

CHAPTER 23
UNIFORM CONSTRUCTION CODE

Authority

N.J.S.A. 40:55D-53.2a, 52:27D-123, 52:27D-123a, 52:27D-123.2, 52:27D-123.5, 52:27D-123.8, 52:27D-124, 52:27D-124f, 52:27D-133.4 and 52:27D-198.

Source and Effective Date

R.2003 d.70, effective January 15, 2003.
See: 34 N.J.R. 351(a), 35 N.J.R. 1054(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 23, Uniform Construction Code, expires on July 13, 2008. See: 39 N.J.R. 2578(a).

Chapter Historical Note

Chapter 23, Uniform Construction Code, was adopted as R.1976 d.344, d.345, d.346 and d.347, effective January 1, 1977 and codified as Subchapter 1, General Provisions; Subchapter 2, Administration and Enforcement Process; Subchapter 3, Subcodes, and Subchapter 4, Enforcing Agencies: Duties, Powers, Procedures. See: 8 N.J.R. 216(b), 319(a), 370(d), 414(a); 8 N.J.R. 546(a). Chapter 23, Uniform Construction Code, superseded N.J.A.C. 5:16, Standard Building Code and N.J.A.C. 5:20, Safety Glazing Materials, which were repealed by R.1978 d.360, effective October 6, 1978. See: 10 N.J.R. 377(a), 10 N.J.R. 470(a). Chapter 23, Uniform Construction Code, also superseded N.J.A.C. 5:21, Uniform Standards Code for Mobile Homes, which was repealed by R.1982 d.7, effective February 1, 1982. See: 13 N.J.R. 717(a), 14 N.J.R. 142(a).

Subchapter 5, Licensing of Code Enforcement Officials, was adopted as R.1977 d.304, effective October 1, 1977. See: 9 N.J.R. 257(b), 9 N.J.R. 413(b). Subchapter 6, Tax Exemption for Solar Facilities, was adopted as R.1978 d.334, effective September 18, 1978. See: 10 N.J.R. 222(b), 10 N.J.R. 418(a).

Pursuant to Executive Order No. 66(1978), Subchapter 6, Tax Exemption for Solar Facilities, was readopted as R.1980 d.303, effective July 1, 1980. See: 12 N.J.R. 249(c), 12 N.J.R. 452(c).

Pursuant to Executive Order No. 66(1978), Chapter 23, Uniform Construction Code, was readopted as R.1983 d.144, effective April 26, 1983. See: 14 N.J.R. 1247(a), 15 N.J.R. 803(c).

Subchapter 7, Barrier Free Subcode, was adopted as R.1986 d.448, effective November 3, 1986. See: 18 N.J.R. 757(a), 18 N.J.R. 2194(a).

Subchapter 8, Asbestos Hazard Abatement Subcode, was adopted as Emergency New Rules R.1985 d.362, effective June 18, 1985 (expired August 17, 1985). See: 17 N.J.R. 1782(a).

Pursuant to Executive Order No. 66(1978), the provisions of R.1985 d.362 were readopted as R.1985 d.472, effective August 16, 1985. See: 17 N.J.R. 2249(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Uniform Construction Code, was readopted as R.1988 d.168, effective March 22, 1988. N.J.A.C. 5:23-6.1, 6.2 and 6.3, concerning tax exemption for solar facilities, were not readopted and expired on April 1, 1988. See: 20 N.J.R. 223(a), 20 N.J.R. 893(a).

Subchapter 9, Code Interpretations, was adopted as R.1988 d.195, effective May 2, 1988. See: 20 N.J.R. 224(a), 20 N.J.R. 977(a).

Subchapter 10, Radon Hazard Subcode, was adopted as R.1990 d.226, effective May 7, 1990. See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Subchapter 4A, Industrialized/Modular Buildings and Building Components, was adopted as R.1990 d.313, effective June 18, 1990, (operative July 1, 1990). See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was adopted as R.1992 d.33, effective January 21, 1992. See: 23 N.J.R. 1730(b), 24 N.J.R. 229(c).

Subchapter 12, Elevator Safety Subcode, was adopted as R.1991 d.325, effective July 1, 1991. See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Uniform Construction Code, was readopted as R.1993 d.106, effective February 3, 1993. See: 24 N.J.R. 1420(b), 25 N.J.R. 920(a).

Subchapter 4B, Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulation, and Subchapter 4C, Enforcement of Federal Manufactured Home Standards, were adopted as R.1994 d.96, effective February 22, 1994. See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

N.J.A.C. 5:23-7.1 through 7.99 were repealed and 7.100 through 7.116 were recodified as 7.2 through 7.18 by R.1995 d.144, effective March 20, 1995 (operative July 1, 1995). See: 26 N.J.R. 2698(a), 26 N.J.R. 2524(a), 27 N.J.R. 1180(a).

Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was repealed by R.1995 d.612, effective December 4, 1995 (operative July 1, 1995). See: 27 N.J.R. 3518(a), 27 N.J.R. 4885(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Uniform Construction Code, was readopted as R.1997 d.409, effective September 9, 1997. As a part of R.1997 d.409, effective October 6, 1997, Subchapter 6, Tax Exemption, was repealed. See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Subchapter 6, Rehabilitation Subcode, was adopted as R.1998 d.28, effective January 5, 1998. See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Subchapter 12A, Optional Elevator Inspection Program, was adopted as R.1998 d.480, effective September 21, 1998. See: 30 N.J.R. 1119(b), 30 N.J.R. 3461(a).

Subchapter 11, Playground Safety Subcode, was adopted as R.1999 d.351, effective October 18, 1999. See: 31 N.J.R. 1838(a), 31 N.J.R. 3082(a).

Subchapter 3A, State-Jurisdiction Subcodes, was adopted as R.2001 d.303, effective September 4, 2001. See: 33 N.J.R. 1991(a), 33 N.J.R. 2989(a).

Chapter 23, Uniform Construction Code, was readopted as R.2003 d.70, effective January 15, 2003. See: Source and Effective Date.

Cross References

Child care center physical facility requirements, see N.J.A.C. 10:122-5.1 et seq.

Children's group home physical facility requirements, see N.J.A.C. 10:128-4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124-5.1 et seq.

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1. Inspections of one-and two-family dwellings for which construction must cease until the inspection is made shall be limited to the following:

i. The bottom of footing trenches before placement of footings, except that in the case of pile foundations, inspections shall be made in accordance with the requirements of the building subcode;

ii. Foundations and all walls up to grade level prior to covering or back filling;

(1) For new construction, a foundation location survey showing all building corners of the foundation shall be submitted to the construction official as soon as possible after the installation of the foundation wall. A land surveyor licensed in the State of New Jersey shall prepare the survey. The proposed foundation location as shown on the original plot plan shall also be shown on the foundation location survey.

(A) Exception: A foundation location survey shall not be required for additions, decks, swimming pools, sheds as described in N.J.A.C. 5:23-9.9 or similar structures.

(2) For new construction and additions, the foundation location survey for a building that is located in a flood plain shall include flood hazard certificates as required by section 1612.5 of the building subcode or section R301.2.4 of the one-and two-family dwelling subcode.

iii. Utility services, including septic;

iv. Mid-point inspections shall include the following:

(1) Building Subcode: All structural framing, connections, wall and roof sheathing, and insulation.

(A) The framing inspection shall take place after the rough electrical and plumbing inspections and after the installation of the heating, ventilation and/or air conditioning duct system.

(B) For buildings containing roof or other truss systems, a truss system and permanent truss bracing inspection shall be performed prior to the installation of any interior roof truss covering material. Where the truss design utilizes the interior finish as bracing for the bottom cord, that portion of the bracing shall be part of the final inspection and shall be in addition to the components of the final inspection in (d) below.

(C) The insulation inspection shall be performed after all other subcode rough inspections and prior to the installation of any interior finish material.

(D) The inspector shall use a Department approved checklist.

(E) Prior to inspection, the responsible person in charge of work shall provide to the building inspector a signed framing checklist to be verified and initialed by the inspector and then made part of the permit file.

(2) Electrical Subcode: Rough wiring, panel and service installation.

(3) Plumbing Subcode: Rough piping.

2. Inspections for all subcodes of construction, other than one-and two-family dwellings, shall be limited to those required for one-and two-family dwellings and the following: fire suppression systems; heat producing devices; any special inspections required by any subcode of the regulations;

i. The mid-point inspection shall include a review for compliance with N.J.A.C. 5:23-7, the Barrier Free Subcode, for buildings required by N.J.A.C. 5:23-7.1 to be accessible.

3. Any additional inspections, as permitted by this chapter and as may be required by the municipality, shall be of the type and nature that construction may continue without interruption;

4. Additional inspection schedule: Where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the construction official or appropriate subcode official may specify additional inspections to the applicant in writing prior to the issuance of a permit and during construction in the case of unforeseeable circumstances.

(c) Notice for inspection:

1. The owner or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection specified herein or required by the construction official or appropriate subcode official. This notice shall be given at least 24 hours prior to the time the inspection is desired. This notice shall represent an attestation on the part of the owner, other than single-family owner-occupants performing their own work, or other responsible person in charge of work, that the work has been completed in conformance with the code and is ready for inspection.

2. Inspections shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which will preclude the inspection until it has been made.

(d) Final inspection: Upon completion of the building or structure, and before the issuance of a certificate of use and occupancy required herein, a final inspection shall be made, and any violations of the code shall be noted and the holder of the permit shall be notified of any discrepancies by the construction official. The final inspection shall include:

1. Building and Fire Subcode: Installation of all interior and exterior finish materials, sealing of exterior joints, mechanical system and any other required equipment.

2. Electrical Subcode: Wiring, devices and fixtures.

3. Plumbing Subcode: Piping, trim and fixtures.

4. Tests required by any provision of the adopted subcodes.

5. A review for compliance with N.J.A.C. 5:23-7, the Barrier Free Subcode, for all buildings required by N.J.A.C. 5:23-7.1 to be accessible.

6. Verification of compliance with N.J.A.C. 5:23-3.5, Posting structures.

(e) Inspections records: The enforcing agency shall make a written record of all inspections, including any discrepancies or violations noted and shall maintain those reports as a public record which shall be available for public inspection during normal business hours.

(f) Department inspections: At the request of an enforcing agency, the Department may assist the enforcing agency in the inspection of any construction, provided that the enforcing agency has submitted the plans and specifications for such construction to the Department.

(g) The construction official shall serve as an agent of the Bureau of Housing Inspection of the Department of Community Affairs for the purpose of inspecting newly constructed and altered hotels and multiple dwellings in order to enforce the provisions of the regulations for the maintenance of hotels and multiple dwellings (N.J.A.C. 5:10). Responsibility for inspection may be delegated to the appropriate subcode official(s).

(h) Periodic inspections: The building subcode official or fire protection subcode official may periodically inspect all existing buildings and structures, except one and two family dwellings, for compliance with the rules with respect to posting. Such inspection shall specify any violation of the rules with respect to the posting of floor load, occupancy load and use group of the building.

Amended by R.1981 d.182, effective June 4, 1981.

See: 13 N.J.R. 187(b), 13 N.J.R. 333(b).

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Class I inspections added to (b)iv.

Amended by R.1996 d.323, effective July 15, 1996 (operative January 1, 1997).

See: 28 N.J.R. 2112(a), 28 N.J.R. 3549(a).

Amended by R.1997 d.304, effective July 21, 1997.

See: 29 N.J.R. 2204(a), 29 N.J.R. 3248(a).

Added (b)lii(1) and (d)l.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (d), added 2; and added (h).

Amended by R.2003 d.187, effective May 5, 2003.

See: 34 N.J.R. 4248(a), 35 N.J.R. 1939(c).

In (b), rewrote iv.

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

Rewrote the section.

Administrative correction.

See: 35 N.J.R. 3298(a).

Amended by R.2006 d.75, effective February 21, 2006.

See: 37 N.J.R. 3110(a), 38 N.J.R. 1183(a).

Added (b)liv(1)(E).

Amended by R.2007 d.46, effective February 5, 2007.

See: 38 N.J.R. 872(a), 39 N.J.R. 370(b).

In (c)1, added new third sentence, and recodified former third sentence as new (c)2.

Administrative correction.

See: 39 N.J.R. 3914(a).

5:23-2.18A Utility load management device installation programs

(a) Whenever a public utility proposes to undertake a program of installing load management devices at the properties of a substantial number of service customers within a limited period of time, it may apply to the Department for permission to utilize the procedure set forth in this section.

(b) A utility with a program to install load management devices shall submit detailed information to the Department on the design of the device.

(c) The utility shall provide an educational program acceptable to the Department to acquaint any interested Department personnel and municipal subcode officials with the device and with installation and operating procedures.

(d) The utility shall insure that all devices to be installed are identical in design, listed and labeled or otherwise approved according to this chapter for their intended use.

(e) At least one month in advance of any installations, the utility shall submit to the Department, and to each affected municipality, notice of the anticipated number of installations to be performed in each municipality. A maximum and a minimum figure may be submitted where there is uncertainty about the number to be scheduled by customers. An approximate number of weeks for installations in that municipality shall be given along with an approximate number of installations per week.

1. Each week, in advance of installation, the utility shall notify the municipality of any change in the anticipated number of installations for that week. No weekly number of installations shall be so great that the cumulative number of installations in the municipality shall exceed the maximum anticipated number submitted.

2. Prior to the commencement of any installation, and as soon as may be practicable, the utility or its contractors will provide to each municipality notice of the actual sites of installations.

3. The Department and the municipalities shall be notified as soon as possible in the event of any change in existing schedules by the utility or its contractors.

(f) On the Monday following installations, the utility shall submit to each municipality a completed permit application

for all installations completed in the municipality's jurisdiction during the preceding week.

1. A listing of all permits so delivered shall be filed by the utility with the Department.

2. All devices installed during that week, by a single contractor, shall be included on that application. The application shall include the Construction Permit Application and an Electrical Subcode Technical Section.

3. Since the permit is not, typically, for work at a single location, the block number shall be entered as "UCC 2.18" and the lot as "A." The work site location shall be the name of the municipality and the owner in fee shall be the utility.

4. In addition to the Construction Permit Application, the utility or contractor shall supply the municipality a complete listing of locations where the devices, listed on this permit, were installed. This list shall include owner's name, owner's address, block and lot, date of installation, type of device(s) installed, and the contractor's name.

(g) If, for any reason, a permit application, or any part, is found to have been submitted in error, the utility or its contractors shall notify the municipality as soon as possible.

(h) When all required municipal and utility inspections have been approved, a single certificate of approval, for that permit, shall be issued to the utility.

(i) If any municipality or the Department has reason to suspect that permit applications are being mishandled or carelessly accounted for, an investigation may be conducted of the utility's permit files for this project and of any permits in the possession of individual contractors in the utility's employ for this project.

(j) The utility shall pay to each municipality 30 percent of the permit fees otherwise due and owing.

(k) The municipality shall inspect 30 percent of the installations performed and shall record the results of those inspections. The utility shall inspect at least 10 percent of the installations performed and shall record the results of those inspections and forward those results concurrently to the municipality and to the Department weekly.

(l) If a municipality or a utility discovers a defect rate of not less than seven percent for any contractor employed by the utility, the Department shall be immediately notified. The Department shall investigate and, in the interest of public safety, shall be authorized to order that:

1. The offending contractor cease to be employed by the utility for this project;

2. The utility remit the fees necessary to inspect all existing installations of the offending contractor in all municipalities where that contractor has performed work;

3. That each municipality affected perform inspections of all the offending contractor's existing installations; and

4. That the utility or its designees correct or remove all defective installations to the satisfaction of the municipal officials.

(m) If, at any time, the Department tabulates a program-wide defect rate equal to or exceeding three percent, the utility shall be notified and the inspection rate and fee rate in (j) and (k) above shall rise to 50 percent.

4. Backflow preventers used to isolate high hazard sources of contamination as defined in the plumbing sub-code: 12 months.

5. Swimming pools, spas and hot tubs: 12 months.

(m) Certificate of Approval: A certificate of approval shall be issued for all work that requires a construction permit but does not require a certificate of occupancy. No application shall be required for a certificate of approval.

(n) Revocation: The enforcing agency may revoke a certificate of occupancy whenever a condition of a certificate has been violated.

(o) Time limit: The provisions of the regulations do not preclude periodic certification pursuant to other applicable laws and ordinances.

(p) Lead Abatement Clearance Certificate: Following a **lead hazard abatement** job performed by a business firm or by an employee or employees of the owner of a property, a written application for a lead abatement clearance certificate shall be filed with the enforcing agency by the owner or the owner's agent. The application shall include a certification by the firm or person performing the work that all applicable provisions of N.J.A.C. 5:17 have been met, including the clearance requirements, and that the components or areas in the scope of work submitted in the permit application are lead safe.

1. When the lead hazard abatement work includes encapsulation or enclosure, the certification by the firm or person performing the work shall include any recommendations for on-going maintenance or precautions to be taken to maintain the integrity of the encapsulation or enclosure.

2. When all lead hazards identified in an evaluation report prepared by a firm licensed by the Department pursuant to N.J.A.C. 5:17 have been totally and permanently abated, the certification shall so state.

3. When an owner-occupant of a single-family house is performing the work, a lead abatement clearance certificate may be requested by the owner. The application for a lead abatement clearance certificate shall include a statement signed by a lead evaluation contractor certified by the Department pursuant to N.J.A.C. 5:17, or signed by an individual inspector/risk assessor certified by the New Jersey Department of Health pursuant to N.J.A.C. 8:62 indicating that the clearance standards contained in N.J.A.C. 5:17 have been met and that all components or areas in the scope of work submitted in the permit application have been rendered lead-safe.

i. When lead abatement work has been performed by an owner-occupant pursuant to an order issued by a local health department, a lead abatement clearance certificate shall be required.

4. When lead abatement work has been performed pursuant to an order issued by a local health department, no lead abatement clearance certificate shall be issued without the approval of the local health department.

5. When lead abatement work has been performed on a steel structure or other superstructure or in a commercial building, no lead abatement clearance certificate shall be required.

(q) The continued validity of a certificate of occupancy shall be contingent upon maintenance of the level of code compliance existing at the time of issuance of the certificate of occupancy and upon compliance with any orders issued by the construction official pursuant to N.J.A.C. 5:23-2.35.

Amended by R.1984 d.120, effective April 16, 1984.
See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

(c): "N.J.A.C. 5:23-2.14 have been determined ... have been found," "lawful" added.

Amended by R.1987 d.91, effective February 2, 1987.
See: 18 N.J.R. 2348(a), 19 N.J.R. 289(c).

Added new (i)2; renumbered (i)2.-9. as (i)3.-10.
Amended by R.1988 d.167, effective April 18, 1988.
See: 20 N.J.R. 223(b), 20 N.J.R. 893(b).

Added text to (b) "after the completion of the alteration".
Amended by R.1991 d.180, effective April 1, 1991.
See: 23 N.J.R. 257(a), 23 N.J.R. 1028(b).

In (i), deleted inspections of sprinkler systems, hazardous uses and places of assembly.

Amended by R.1991 d.325, effective July 1, 1991.
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Potentially hazardous equipment approvals time-limited at (i); elevator requirements added at (j).

Amended by R.1992 d.147, effective April 6, 1992.
See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.
Amended by R.1993 d.421, effective September 7, 1993.
See: 25 N.J.R. 2161(a), 25 N.J.R. 4073(a).

Amended by R.1993 d.662, effective December 20, 1993.
See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1994 d.434, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).
Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).
Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Rewrote (j).
Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added (m)5.
Amended by R.1998 d.28, effective January 5, 1998.
See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Amended (b); added new (c) and (d); recodified existing (c) as (e); recodified existing (d) as (f) and amended it to include reference to N.J.A.C. 5:23-6; recodified existing (e) through (m) as (g) through (o).

Amended by R.2000 d.47, effective February 7, 2000.
See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

In (k), inserted references to installations throughout, inserted "and no installation shall be opened for use or occupancy" following "operation" and substituted "issued" for "reissued" at the end of the last sentence of the introductory paragraph, and added 5.

Amended by R.2000 d.166, effective April 17, 2000.
See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

Rewrote k(4).
Amended by R.2001 d.347, effective October 1, 2001.

See: 32 N.J.R. 3218(a), 33 N.J.R. 3430(a).
Rewrote (g).

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (h), neutralized the gender reference and deleted “, the approved plans” following “the permit” in 4 and rewrote 6; substituted “code” for “approved permit” throughout.

Amended by R.2003 d.385, effective October 6, 2003.

See: 35 N.J.R. 2423(a), 35 N.J.R. 4713(a).

Added (p).

Amended by R.2005 d.199, effective July 5, 2005.

See: 37 N.J.R. 565(a), 37 N.J.R. 2474(a).

In (g), inserted “list the work to be completed and shall” following “each subsequent renewal shall” and “specified” preceding “work” in the first sentence of 1, and added 2i.

Amended by R.2007 d.125, effective May 7, 2007.

See: 38 N.J.R. 3707(a), 39 N.J.R. 1671(a).

Added new (h); and recodified former (h) through (p) as (i) through (q).

Administrative correction.

See: 40 N.J.R. 3991(a).

Law Review and Journal Commentaries

Arbitration—Condominiums—Consumer Fraud Act. Steven P. Bann, 137 N.J.L.J. No. 2, 65 (1994).

Attorneys fees—Condominiums—Damages—DCA—PREDFDA. 132 N.J.L.J. No. 9, 45 (1992).

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

Condominium vendor committed unconscionable practice within scope of Consumer Fraud Act. *Cybul v. Atrium Palace Syndicate*, 272 N.J.Super. 330, 639 A.2d 1146 (A.D.1994), certification denied 137 N.J. 311, 645 A.2d 140.

Penalties could not be imposed on condominium vendor for failure to obtain temporary certificates of occupancy. *Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate*, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).

Purchasers were entitled to return of deposit for failure of vendors to timely perform. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Not substantially complete condominium unit could not be occupied. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Certificates of occupancy cannot bar occupancy. *Department of Community Affairs, Div. of Housing and Department v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Developer’s failure to timely issue temporary certificate of occupancy (TCO) required refund of purchasers’ deposits. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 244 N.J.Super. 329, 582 A.2d 821 (A.D.1990), certification denied 126 N.J. 317, 598 A.2d 878.

Building does not qualify for property tax exemption if certificate of occupancy issued after assessment date; use of building for exempt purposes prior to issuance of certificate irrelevant to exemption issue (citing former N.J.A.C. 5:23-2.7). *Grace & Peace Fellowship Church, Inc. v. Cranford Twp.*, 4 N.J.Tax 391 (Tax Ct.1982).

5:23-2.23A Permits and certificates for multi-tenant buildings

(a) Construction permits for multi-tenant buildings shall be issued as follows:

1. A single construction permit shall be issued for the entire structure including all tenant spaces if:

- i. The permit applicant is undertaking all the work;
- ii. All the work is, or will be shown as, a single set of plans;

iii. All work is intended to be undertaken by the same team of contractors; and

iv. The certificate of occupancy or certificate of approval, as applicable, for all tenant spaces will be sought before or at the same time as that for the entire building. Plans for individual tenant spaces may be submitted as permit updates if all of the above conditions are met.

2. A separate permit shall be required for any tenant space if any of the following conditions apply:

i. The tenant is undertaking the fit-up work within the tenant space;

ii. The plans for the tenant space work will be prepared by a design professional different from the one that prepared the plans for the base building;

iii. The work will be undertaken by one or more contractors who are different from the contractors for the base building; or

iv. The permit is being applied for after a temporary certificate of occupancy or certificate of occupancy has been issued for the base building.

3. Fees for construction permits for multi-tenant buildings shall be applied pursuant to N.J.A.C. 5:23-4.18(c)6.

(b) Temporary certificates of occupancy for individual tenant spaces in multi-tenant buildings shall be issued as follows:

1. A temporary certificate of occupancy shall be issued for each tenant space provided that portion of the building may be occupied safely prior to full completion of the building, the common area(s) serving that tenant space has a temporary certificate of occupancy or a certificate of occupancy, and the unfinished portions of the building for which temporary certificates of occupancy or certificates of occupancy are not being sought do not present life safety hazards.

i. Temporary certificates of occupancy may be issued floor by floor or tenant space by tenant space.

2. Notice of unsafe structure: If an unsafe or unsanitary condition is found in a building or structure, the construction official shall serve a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be vacated or demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the construction official his or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 15 days of receipt of the notice.

3. Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to a safe condition in accordance with N.J.A.C. 5:23-6, Rehabilitation Subcode. A certificate of approval or certificate of occupancy, as appropriate, shall be obtained prior to reoccupancy of the building or structure.

4. Posting notice of unsafe structure: If the person addressed with a notice of unsafe structure cannot be found within the municipality after diligent search, then such notice shall be sent by registered or certified mail to the last known address of such person, as on file with the office of the tax collector, and a copy of the notice of unsafe structure shall be posted in a conspicuous place on the premises; and such procedures shall be deemed the equivalent of personal notice.

5. Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

(b) Emergency measures:

1. When, in the opinion of the construction official and appropriate subcode officials, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the construction official is hereby authorized and empowered to order and require the occupants to vacate the same forthwith. The construction official shall cause to be posted at each entrance to such building a notice reading as follows: This structure is unsafe and its use or occupancy has been prohibited by the construction official, and it shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or demolishing the same. The order of the construction official shall be effective immediately.

2. Temporary safeguards: When, in the opinion of the construction official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, the construction official

shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe, whether or not the legal procedure herein has been instituted. Such work may include such demolition as may be necessary in order to eliminate any actual and immediate danger to human life; provided, however, that any demolition work shall not commence until at least 24 hours following service of notice of the pending demolition upon the owner, unless such service is not possible because the identity or the address of the owner cannot be determined from public records. Upon expiration of the 24-hour period, demolition may proceed unless stayed by order of the Superior Court.

3. Closing streets: When necessary for the public safety, the construction official may temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe structure, and prohibit the same from being used.

4. Emergency repairs or demolition: For the purpose of this section, the construction official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

5. Costs of emergency repairs: Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on certificate of the construction official; and the legal authority of the jurisdiction shall institute appropriate action against the owner of the premises for the recovery of such costs.

6. Appeals: An emergency order issued by a municipal construction official pursuant to this subsection shall be appealable only to a court of competent jurisdiction.

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

C.O. required prior to reoccupancy.

Amended by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Amended by R.1999 d.424, effective December 6, 1999.

See: 31 N.J.R. 2428(a), 31 N.J.R. 4001(c).

Rewrote (a)3.

Amended by R.2003 d.201, effective May 19, 2003.

See: 35 N.J.R. 303(a), 35 N.J.R. 2207(a).

Rewrote (b).

Law Review and Journal Commentaries

Tort Claims Act—Landlords. P.R. Chenoweth, 138 N.J.L.J. No. 2, 77 (1994).

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

Mobile park owner that leased space to mobile home owners could not require residents to convert from oil heat to gas heat as condition of approving prospective purchases. *Garden Park Mobile Home Owners Ass'n v. Garden Park Associates*, 292 N.J.Super. 442, 678 A.2d 1191 (L.1996).

City, as landowner, did not have immunity from claim it negligently maintained buildings in dangerous condition, resulting in spread of fire to surrounding buildings. *Saldana v. DiMedio*, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).

If activities of building inspector and public works director required discretionary decisions and were subject to qualified immunity, standard of liability would be whether decisions were palpably unreasonable or whether they merely failed to follow mandates of higher-up decisions. *Saldana v. DiMedio*, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).

"Dangerous condition" for tort liability was satisfied with respect to surrounding buildings damaged by fire which spread from buildings on city-owned lots. *Saldana v. DiMedio*, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).

Loss of housing which occurred when premises was evacuated for safety of tenants upon broken water main was a natural disaster that precluded payment of relocation benefits. *Union Gardens' v. Township of Montclair*, 95 N.J.A.R.2d (CAF) 85.

5:23-2.33 Service of notice

Except as is specifically provided for by the act with respect to stop construction orders, service of notices and orders pursuant to this section shall be upon the owner or the person specified as agent for receipt of same in the application for a permit or the person responsible for the work or in the case of unsafe structures upon any agent or person in control of the building. Service may be made by personal delivery or by leaving a copy at the dwelling house or usual place of abode of such person, with a competent member of his household of the age of 14 years or older than residing therein, or by any other method or upon any other person approved pursuant to Rules 4:4-4 and 4:4-5 of the New Jersey Supreme Court, or which is otherwise consistent with due process.

5:23-2.34 Protection of adjoining properties

(a) Owners who undertake construction, rehabilitation, or demolition work at their properties shall protect adjoining properties from damage caused by the work.

(b) The owner intending to undertake the construction, rehabilitation, or demolition work that could potentially damage adjoining properties shall deliver written notice of such intent to the owners of the affected properties. The notice shall request written permission to enter the adjoining properties to determine the measures that must be taken to safeguard the properties from damage.

1. Written consent from the owners of the adjoining properties must be obtained prior to entering the properties.

2. In those cases where owners of adjoining properties refuse access, work shall not proceed unless access to the properties is granted by the courts.

(c) The measures to be taken to safeguard adjoining properties shall be submitted with the permit application for review and approval by the construction official.

(d) Upon approval of the measures to safeguard the adjoining properties, the owner intending to undertake the construction, rehabilitation, or demolition work shall provide a copy

of the measures to the owners of adjoining properties and shall request written permission to implement the measures prior to the commencement of work.

i. Written consent from the owners of the adjoining properties to implement the measures to safeguard the properties must be obtained.

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Construction board of appeals".
New Rule, R.2008 d.39, effective March 3, 2008.

See: 39 N.J.R. 2175(a), 40 N.J.R. 1084(a).

Section was "Reserved".

5:23-2.35 Enforcement actions in residential developments after issuance of certificate(s) of occupancy

(a) Subsequent to the issuance of a certificate of occupancy, the construction official shall issue a notice of violation for any violation of the provisions of the Code in effect at the time of permit application that comes to his or her attention. Pursuant to N.J.S.A. 2A:14-1.1, no notice of violation may be issued to the developer or to any contractor more than 10 years after issuance of the certificate of occupancy.

1. If violations of any of the following provisions of the Code in effect at the time of permit application are found in a residential structure in a development, other than Group R-1, subsequent to the issuance of a certificate of occupancy, the construction official shall issue such notices and orders as may be necessary to ensure that all units within the development that might have similar violations are inspected for such violations and that any such violations found are cited and abated:

i. N.J.A.C. 5:23-2.32 Unsafe structures;

ii. The following provisions of the building sub-code:

(1) Chapter 4, Special Detailed Requirements Based on Use and Occupancy, except for sections 401, 402.3, 403.12, 406.1, 406.2, 406.3.1, 406.3.2, 406.3.3, 406.3.4, 406.3.5, 406.3.6, 406.3.7, 406.4, 406.5, 409, 412;

(2) Chapter 7, Fire-resistant Rated Construction;

(3) Section 803, Wall and Ceiling Finishes;

(4) Chapter 9, Fire Protection Systems; and

(5) Chapter 10, Means of Egress, except for sections 1003.3.3.3.1, 1003.3.3.3.2, 1003.3.3.1.1, 1003.3.12, 1008.9, 1009.11 and 1008.12;

iii. The following provisions of the one- and two-family dwelling subcode:

(1) Sections R-302.1, R-302.2 and R-302.3, Required Fire Resistance Ratings;

(2) Section R-317, Smoke Alarms; and

(3) Sections R-321.1 and R-321.2, Dwelling Unit Fire Separations;

iv. The following provisions of the electrical sub-code:

(1) Section 240.3, Protection of Equipment Against Overcurrent;

(2) Section 240.4, Protection of Conductors Against Overcurrent;

(3) Section 250.4, General Requirements for Grounding and Bonding;

v. Subchapter 7, the barrier free subcode; and

vi. Any structural deficiency which is present or likely to occur that has the potential for injury or significant damage to the livability of a home. This shall include any structural member that exceeds the permitted deflection established at N.J.A.C. 5:23-6.5(c)1i.

2. The municipality may retain the services of a professional engineer or registered architect, to be paid at an hourly rate and to work subject to the supervision and control of the construction official, for inspections, review of plans and supporting documents and preparation of reports and documents, in connection with enforcement of (a)1 above provided that the professional retained is independent of both the builder and the homeowner and has no actual or apparent conflict of interest that would call into question his or her ability to carry out these duties impartially. Any person carrying out inspections under such a contract shall be, at a minimum, a licensed engineer or a registered architect or shall have a bachelor's degree from an accredited institution of higher education in engineering or in architecture, or in engineering or architectural technology and shall have not less than five years of experience in the design, construction or rehabilitation of woodframe structures.

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Applicant's right of appeal; procedure".

New Rule, R.2006 d.355, effective October 2, 2006.

See: 38 N.J.R. 1789(a), 38 N.J.R. 4175(a).

5:23-2.36 (Reserved)

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Procedure of the board".

5:23-2.37 (Reserved)

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Decision of the board".

5:23-2.38 Departmental appeal

(a) Whenever the Department shall act as the enforcing agency under the State Uniform Construction Code Act

(N.J.S.A. 52:27D-128), an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals may be made to the Hearing Coordinator, Division of Codes and Standards, Department of Community Affairs, PO Box 802, Trenton, NJ 08625.

1. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

2. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the time provisions applicable to construction boards of appeal.

(b) Any party in interest aggrieved by any decision made by a facility manager or owner or administering agency with respect to compliance with either the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.15 through 7.31) or the Playground Safety Subcode (N.J.A.C. 5:23-11) shall have the right to appeal the decision to the Department.

1. The Department shall forward a copy of the complaint to the facility manager and to the facility owner or agency responsible for administration of the facility and shall request a response from the facility manager.

2. The facility manager shall respond in writing within 45 days of receipt of the request.

3. The Department shall review the response and shall determine whether the complaint is justified and what corrective measures shall be required to be taken by the facility owner or administering agency. The Department shall make such determination and issue any necessary orders within 60 days.

4. In the event that the owner or administering agency of a facility appeals any such order and the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

5. A "party in interest" may be either the owner, or authorized representative of the owner, of the premises that is the subject of the decision or an occupant, user or prospective occupant or user, of the premises, or a group representative of such occupants, users or prospective occupants or users; provided, however, that an occupant, user or representative group shall only be deemed to be a party in interest if notice of such interest has been given to the Department by the party prior to the issuance of the Department's determination.