

CHAPTER 25

REGULATIONS GOVERNING NEW HOME WARRANTIES AND BUILDERS' REGISTRATION

Authority

N.J.S.A. 46:3B-10.

Source and Effective Date

R.2011 d.250, effective September 7, 2011.
See: 42 N.J.R. 3015(b), 43 N.J.R. 2581(a).

Chapter Expiration Date

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, expires on September 7, 2018.

Chapter Historical Note

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was adopted as new rules by R.1979 d.147, effective April 19, 1979. See: 10 N.J.R. 377(b), 11 N.J.R. 223(c).

Pursuant to Executive Order No. 66(1978), Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.1980 d.522, effective January 1, 1980. See: 12 N.J.R. 631(a), 13 N.J.R. 7(e).

The Executive Order No. 66(1978) expiration date for Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was extended by gubernatorial directive from January 1, 1986 to February 3, 1986. See: 18 N.J.R. 218(a).

The Executive Order No. 66(1978) expiration date for Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was extended by gubernatorial directive from February 3, 1986 to March 31, 1986. See: 18 N.J.R. 490(a).

Pursuant to Executive Order No. 66(1978), Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.1986 d.141, effective March 31, 1986. See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Pursuant to Executive Order No. 66(1978), Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.1991 d.140, effective February 19, 1991. See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c).

Pursuant to Executive Order No. 66(1978), Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.1996 d.93, effective January 24, 1996. See: 27 N.J.R. 4058(a), 28 N.J.R. 1225(a).

Pursuant to Executive Order No. 66(1978), Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.2001 d.56, effective January 18, 2001. See: 32 N.J.R. 1271(a), 33 N.J.R. 692(a).

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.2006 d.269, effective June 22, 2006. See: 37 N.J.R. 2754(a), 38 N.J.R. 3019(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was scheduled to expire on December 19, 2013. See: 43 N.J.R. 1203(a).

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was readopted as R.2011 d.250, effective September 7, 2011. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:25-1.1 Title

This chapter shall be known as and may be cited as "Regulations Governing New Home Warranties and Builders' Registration".

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 564) adopted, which concluded that it was reasonable for the homeowner to be present for a repair made pursuant to the New Home Warranty Act, whether the repair was to the inside or outside of the house, and that the owner did not deny access to the home to make repairs. *Koutouzakis v. Orenson Constr.*, OAL Dkt. No. CAF 05885-07, 2007 N.J. AGEN LEXIS 497, Final Decision (August 17, 2007).

5:25-1.2 Scope

This chapter shall: prescribe the form and coverage of the minimum warranty established by the Act; govern procedures for the implementation and processing of claims pursuant to the warranty; establish requirements for registration as a builder, and procedures governing the denial, revocation and suspension of builders registration; and, establish the requirements of private alternate New Home Warranty Security Plans and of the State New Home Warranty Security Plan.

5:25-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the New Home Warranty and Builders’ Registration Act (P.L. 1977, c.467), and regulations promulgated hereunder.

“Appliances, fixtures, and equipment” shall mean and include, but not be limited to: furnaces, boilers, heat pumps, humidifiers, air purifiers, air handling equipment, ventilating fans, air conditioning equipment, water heater, pumps, stoves, ranges, ovens, refrigerators, garbage disposals, food waste disposers, compactors, dishwashers, automatic garage door openers, washers, and dryers, plumbing fixtures and trim, faucets, fittings, motors, water treating equipment, ejectors, thermostats and controls, including any fitting attachments; electric receptacles, switches, lighting fixtures, and circuit breakers;

“Builder designee” means the partner, officer, or director designated as such in the builder’s application for registration and is the individual responsible for on-site building activity.

“Certificate of occupancy” means the certificate required to be issued pursuant to the State Uniform Construction Code Act, (N.J.S.A. 52:27D-119 et seq.).

“Certificate of Participation” means that certificate which is issued by the Commissioner to the owner of each new home constructed by a builder who participates in the State Plan and which signifies that the home was constructed by a participating builder, and that premiums due have been paid.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Common elements” shall mean those elements listed in the master deed on file for each such development or unit as required under law for common ownership.

“Consequential damages” means damage to the home itself resulting directly or proximately from a defect covered by the warranty.

“Construction permit” means that permit required pursuant to the State Uniform Construction Code Act (N.J.S.A.

52:27D-119 et seq.) before the construction of any new home is permitted to begin.

“Department” means the Department of Community Affairs.

“Director” means the Director of the Division of Codes and Standards.

“Division” means the Division of Codes and Standards in the Department of Community Affairs.

“General contractor” means a builder who is responsible for general construction, plumbing, heating, and air-conditioning, and electrical work for a single new home constructed for an owner on the owner’s land.

“Major structural defect” means any actual damage to the load-bearing portion of the home, including consequential damages, damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) that affects its load-bearing function and that vitally affects or is imminently likely to vitally affect use of the home for residential purposes. “Major structural defect” shall have the same meaning as “major construction defect,” as used in the Act.

“Mechanical and electrical systems” shall mean and include the following:

1. Plumbing system: Gas supply lines and fittings, and water supply, waste and vent pipes and their fittings; septic tanks and their drains; water, gas, and sewer service piping, and their extensions to the property line which tie-in to a public utility connection or on-site well and/or sewage disposal system.
2. Electrical system: All wiring, electrical boxes, and connections up to the public utility meter connection, excluding appliances, fixtures and equipment.
3. Heating, Ventilating, Cooling and Mechanical systems: All ductwork, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

“New home” means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease, and units governed by the Federal Mobile Home Construction and Safety Standards Act, 42 USC 5401 et seq.

“New home builder” means any individual, corporation, partnership or other business organization engaged in the construction of new homes. Whenever used herein the term “builder” shall mean “new home builder.”

“Owner” means any person for whom the new home is built, or to whom the new home is sold, for occupation by that person or the family of that person as a home, and also means and includes his or her successors in title to the home, or mortgagee in possession. “Owner” does not mean or include any development company, association or subsidiary

owner Protection, New Home Warranty Program, OAL Dkt. No. CAF 494-06, 2006 N.J. AGEN LEXIS 760, Final Decision (August 21, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 287) adopted, which concluded that where a builder failed to register as a new home builder, a \$750 penalty, instead of the maximum \$2,000 penalty, was more appropriate under the factual circumstances; the reduced penalty would not be so harsh as to be unfair, but would serve to remind respondents of the necessity to comply with the registration requirements in the future for the protection of citizens. Bureau of Homeowner Protection, New Home Warranty Program v. McClernan Contractors, OAL Dkt. No. CAF 2693-05, 2006 N.J. AGEN LEXIS 516, Final Decision (May 18, 2006).

Petitioner did not make an inadvertent mistake when it listed the wrong building corporation in a sales contract; given that one entity controlled by the corporate president did not renew its registration, one was denied registration, and the third was suspended, there was no evidence of any intention to have the house built by a registered builder. This pattern of facts was inconsistent with any honest intention to comply with the registration requirements of the New Home Warranty and Builders' Registration Act. Pennington Hills, L.L.C. v. Dep't of Community Affairs, Bureau of Homeowner Protection, OAL Dkt. No. CAF 10155-04, 2005 N.J. AGEN LEXIS 1118, Final Decision (September 21, 2005).

Contractor not registered with the Department of Community Affairs as a new home builder was engaged in the business of construction of new homes. CRP Enterprises v. Bureau of Homeowner Protection, 93 N.J.A.R.2d (CAF) 11.

5:25-2.2 Registration; new home builder

(a) Rules concerning application are as follows:

1. Every application for registration as a new home builder shall be made on the form prescribed by the Commissioner and shall be accompanied by a non-returnable registration fee of \$200.00;

2. Each application for registration as a new home builder shall include full name and address of the business. In the case of a corporation the name entered on the application shall be that registered with the Secretary of State. In all cases the address entered on the application shall be the street number, street name, and municipality at which the primary office of the applicant's business organization is located. In no case shall the address be a post office box or the address of an agent. It shall, in all cases, be the address at which the proprietor, or a listed builder designee who is a partner, officer, director or stockholder of the organization can usually be found. The address shall be that of a business office unless there is none in which case it may be a residence address. The application shall appoint an agent for the service of process and shall provide his address. The agent may be any person who is a resident of this State. The application shall also include the builder's business and home telephone number his Federal Employer Identification number and the names, and addresses and home phone numbers of all persons having a minimum of ten percent interest in the new home builder. In addition, the application shall include historical information concerning the experience of the builder in the State of New Jersey including the number of years in the new home construction business, and the municipalities in

which the business has been practiced during the three years immediately previous to the date of application. The application shall also include any criminal convictions against any person having an interest in the new home builder and the disposition thereof;

3. Each applicant for a certificate of registration as a builder shall disclose in the application any subsidiary or parent relationship with any other new home building organization and shall further disclose all interests of any officer, partner, director, or stockholder of the builder in any other new home building organization.

(b) At least 30 days prior to the expiration date of a builder's registration, the Division shall mail a renewal application form to the builder at the builder's then current registered address by ordinary mail.

Amended by R.1986 d.141, effective May 5, 1986.
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Substantially amended.

Amended by R.1998 d.126, effective March 2, 1998.
See: 29 N.J.R. 3916(a), 30 N.J.R. 825(a).

Added (b).

5:25-2.3 Certificate of registration

Upon receipt of a completed application, a certificate of registration will be issued as a registered builder unless denied in accordance with N.J.A.C. 5:25-2.5. The certificate of registration shall remain valid, unless suspended or revoked in accordance with N.J.A.C. 5:25-2.5, until the expiration date indicated thereon except in the case of a builder whose relationship with the partner, director, officer, or stockholder who shall have been the registered designee is ended. In such a case the certificate of registration shall expire and become invalid unless another designee is substituted. The certificate of registration shall also become invalid if a builder shall fail to continue or let lapse his participation in either the State Plan or a private plan.

Amended by R.1986 d.141, effective May 5, 1986.
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Substantially amended.

5:25-2.4 Registration renewal

A certificate of registration may be renewed for additional two year periods. Applications for renewal shall be made upon the forms provided by the Commissioner and shall be accompanied by a fee of \$200.00 and shall be subject to the same conditions as an original application.

Amended by R.1986 d.141, effective May 5, 1986.
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Substantially amended.

5:25-2.5 Denial, suspension or revocation of registration

(a) A certificate of registration may be denied or revoked if the registrant or applicant or an officer, partner, director or stockholder of the registrant or applicant has at any time:

1. Willfully made a misstatement of material fact in his application for registration or renewal;
2. Willfully committed fraud in the practice of his occupation;
3. Practiced his occupation in a grossly negligent manner;
4. Willfully violated the New Jersey State Uniform Construction Code to any substantial degree; or
5. Habitually or egregiously engaged in any act or omission set forth in (b)1 through 7 below.

(b) A certificate of registration may be denied or suspended, pending compliance with the Act, with this chapter and with the orders of the Commissioner, if the registrant or applicant, or an officer, partner, director, or stockholder of the registrant or applicant, has at any time:

1. Failed to continue his participation in either the State Plan or a private plan;
2. Failed or enroll or warrant any new home with either the State Plan or an approved private plan;
3. Failed to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan or of a private plan, as the case may be, unless such determination is appealed and a stay of the order to correct the defect is issued by the Commissioner or by a court having jurisdiction;
4. Failed to file an amended application for or to a certificate of registration within 30 days of any material change in the information provided in the most recent application or amendment thereto;
5. Had as an officer, partner, director or stockholder any person who was serving as an officer, partner, director or stockholder of a builder that is not registered or the certificate of registration of which has been revoked or is currently suspended; provided that this paragraph shall not apply to any person who was not affiliated with such builder at the time that the incident or practice that led to revocation or suspension occurred;
6. Incurred, or been responsible for incurring, an award against the New Home Warranty Security Fund for which the fund has not been fully compensated; or
7. Failed to participate in the dispute settlement process, in which case any suspension shall continue in effect pending resolution of the dispute and full compensation for any payments made, or expenses incurred, by the Fund.

(c) A certificate of registration may be denied or revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director or stockholder of the applicant or registrant, has at any time, violated any provision of the Act or of this chapter,

or any order of the Commissioner, with regard to any matter not referred to in either (a) or (b) above.

(d) Whenever the Department shall find cause to deny an application for a certificate of registration, or to suspend or revoke same, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with 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 when an appeal is filed within 15 days from the date of receipt of the notice. The Commissioner shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

(e) Any new home purchaser under contract with a builder whose registration has been suspended or revoked may at the purchaser's option, and under the supervision of the Bureau of Homeowner Protection, require the builder to complete the work. The warranty plan under which the home is covered or was required to be covered at the time of closing shall cover said home for the length of the warranty.

Amended by R.1980 d.316, effective July 17, 1980.

See: 12 N.J.R. 303(b), 12 N.J.R. 452(d).

Amended by R.1986 d.141, effective May 5, 1986.

See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Substantially amended.

Amended by R.1991 d.140, effective March 18, 1991.

See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c).

Stylistic revisions.

Amended by R.1992 d.246, effective June 15, 1992.

See: 24 N.J.R. 1149(a), 24 N.J.R. 2244(b).

Text deleted at (a)5-13; new (a), (b) and (c) added to clarify suspension and revocation circumstances.

Administrative Correction.

See: 25 N.J.R. 2546(a).

Amended by R.1994 d.610, effective December 19, 1994.

See: 26 N.J.R. 1913(a), 26 N.J.R. 5010(a).

Amended by R.1996 d.93, effective February 20, 1996.

See: 27 N.J.R. 4058(a), 28 N.J.R. 1225(a).

Case Notes

Regulation presumes proportional penalties. *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs*, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

License revocation should not be automatically imposed. *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs*, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

Repayment to Fund could not be compelled without hearing. *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs*, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

Penalty supported by substantial evidence. *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs*, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

Department's determination and sanction requires findings and explanation. N.J.S.A. 46:3B-1 to 46:3B-12. *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs*, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

Suspension of builder's certification of registration with the New Home Warranty Program was unwarranted, despite that the builder did not comply with an arbitration award within the 45 days allocated; the builder presented sufficient mitigating evidence regarding its actions, which were thwarted by the homeowners themselves, as well as a record of no prior disciplinary actions or infractions. Builder was, however, ordered to correct the identified defects within 45 days, if allowed by the homeowners, or face suspension (adopting as modified 2007 N.J. AGEN LEXIS 726). *Dura-Bilt Contractors, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program*, OAL Dkt. No. CAF 4857-06, 2008 N.J. AGEN LEXIS 10, Final Decision (January 10, 2008).

Record indicated that letters between the builder and the Bureau crossed in the mail, with the result that the builder appeared to be refusing to participate in conciliation when that was not, in fact, the

builder's actual intention; thus, fairness dictated that sanctions not be imposed. *Evergreen Home Builders, LLC v. Bureau of Homeowner Protection*, OAL Dkt. No. CAF 01391-06, 2006 N.J. AGEN LEXIS 511, Final Decision (May 18, 2006).

Builder's failure to repair or reimburse for costs of repairing home defects justifies suspension of registration. *DeSimone v. Bureau of Home Protection*, 97 N.J.A.R.2d (CAF) 15.

Suspension of corporate homebuilder's registration was appropriate. *Department of Community Affairs v. Cathan, Inc.*, 94 N.J.A.R.2d (CAF) 21.

Failure to participate in the dispute settlement process and to reimburse the New Home Warranty Program State Fund was sufficient

grounds to suspend New Home Warranty Program registration and New Home Builders license. Bureau of Homeowner Protection New Home Warranty Program v. Stoltz, 93 N.J.A.R.2d (CAF) 5.

5:25-2.6 Failure to register; penalty

(a) Any builder who fails to register as herein required, who fails to file an amended application as specified in N.J.A.C. 5:25-2.5(b)4, or who fails to maintain a current builder registration as required by N.J.A.C. 5:25-2.1(a), shall be subject to a penalty not to exceed \$2,000 for each offense, to be levied by the Division and collected in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(b) Each instance in which a builder sells a new home without having been registered, or without then having a registration currently in effect, shall be considered a separate offense.

Amended by R.1998 d.126, effective March 2, 1998.

See: 29 N.J.R. 3916(a), 30 N.J.R. 825(a).

Rewrote the section.

5:25-2.7 Enrollment in a warranty plan

Each builder or building business entity shall, at the time of registration, indicate on the registration form the warranty plan in which that entity is enrolled or chooses to be enrolled. No builder or building business entity shall be issued a certificate of registration unless they have enrolled or have applied for enrollment in either the State Warranty Plan or a private warranty plan.

5:25-2.8 Restoration of registration

(a) No certificate of registration which has been suspended or revoked shall be restored to any person previously registered as a builder unless the Director finds that the reason for the suspension or revocation no longer applies and is unlikely to recur and that such builder has fully compensated or, as a condition of such restoration, will fully compensate, the State Plan or any private plan or any other person for any loss incurred as a result of such builder's failure to comply with the Act.

(b) No certificate of registration which has been suspended, revoked or allowed to lapse shall be restored unless and until all fees, premiums, surcharges and penalties have been paid in full.

(c) In any case in which payment has been made by the State Plan or any private plan as a result of failure by a builder to comply with the Act, full compensation, within the meaning of (a) above, shall include, without limitation, interest in the maximum amount allowed by law on any payments made by the State Plan or private plan. For purposes of determining the legal interest rate, such payments shall be deemed to be unsecured loans made by the plan pursuant to a written agreement.

New Rule, R.1982 d.55, eff. March 1, 1982.

See: 14 N.J.R. 9(a), 14 N.J.R. 234(b).

Case Notes

Revocation should not be imposed automatically. Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

Failure to comply with arbitration award to correct defects in home under warranty required reimbursement of costs to correct defects to obtain restoration of registration as new home builder. Williams v. Bureau of Homeowner Protection, 95 N.J.A.R.2d (CAF) 95.

SUBCHAPTER 3. WARRANTY COVERAGE AND STANDARDS

5:25-3.1 Warranty applicability

(a) The warranty specified in this section shall be provided by any and all new home builders for all new homes for which title is first transferred from builder to owner, or for which possession or occupancy is first given by builder to owner, on or after July 1, 1979.

(b) A new home built for an owner shall be considered given for occupancy if the builder shall obtain and give over to the owner a certificate of occupancy issued by a local enforcing agency pursuant to the New Jersey Uniform Construction Code. A new home sold to an owner shall be considered given for occupancy when the owner is authorized to occupy pursuant to any agreement between the builder and the owner.

(c) The following rules concern applicability to condominiums and cooperatives:

1. In addition to the individual dwelling units, the common elements serving condominiums or cooperatives are covered by this warranty, subject to the exclusions as defined under N.J.A.C. 5:25-3.4. The warranty date on common elements shall be the date on which that common element is first put to use. In the event one unit in a single condominium or cooperative structure is sold all remaining units in that structure shall be warranted whether sold or used for rental purposes.

2. Where the warranty date on common elements has expired, a unit owner who has taken first occupancy after that period may file a notice of defect on a common element directly with the builder and when it is established that such defect could not have been determined prior to occupying the unit, the defect shall be made a part of the unit owner's claim.

(d) Any condominium or cooperative building containing three or more dwelling units for which more than 10 percent of the unit deeds or leases have been transferred or signed, as the case may be, or where more than 10 percent of the units have been given for occupancy prior to July 1, 1979, shall not be subject to this Act. In the case of a project consisting of more than one building, individual buildings within such project shall not be subject to this Act by the same criteria.

(e) The warranty specified in this section shall be applicable to new owner-occupied two-family homes in the same manner and to the same extent as to one-family homes.

(f) In any case of mixed residential and nonresidential use, the warranty specified in this section shall be applicable only to that portion of a new home that is used exclusively for residential purposes, unless it can be shown that a defect in the nonresidential portion is or will be the proximate cause of a defect in the residential portion of the new home.

(g) Where an owner has contracted with someone other than the builder for either the mechanical, electrical, foundation or framing, other than piling foundation, the builder shall not be required to provide a warranty. Except where an owner has contracted with some person other than the builder for construction of the foundation and/or framing a warranty may be issued, at the builder's option, that shall contain exclusions for work done by anyone other than the builder, the builder's employees, agents or subcontractors.

(h) The warranty administrator or State Plan administrator shall require, prior to the issuance of a warranty for any model home, for any new home that has been completed but vacant for a period of at least 12 months, or for any new home for which it has been made a condition of enrollment under either an approved private plan or the State Plan, the inspection of the new home by the warranty plan prior to occupancy and the repair, replacement or correction, by the builder, of any materials or workmanship exhibiting defects and replacement of any appliances, fixtures or equipment not covered by a manufacturer's warranty for at least one year from the warranty date.

1. In the event that a builder disputes a determination by the warranty administrator or State Plan administrator that a defect exists, the builder shall have the option of submitting the certification of a licensed professional engineer that structural and/or mechanical components of the home meet industry standards and are adequate for the term of the warranty coverage.

2. In the event that there is not sufficient time to correct all defects prior of the transfer of the new home to an owner, the builder shall, with the agreement of the owner, and in lieu of repair, replacement or correction of defects, or replacement of appliances, fixtures or equipment, as provided in (h) above, have the option of posting, with an attorney at law or banking institution licensed in the State of New Jersey, an escrow in an amount not to exceed five percent of the selling price or limit of liability, the escrow to be released only upon a determination by the warranty administrator or State Plan administrator that the required work or replacement has been satisfactorily done, or to be forfeited to the approved private warranty plan or State Plan in the event that the work is not done in a satisfactory manner, or the required replacement is not made, within such time as the agreement establishing the escrow may allow.

(i) Builders may negotiate monetary settlements, as noted in N.J.A.C. 5:25-3.3(b), in the form of price concessions, which settlements shall survive closing and shall be incorporated into the terms of the warranty coverage available on the home.

1. Any defect or deficiency for which an owner accepts a monetary settlement shall be excluded from warranty coverage.

2. It shall be the responsibility of any builder entering into a monetary settlement in lieu of correcting a defect or deficiency to provide the approved private plan or the State Plan with a copy of an agreement, signed by both the builder and the owner, specifying the amount of the price concession or other monetary settlement and the defects or deficiencies for which the settlement is being made. This document shall be provided at or before the time that the new home is enrolled in the warranty plan.

As amended, R.1982 d.22, eff. February 1, 1982.

See: 13 N.J.R. 863(b), 14 N.J.R. 145(a).

(f) added.

Amended by R.1986 d.141, effective May 5, 1986.

See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Substantially amended.

Amended by R.1998 d.126, effective March 2, 1998.

See: 29 N.J.R. 3916(a), 30 N.J.R. 825(a).

Rewrote (g); and added (h) and (i).

Case Notes

Leaking roof on homeowners' house constituted a "defect" subject to warranty under New Home Warranty Security Program, not "incompletion," which was not so covered, where builder gave homeowner certificate of occupancy by the time of administrative hearing. *Bracken v. Princeton Estates, Inc.*, 350 N.J.Super. 300, 795 A.2d 275.

Provision in house construction contract attempting to eliminate remedies for homeowner was unenforceable as violation of public policy and remedies. *Marchak v. Claridge Commons, Inc.*, 261 N.J.Super. 126, 617 A.2d 1256 (A.D.1992), certification granted 133 N.J. 440, 627 A.2d 1145, affirmed 134 N.J. 275, 633 A.2d 531.

Mortgagee in possession who completed construction of condominium building after builder defaulted was entitled to indemnification. *Central Heights Condominium Ass'n, Inc. v. Little Falls Sav. and Loan Ass'n*, 251 N.J.Super. 335, 598 A.2d 233 (A.D.1991).

Petitioner's house not a 'new home' since the house had been rehabilitated from an existing house. *Glaum v. Bureau of Const. Code Enforcement, New Home Warranty Program, Dep't of Community Affairs*, 221 N.J.Super. 79, 533 A.2d 986 (App.Div.1987).

Builder who failed to provide homeowner with home warranty plan for nine months following completion of construction was ordered to pay \$400 late fee. *Pellegrini v. Bureau of Homeowner Protection/NHWP*, 96 N.J.A.R.2d (CAF) 105.

New Home Builders' Registration would not be revoked on the grounds that builder failed to correct a defective septic system. *Ocean Heights Realty v. Bureau of Homeowner Protection/NHWP*, 92 N.J.A.R.2d (CAF) 58.

Registration of builder revoked upon revocation of related company registration. *Bureau of Homeowner Protection v. Image Builders*, 92 N.J.A.R.2d (CAF) 39.