matters.

Despite these advances, the core legal principles remain the same. Courts continue to evaluate evidence based on its relevance, reliability, and authenticity while balancing privacy concerns with the need to resolve disputes fairly.

As digital evidence continues to shape family law, attorneys must remain mindful of its potential impact on divorce proceedings. Understanding how to identify, preserve, and effectively use this information is essential to protecting clients' interests and navigating the complexities of modern divorce cases.

Rapid Legal Response Initiative (RLRI)

Submitted by: Susan G. Roy, Esq.

The State of New Jersey has launched the Rapid Legal Response Initiative (RLRI), a coordinated statewide initiative based out of the Immigrants Rights Clinic at Seton Hall University Law School, to recruit, train, and support volunteer attorneys in filing habeas corpus petitions and engaging in other federal court litigation on behalf of New Jersey based non-citizens detained by ICE. The RLRI operates as a structured network with defined roles, tracked case assignments, and clear lines of supervision. The urgency of this work is underscored by inhumane conditions reported at Delaney Hall Detention Center in Newark, an overwhelmed legal services sector, and the reality that federal litigation is now required for nearly anyone held in ICE detention in New Jersey.

The RLRI provides comprehensive support to ensure no volunteer attorney works alone, including in-person and virtual training sessions, shared templates and written materials, pleading review, and one-on-one mentoring from practitioners with significant federal court experience. The program is actively seeking attorneys who are (1) ready to file habeas petitions, (2) ready to serve as mentors or trainers, (3) willing to sponsor pro hac vice volunteer attorneys; and (4) volunteer attorneys who are ready to be trained on how to file and litigate habeas petitions with full guidance from the RLRI team.

With enforcement activity rising sharply across New Jersey and demand far exceeding current legal capacity, the need for volunteer federal litigators is urgent. Volunteer support could mean the difference between detention and freedom for a New Jersey immigrant resident. To sign up or learn more, attorneys are asked to complete the intake form: [RLRI VOLUNTEER ATTORNEY QUESTIONNAIRE](#).

For more information, please contact Susan.Roy@shu.edu or RLRI@shu.edu.

Please note that this program is open to ALL active attorneys in good standing. NO PRIOR FEDERAL LITIGATION OR IMMIGRATION EXPERIENCE IS NEEDED.

To follow RLRI updates, please visit our newly-launched blog [HERE](#)

Rutgers Adds Former NJ Appellate Judge To GC Office

By **Jake Maher**

Law360 (September 15, 2026, 3:59 PM EDT) -- A former New Jersey state appeals court judge has joined Rutgers University as its deputy general counsel, returning to her alma mater with 25 years of experience in public service.

Former Judge Kay Walcott-Henderson joined the school as its associate vice president and deputy general counsel for litigation and general university affairs in July, Rutgers announced on Monday.

"It's really an honor," Walcott-Henderson said. "I could never have foreseen this as an opportunity, but I'm very grateful for it."

Walcott-Henderson previously served in the New Jersey Superior Court's Appellate Division since 2023. She first joined the state bench in 2016 in Mercer County and moved up to presiding judge of the general equity division in 2022.



Kay Walcott-Henderson

She said she enjoyed her time as a judge in both the trial and the appellate courts and thanked Chief Justice Stuart Rabner for the opportunities, but said she took the role at Rutgers after close consideration and conversation with her family.

Before joining the bench Walcott-Henderson worked as a supervising judge of workers' compensation, an assistant counsel to then-Gov. Jon Corzine, chief of staff in the Department of State and general counsel to the speaker of the New Jersey General Assembly. There, she worked with Bill Castner, Rutgers' current general counsel and executive vice president.

"Rutgers is highly fortunate that former Judge Walcott-Henderson has joined the university," Castner said in a statement on Walcott-Henderson's hire. "The judge's proven ability to develop effective litigation strategies, mentor other attorneys in the office, and manage costs will be extremely valuable to Rutgers."

Walcott-Henderson also worked earlier in her career as an assistant prosecutor. She is a graduate of Villanova University's Charles Widger School of Law.

Walcott-Henderson said she has built experience throughout her career in areas like building courtroom rapport and evaluating litigation that will help her guide the other employees in Rutgers' Office of General Counsel. She also said she's looking forward to working around students and offering a model of how to build a career based on hard work and a reputation for working with others.

The chance to help Rutgers in her new role also has a personal significance to her, Walcott-Henderson said. She and her family immigrated to the United States from Barbados when she was 16, she said, and her father encouraged her to go to Rutgers as an affordable and attractive choice for a strong student like her.

It was during a senior year course on constitutional law at Rutgers that she decided to become an attorney, Walcott-Henderson said, and her career has now taken her back to an office at the university's College Avenue Campus that's a short distance from where she lived while an undergraduate student.

"I went here, I got the best education possible, and I want to make sure that I do my part to ensure that Rutgers is able to continue to do that," Walcott-Henderson said.

--Editing by Nicole Bleier.



Join Szaferman Lakind on November 12, 2026
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2026 Silent Auction

The Mercer County Bar Foundation is a non-profit corporation formed by the Mercer County Bar Association to provide funding for various programs and seminars to our community. It also provides funding for grants, assistance to Central Jersey Legal Services and law school scholarships. The Foundation's main fundraiser is coming up. On November 12, 2026, the MCBA will gather at The Boathouse at Mercer Lake in West Windsor to honor the recipients of the Michael J. Nizolek Award and Community Partner Award. We are counting on every one of you to help make this year's event a great success.

We are putting together a fabulous silent auction but are in need of items. Please consider donating an item such as a basket of goodies, a gift card, sports tickets, concert tickets, golf outings, adult beverages, or artwork. Also, please ask your local businesses to make a tax deductible donation. If you have no time to pick something up or cannot think of something you wish to donate, we will shop for you. Monetary donations are greatly appreciated.

If you are willing to make a donation, please drop it off at the MCBA Office at 1245 Whitehorse Mercerville Rd, Ste 420, Hamilton. You may also call or email me at amangat@mercerbar.com. Please join us in making this year's event a success and ensuring the Foundation is secure so it can continue to serve our community. We need you and our community needs you.

Thank you, in advance, for your generosity.

Navigating New UHAC Requirements: Practical Challenges for New Jersey Inclusionary Housing Developers

Submitted by: Kevin J. Moore, Esq.

Introduction

The Uniform Housing Affordability Controls,ⁱ commonly known as “UHAC,” establish the regulatory requirements applicable to affordable housing units in New Jersey.ⁱⁱ These requirements apply both to fully affordable housing developments and to mixed-income projects that include market-rate and affordable units,ⁱⁱⁱ commonly referred to as “inclusionary developments.” The New Jersey Housing and Mortgage Finance Agency adopted the current UHAC rules on December 20, 2024,^{iv} and amended them on November 6, 2025.^v Although intended to provide uniform standards for affordable housing compliance, the new rules are complex, in some respects unclear, and likely to create practical challenges for developers. The provisions governing income distribution, bedroom distribution, unit size, occupancy standards, and construction timing are among the most significant for inclusionary developments and are the focus of this article.

Types of Affordable Units

The UHAC rules refer to affordable housing units as “restricted units”.^{vi} There are three principal types of restricted units:^{vii} moderate-income units, low-income units, and very-low-income units.^{viii} A moderate-income unit is a restricted unit that is affordable to a household with a household income in excess of 50 percent but less than or equal to 80 percent of the regional median income.^{ix} A low-income unit is a restricted unit that is

ⁱ N.J.A.C. 5:80-26.1 et seq.

ⁱⁱ N.J.A.C. 5:80-26.1.

ⁱⁱⁱ See *ibid.*

^{iv} See 57 N.J.R. 389(a).

^v See 57 N.J.R. 2743(a).

^{vi} N.J.A.C. 5:80-26.2.

^{vii} The UHAC rules also define age restricted units and assisted living residences. See N.J.A.C. 5:80-26.2. However, these types of units are beyond the scope of this article.

^{viii} N.J.A.C. 5:80-26.2.

^{ix} *Ibid.*

affordable to a household with a household income equal to 50 percent or less of the regional median income,^x and a very-low-income unit is a restricted unit that is affordable to a household with a household income less than or equal to 30 percent of the regional median income.^{xi}

Affordability Averages^{xii}

The average rent for all restricted units within a rental inclusionary development must be affordable to households earning no more than 52 percent of the regional median income,^{xiii} and the maximum rent for all restricted units within an inclusionary development must be affordable to households earning no more than 60 percent of the regional median income.^{xiv} However, this maximum rent can be affordable to households earning no more than 70 percent of the regional median income if very-low-income units comprise at least 13 percent of the restricted units and the number of units with rent affordable to households earning 70 percent of regional median income does not exceed the number of very-low-income units in excess of 13 percent of the restricted units.^{xv} Further, municipalities can require that inclusionary developments have at least 13 percent of restricted units affordable to and reserved for very-low-income households.^{xvi}

In the case of for-sale inclusionary developments, the maximum sale price of restricted units within each inclusionary development must be affordable to households earning no more than 70 percent of regional median income.^{xvii} Further, the inclusionary development must have an affordability average for all its restricted units of no more than 55 percent of regional median income.^{xviii} Additionally, restricted units must be available for at least three different moderate-income prices within each bedroom count with moderate-income ownership units and at least two different low-income prices within each bedroom count with low-income ownership units.^{xix}

^x Ibid.

^{xi} Ibid.

^{xii} The affordability average requirements of the current UHAC rules do not apply to restricted units developed in the New Jersey Fair Housing Act's N.J.S.A. 52:27D-301 et seq First, Second, and Third Rounds. See N.J.A.C. 5:80-26.4(a).

^{xiii} N.J.A.C. 5:80-26.4(c).

^{xiv} Ibid.

^{xv} Ibid.

^{xvi} Ibid.

^{xvii} N.J.A.C. 5:80-26.4(d).

^{xviii} Ibid.

^{xix} Ibid.

For all inclusionary developments, at least 50 percent of all restricted units must be low-income or very-low-income units.^{xx} However, there is an exception to these affordability average requirements for inclusionary developments with four or fewer restricted units. In these small inclusionary developments, affordability averages can be calculated based on the aggregate of all the restricted units within small developments within the municipality.^{xxi}

Bedroom Distribution^{xxii}

The number of bedrooms within the restricted units must equal twice the number of restricted units.^{xxiii} Furthermore, two-bedroom and/or three-bedroom units must comprise at least 50 percent of all restricted units.^{xxiv} Additionally, no more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, can be efficiency or one-bedroom units, and at least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, must be two-bedroom units.^{xxv} Moreover, at least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, must be three-bedroom units.^{xxvi} Finally, the remainder of the restricted units, if any, may be allocated at the discretion of the developer.^{xxvii}

Additionally, the UHAC rules require that at least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, must be low-income units or very-low-income units,^{xxviii} and at least 50 percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, must be low-income units or very-low-income units.^{xxix} Furthermore, at

^{xx} N.J.A.C. 5:80–26.4(g).

^{xxi} N.J.A.C. 5:80–26.4(b)1.

^{xxii} The bedroom distribution requirements of the current UHAC rules do not apply to restricted units developed in the First, Second, and Third Rounds. See N.J.A.C. 5:80–26.4(a).

^{xxiii} N.J.A.C. 5:80–26.4(e).

^{xxiv} *Ibid.*

^{xxv} *Ibid.*

^{xxvi} *Ibid.*

^{xxvii} *Ibid.*

^{xxviii} N.J.A.C. 5:80–26.4(g).

^{xxix} *Ibid.*

least 50 percent of all restricted three-bedroom units must be low-income units or very-low-income units,^{xxx} and at least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, must be low-income units or very-low-income units.^{xxxi} Finally, any very-low-income units must be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.^{xxxii} For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units. The small development exception also applies to these bedroom distribution requirements.^{xxxiii}

Waivers from Affordability Averages and Bedroom Distribution Requirements.

Developers can obtain waivers from the affordability averages and bedroom distribution requirements of the UHAC rules from the Division of Local Planning Services of the New Jersey Department of Community Affairs if the waiver will not result in a material deviation from the municipal housing element and fair share plan.^{xxxiv} If the waiver will result in a material deviation from the municipal housing element and fair share plan, the developer must receive written approval from a county-level housing judge.^{xxxv}

The applicable UHAC rule literally states that in the case of such a material deviation, the developer must apply to the Dispute Resolution Program and only to a county-level housing judge if the municipality does not participate in the Dispute Resolution Program.^{xxxvi} However, the Dispute Resolution Program is no longer functioning. Accordingly, it seems logical that a developer should apply to the county-level housing judge, i.e., the Mount Laurel Judge for the applicable vicinage. Most likely such an application would be by way of motions in the applicable declaratory judgment action.

To obtain a waiver from the Division of Local Planning Services, the developer must submit the following information to the Division: (1) an explanation of the waiver request including a citation to the UHAC rule(s) from which the waiver is being requested, (2) an explanation describing why the waiver is necessary, (3) an analysis of alternatives to the

^{xxx} Ibid.

^{xxxi} Ibid.

^{xxxii} Ibid.

^{xxxiii} N.J.A.C. 5:80-26.4(b)1.

^{xxxiv} N.J.A.C. 5:80-26.4(l).

^{xxxv} Ibid.

^{xxxvi} Ibid.

waiver that have been considered, including a detailed explanation as to why said alternatives are not suitable, (4) a summary of potential impacts that may result if the waiver is not granted, (5) a resolution from the municipal land use board stating its position on the waiver request and the reasons for that position, and (6) any additional information deemed necessary by the Division.

Occupancy Standards^{xxxvii}

For rental inclusionary developments, restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes.^{xxxviii} Furthermore, restricted units and market-rate units within the same inclusionary development must be sited such that restricted units are not concentrated in less desirable locations^{xxxix}. Additionally, restricted units cannot be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building but must be interspersed throughout the development.^{xl} Moreover, residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development.^{xli} Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits.^{xlii}

Further, restricted rental units must include adequate air conditioning and heating and, if market-rate units provide cooling and heating, restricted units must use the same type of cooling and heating sources as market-rate units of the same unit type.^{xliii} Finally, each bedroom in each restricted unit must have at least one window,^{xliv} and restricted units must be of the same unit type as market-rate units within the same building.^{xlvi}

^{xxxvii} The occupancy standards of the current UHAC rules do not apply to restricted units developed in the First, Second, and Third Rounds. See N.J.A.C. 5:80–26.5(a).

^{xxxviii} N.J.A.C. 5:80–26.5(a)2.

^{xxxix} Ibid.

^{xl} Ibid.

^{xli} Ibid.

^{xlii} Ibid.

^{xliii} Ibid.

^{xliv} Ibid.

^{xlvi} Ibid.

For for-sale inclusionary developments, restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes.^{xlvi} Restricted units can be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or locations,^{xlvi} and restricted units can be of different housing product types than market-rate units, provided that developments containing market-rate duplexes, townhomes, and/or single-family homes offer restricted housing options that also include duplexes, townhomes, and/or single-family homes^{xlvi}.

Moreover, penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).^{xlvi} Furthermore, residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development.¹ Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. Each bedroom in each restricted unit must have at least one window.^{li} Restricted units must include adequate air conditioning and heating.^{lii}

Minimum Unit and Bedroom Sizes^{liii}

For rental inclusionary developments, the minimum unit sizes excluding exterior hallways, garages, common space and unfinished space are as follows: studio units – 495 square feet; one-bedroom units – 540 square feet; two-bedroom units – 765 square feet; three-bedroom units – 1,035 square feet, and four-bedroom units – 1,125 square feet^{liv}

^{xlvi} N.J.A.C. 5:80–26.5(a)3.

^{xlvi} Ibid.

^{xlvi} Ibid.

^{xlvi} Ibid.

¹ Ibid.

^{li} Ibid.

^{lii} Ibid.

^{liii} The minimum unit and bedroom sizes of the current UHAC rules do not apply to restricted units developed in the First, Second, and Third Rounds. See N.J.A.C. 5:80–26.5(a).

^{liv} N.J.A.C. 5:80–26.5(a)2; N.J.A.C. 5:43–2.4(f).

Further, each rental unit shall contain at least one bedroom of no less than 135 square feet in area, and each additional bedroom shall be at least 90 square feet.^{lv}

For for-sale inclusionary developments, the minimum square footage of restricted units is as follows: studio units – 550 square feet; one-bedroom units – 600 square feet; two-bedroom units – 850 square feet; three-bedroom units – 1,150 square feet, and four-bedroom units – 1,250 square feet.^{lvi} Further, each Unit shall contain at least one bedroom with no less than 150 square feet, and each additional bedroom shall be no less than 100 square feet.^{lvii}

Phasing^{lviii}

If an inclusionary development is constructed in phases, then:

1. No more than 25 percent of the market-rate units plus one, may be completed prior to the completion of 10 percent of the restricted units.
2. No more than 50 percent of the market-rate units may be completed prior to the completion of 50 percent of the restricted units.
3. No more than 75 percent of the market-rate units may be completed prior to the completion of 75 percent of the restricted units, and
4. No more than 90 percent of the market-rate units may be completed prior to the completion of all of the restricted units.^{lix}

Waivers

A developer can obtain waivers of the occupancy standards, minimum unit and bedroom sizes and phasing requirements^{lx} of the UHAC rules from the Division of Local Planning Services of the New Jersey Department of Community Affairs under the same bases and using the same procedures as waivers from the affordability averages and bedroom distribution requirements of the UHAC rules.^{lxi}

^{lv} N.J.A.C. 5:80–26.5(a)2; N.J.A.C. 5:43–2.4(g).

^{lvi} N.J.A.C. 5:80–26.5(a)3; N.J.A.C. 5:43–2.4.

^{lvii} Ibid.

^{lviii} The phasing of the current UHAC rules do not apply to restricted units developed in the First, Second, and Third Rounds. See N.J.A.C. 5:80–26.5(a).

^{lix} N.J.A.C. 5:80–26.5(a)4.

^{lx} Except that a developer cannot obtain a waiver from the phasing requirement that no more than 90 percent of the market-rate units may be completed prior to the completion of all the restricted units. See N.J.A.C. 5:80–26.5(a)5.

^{lxi} Compare N.J.A.C. 5:80–26.4(l) to N.J.A.C. 5:80–26.5(a)5.

Conclusion

The new UHAC rules impose detailed and interrelated requirements that can materially affect the design, pricing, phasing, and approval strategy for inclusionary developments. Because these requirements are complex and, in several respects, unclear, developers should evaluate UHAC compliance at the earliest stages of site planning and financial modeling rather than after municipal approvals are substantially advanced. Where strict compliance is impracticable or inconsistent with a project's approved design, developers should also assess whether a timely waiver application is available and strategically appropriate. Careful advance planning will be essential to avoiding delay, preserving project feasibility, and ensuring that inclusionary developments satisfy New Jersey's affordable housing requirements.

About the Author: Kevin J. Moore is a partner at Stevens & Lee, P.C. His practice focuses on real estate, land use, affordable housing, and related development and redevelopment matters in New Jersey.





Mercer County Bar Association's Domestic Violence Awareness Month

Donation Drive

Now - October 31st

Domestic violence affects people of every background and may involve physical, emotional, sexual, financial, or other forms of abuse. It impacts an estimated 1 in 3 women and 1 in 4 men, often leaving lasting effects on survivors, children, families, and communities.

In recognition of Domestic Violence Awareness Month, the Mercer County Bar Association Women's Committee is hosting a donation drive to benefit Younity, formerly Womanspace, Inc. Younity is a nonprofit organization that supports individuals affected by domestic and sexual violence through critical services including crisis intervention, emergency shelter, counseling, advocacy, and support for survivors and their families.

By partnering with Younity, we hope to provide meaningful resources to people navigating the path toward safety, stability, healing, and independence.

Three Ways to Help

This year, the MCBA is collecting donations through three options:

- Most-needed items: Donate items identified by Younity as currently most needed.
- Amazon Wish List: Purchase requested items directly through Younity's Amazon Wish List.
- Gift card drive: Gift cards provide something especially meaningful to individuals impacted by domestic and sexual violence: choice. They allow survivors and families to purchase what they need, when they need it, on their own terms—helping restore dignity, independence, and a sense of control.

Donations may be dropped off Monday through Thursday, from 10:00 a.m. to 3:00 p.m., at either location:

Mercer County Bar Association
1245 Whitehorse-Mercerville Road, Suite 420
Hamilton, New Jersey 08619

Stark & Stark, P.C.
Attn: Chinsu Shajan
100 American Metro Boulevard
Hamilton, New Jersey 08619



Mercer County Bar Association's Domestic Violence Awareness Month



Donation Drive

Now - October 31st

Most Needed Items

- Yoga Pants size: S-XXL
- T-shirts size: S-XXL
- Socks (All sizes)
- Underwear: S-XXL
- Winter Coats: Children Sizes (3T-5T) and XS-XXL
- Plain Hoodies: (Same sizes needed as coats)
- Mattress Protector Covers: Twin and Full Size
- Body lotion and body wash (Sensitive skin)
- Deodorant (Aluminum Free/Sensitive skin)

Most Helpful Gift Cards:

- Grocery Stores (such as Shoprite, Aldi)
- Clothing Retailers (such as Macy's)
- Big-Box Retailers (such as Target, Walmart)
- Pharmacies
- Gas Cards
- Amazon

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