

**CHAPTER 25**  
**REGULATIONS GOVERNING NEW HOME**  
**WARRANTIES AND BUILDERS'**  
**REGISTRATION**

**Authority**

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

**Source and Effective Date**

R.1991 d.140, effective February 19, 1991.  
 See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c).

**Executive Order No. 66(1978) Expiration Date**

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, expires February 19, 1996.

**Chapter Historical Note**

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, became effective April 19, 1979 as R.1979 d.147. See: 10 N.J.R. 377(b), 11 N.J.R. 223(c). Pursuant to Executive Order No. 66(1978), Chapter 25 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 of January 1, 1986 for Chapter 25 was extended by gubernatorial waiver from January 1, 1986 to February 3, 1986. See: 18 N.J.R. 218(a). The expiration date was further extended by gubernatorial waiver from February 3, 1986 to March 31, 1986. See: 18 N.J.R. 490(a). Pursuant to Executive Order No. 66(1978), Chapter 25 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 was readopted as R.1991 d.140. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

- 5:25-1.1 Title
- 5:25-1.2 Scope
- 5:25-1.3 Definitions
- 5:25-1.4 Administration and enforcement
- 5:25-1.5 Effective date
- 5:25-1.6 Validity

**SUBCHAPTER 2. BUILDER REGISTRATION**

- 5:25-2.1 Registration required
- 5:25-2.2 Registration; new home builder
- 5:25-2.3 Certificate of registration
- 5:25-2.4 Registration renewal
- 5:25-2.5 Denial, suspension or revocation of registration
- 5:25-2.6 Failure to register; penalty
- 5:25-2.7 Enrollment in a warranty plan
- 5:25-2.8 Restoration of registration

**SUBCHAPTER 3. WARRANTY COVERAGE AND STANDARDS**

- 5:25-3.1 Warranty applicability
- 5:25-3.2 Warranty coverage
- 5:25-3.3 Builder responsibilities
- 5:25-3.4 Warranty exclusions
- 5:25-3.5 Performance standards

- 5:25-3.6 Structural and mechanical system standards
- 5:25-3.7 Major structural defects
- 5:25-3.8 Limit on liability
- 5:25-3.9 Warranty minimum
- 5:25-3.10 Remedy exclusive

**SUBCHAPTER 4. PRIVATE ALTERNATE NEW HOME WARRANTY SECURITY PLANS**

- 5:25-4.1 Private plans permitted
- 5:25-4.2 Requirements
- 5:25-4.3 Application approval
- 5:25-4.4 Revocation or suspension of approval
- 5:25-4.5 Denial, suspension or revocation hearing
- 5:25-4.6 Responsibilities; prohibitions

**SUBCHAPTER 5. THE STATE NEW HOME WARRANTY SECURITY PLAN**

- 5:25-5.1 Fund administrator
- 5:25-5.2 Claim eligibility
- 5:25-5.3 Builder participation; new home warranty and security fund
- 5:25-5.4 Warranty contributions, amount, date due
- 5:25-5.5 Claims procedure

**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".

**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 Housing and Development.

"Division" means the Division of Housing and Development 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."

"Person" means any individual, corporation, association, or other entity, as defined in N.J.S.A. 1:1-2.

"Release" means an executed acknowledgement of satisfaction of the claim of defect required to be given to a builder by an owner after a claim of defect is satisfied. A release shall not prejudice the right of the owner to further relief from the builder pursuant to N.J.A.C. 5:25-5.5, Claims procedure.

"State New Home Warranty Security Plan" or "State Plan" means the combination of dispute settlement procedure, New Home Warranty Security Fund, and any other elements of the program operated by the Division of Housing and Development intended to give effect to the Act and these regulations.

"Stockholder" means any person who owns any share or share in a builder except that as used herein the term stockholder shall not include persons holding publicly-traded shares on any national or regional stock exchange.

"Subsidiary" means any corporation, partnership or other business organization which is controlled in any manner by any other corporation, partnership or business organization. Control is presumed whenever such organizations share any common officers, directors, principals, or stockholders.

"Warrantor" means the builder who constructed or transferred title to the owner.

"Warranty" means the warranty prescribed by the Act and these regulations.

"Warranty administrator" means that person responsible for administering any portion or all of the claims resolution and defect correction process of a private plan where that person is a legal entity different from the warranty guarantor.

"Warranty date" means the first occupation or settlement date whichever is sooner; in cases of model homes, the warranty date will be the date on which a temporary certificate of occupancy is issued pursuant to N.J.S.A. 52:27D-119 et seq.

"Warranty guarantor" means that person responsible for securing the warranty, required to be offered pursuant to these regulations, on behalf of a private plan. The term shall mean and include warranty administrator where a separate administrator is not established.

Amended by R.1980 d.158, eff. April 15, 1980.

See: 12 N.J.R. 249(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).

In "Director" and "Division", changed "urban renewal" to "development."

Amended by R.1992 d.188, effective April 20, 1992.

See: 23 N.J.R. 3603(a), 24 N.J.R. 1476(a).

Major structural defect equated with major construction defect, as defined by statute.

Administrative change.

See: 25 N.J.R. 1755(a).

#### Case Notes

Rehabilitated home previously damaged by fire not 'new home'. *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).

#### 5:25-1.4 Administration and enforcement

(a) The Division of Housing and Development in the Department of Community Affairs shall administer and enforce this chapter. All the powers, duties, and responsibilities vested in the Commissioner by the New Home Warranty and Builders' Registration Act are hereby delegated to and vested in the Director of the Division of Housing and Development except the power to adopt, amend, or repeal regulations and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Within the Division of Housing and Development, responsibility for the administration and enforcement of these regulations shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities delegated by the Director, Division of Housing and Development by this chapter shall be executed, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, by the Chief, Bureau of Homeowner Protection.

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

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

Substituted "Commissioner" for "Director".

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

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

In (a), added reference to final determinations resulting from hearings. In (b), added supervision by Director and Assistant Director.

#### 5:25-1.5 Effective date

(a) The provisions of these regulations prescribing the new home warranty and the procedures for the implementation and processing of claims against a warranty shall take effect on July 1, 1979. No builder shall on or after that date, transfer title of possession for occupancy of any new home to an owner, unless the builder shall have registered in accordance with this chapter.

(b) No builder who has been issued a certificate of registration pursuant to these regulations shall, after August 1, 1979 be required to be licensed or registered by any municipality of this State; nor shall any builder be required to offer any warranty by any municipality; nor shall any builder be required to post any bond or any other form of security relating to the construction of a new home, exclusive of those required by water, sewer, utility, or land use requirements.

#### 5:25-1.6 Validity

If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

## SUBCHAPTER 2. BUILDER REGISTRATION

#### 5:25-2.1 Registration required

(a) No individual, partnership, corporation or other business entity shall engage in the business of constructing new homes unless registered with the Department in accordance with this subchapter.

(b) No corporation, partnership, or other business entity shall be issued a registration in accordance with this subchapter nor shall they engage in the business of construction of new homes unless a stockholder, director, officer, partner or employee thereof, as the case may be, shall be listed as a builder designee in accordance with this subchapter.

(c) For the purpose of these regulations the term "engaging in the business of construction of new homes" shall mean and include constructing any new home for sale, acting as prime contractor to construct any new home on behalf of oneself or another person or advertising or holding oneself out as constructing or being available to construct a new home or homes. The term shall also mean and include the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferer. The term shall also include a person who contracts with a general contractor or with sub-contractors for the construction of a new home for the purpose of sale to a purchaser.

(d) Nothing herein shall be interpreted as requiring that a person who constructs a new home for his own personal use and occupancy or who contracts with a licensed architect, professional engineer or attorney to provide customary professional services in connection with said new home, be registered as a builder; nor shall a person acting as a licensed architect, professional engineer or attorney for said owner to provide customary professional services in connection with said new home, be registered as a builder. If such new homes are subsequently sold to purchaser who is not the original builder/owner, notification that the home carries no warranty shall be made at the time of title transfer and/or closing. No person shall be permitted to construct a new home for his own use and occupancy more often than once each five years without being registered as a builder, and complying with these regulations.

(e) A corporation, partnership or other business organization may be denied a certificate of registration as a builder if any stockholder, director, officer, partner, or any other person having an economic interest in the organization shall have violated any of the provisions of N.J.A.C. 5:25-2.5. The provisions of this subsection shall extend to any business organization having a parent or subsidiary relationship to any such business organization.

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

Added text in (c) "The term shall ... sale to a purchaser."

### 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.

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.

### 5:25-2.3 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 when an appeal is filed within 15 days from the date of notice. The appointed hearing officer shall issue a recommended report and decision to the Commissioner. The applicant will be afforded 15 days from the date of the recommended decision in which to file exceptions, objections and replies thereto. Within 45 days thereafter the Commissioner shall issue a decision which adopts or rejects the recommended decision, the decision of the Commissioner shall be final.

(e) Any new home purchaser under contract with a builder whose registration has been suspended or revoked may at the purchasers 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).

## 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).

**5:25-2.6 Failure to register; penalty**

Any builder who fails to register as herein required or who fails to file an amended application as specified in N.J.A.C. 5:25-2.5(a)8 shall be subject to a penalty not to exceed \$2,000 for each offense. Each instance in which a builder sells a new home without having been registered shall be considered a separate offense.

**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.  
Sec: 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).

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**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.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct heating system as required to provide the required temperatures. Balance dampers, registers and make minor adjustments one time only, during the first year of the warranty.

ii. Possible Deficiency: Inadequate cooling.

(1) Performance standard: Where air conditioning is provided, the cooling system is to be capable of maintaining a temperature of 78 degrees Fahrenheit as measured in the center of each room at height of five feet above the floor, under local outdoor summer design conditions as specified in the latest edition of the New Jersey U.C.C. Energy Subcode and ASHRAE Handbook in effect at the time the home was constructed.

(2) Note for Air Conditioning: The cooling cycle outdoor design temperature established by ASHRAE provides for a maximum of 12 degree temperature differential between the outdoor and the indoor temperature. There may be periods when the outdoor temperature rises above the design temperature, thereby raising the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the air conditioning system is controlled by a single thermostat for one or more floor levels.

(3) Builder/Warrantor responsibility: Correct cooling system to meet the above temperature requirements during the first year of the warranty.

iii. Possible Deficiency: Ductwork and heating piping not insulated in uninsulated areas.

(1) Performance standard: Ductwork and heating pipes that are run in uninsulated crawlspaces, garages or attics are to be insulated. Basements are not "uninsulated areas", and no insulation is required.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install required insulation.

iv. Possible Deficiency: Refrigerant lines leak.

(1) Performance standard: Refrigerant lines that develop leaks during normal operation are deficiencies during the first year and second year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair leaking lines and recharge unit as required.

v. Possible Deficiency: Condensate lines clog-up.

(1) Performance standard: Condensate lines will clog under normal conditions.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall provide clean and unobstructed lines on warranty date.

(3) Owner responsibility: Continued operation of drain line is homeowner maintenance item.

vi. Possible Deficiency: Improper mechanical operation of evaporative cooling system.

(1) Performance standard: Equipment that does not function properly at temperature standard set is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct and adjust so that blower and water system operate as designed during the first year of the warranty.

vii. Possible Deficiency: Ductwork noisy.

(1) Performance standard: Noise in ductwork may occur for a brief period when the heating or cooling begins to function and is not considered a deficiency. Continued noise in the ductwork during its normal operation is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take necessary steps to eliminate noise in the ductwork.

viii. Possible Deficiency: Ductwork separates, becomes unattached.

(1) Performance standard: Ductwork that is not in tact or securely fastened is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall reattach and resecure all separated or unattached ductwork.

(l) Rules concerning electrical systems are as follows:

1. Electrical conductors:

i. Possible Deficiency: Failure of wiring to carry its designed circuit load to switches and receptacles.

(1) Performance standard: Wiring that is not capable of carrying the designed load, for normal residential use to switches and receptacles and equipment is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring and replace wiring if it fails to carry the design load.

2. Switches and receptacles:

i. Possible Deficiency: Fuses blow, or circuit breakers kick out.

(1) Performance standard: Fuses and circuit breakers which deactivate under normal usage, when reset or replaced is a deficiency during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring and replace wiring or breaker if it does not perform adequately or is defective.

ii. Possible Deficiency: Drafts from electrical outlets.

(1) Performance standard: The electrical junction box on exterior walls may produce a slight air flow whereby the cold air can be drawn through the outlet into a room. This problem is normal in new home construction.

(2) Builder/Warrantor responsibility: None.

iii. Possible Deficiency: Malfunction of electrical outlets, switches or fixtures.

(1) Performance standard: All switches, fixtures and outlets which do not operate as intended are considered deficiencies only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace defective switches, fixtures and outlets.

3. Service and distribution:

i. Possible Deficiency: Ground fault interruptor trips frequently.

(1) Performance standard: Ground fault interruptors are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These devices are sensitive and can be tripped very easily. Ground fault interruptors are required on outlets located in the kitchen, bath and powder rooms along with all exterior outlets. Ground fault outlets which do not operate as intended are considered deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace the device if defective.

Amended by R.1986 d.141, effective May 5, 1986.  
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).  
Recodified with changes from 3.4.

#### Case Notes

Attached patio performance standards and builder responsibility (citing former N.J.A.C. 5:25-3.4). Aronsohn v. Mandara, 98 N.J. 92, 484 A.2d 675 (1984).

Heating and air conditioning warranted (citing former N.J.A.C. 5:25-3.4). Kratchman v. Gabriel S. DiMedio, Inc., 5 N.J.A.R. 202 (1981).

#### 5:25-3.6 Structural and mechanical system standards

The structural and mechanical systems standards to be used in determining the adequacy of design, materials and workmanship for the structural components of the home and for the mechanical systems of the home including plumbing, electrical and heating and cooling systems shall be the provisions of the State Uniform Construction Code in effect on the date that the construction permit under which the new home was constructed was issued. The standards of adequacy for plumbing systems shall be as specified in N.J.A.C. 5:25-3.5(k)2; for Heating and Air Conditioning systems shall be specified in N.J.A.C. 5:25-3.5(k)4 and for the Electrical system capability shall be as specified in N.J.A.C. 5:25-3.5(l).

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

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

Deleted text "The standards of ... and 3.4(k)3" and added "The standards of ... N.J.A.C. 5:25-3.5(l)." Recodified from 3.5.

#### 5:25-3.7 Major structural defects

(a) The load bearing portion of a home is defined as the framing members and structural elements that transmit both dead and live loads of the home to the supporting ground. Examples of load bearing elements are: roof rafters and trusses; ceiling and floor joists; bearing partitions, supporting beams, columns, basement and foundation walls, and footings.

(b) A structural failure will not be considered a defect until it has been established by the Bureau of Construction Code Enforcement under the Uniform Construction Code in effect on the date that the Construction Permit under which the new home was constructed was issued as an actual or pending structural failure of some part of the load bearing system as defined in (a) above. To be eligible, such defect does not have to render the home uninhabitable, however, it must be of such a serious nature that it vitally affects the use of the home for residential purposes and the Construction Code Official shall issue a notice to that effect under N.J.A.C. 5:23-2.32 (Unsafe Structures).

(c) The following are excluded as major structural defects:

1. Changes by the owner to the established grade lines affecting basement and foundation walls;
2. Movement caused by flood or earthquake;
3. Actual or resultant damage caused by lightning, tornado, unnatural high winds or hurricanes;
4. Damage caused by additions or alterations to the home;
5. Improper loading over and above the design criteria for which that portion of the house was intended;
6. Resultant structural damage due to fire;
7. Changes in the water level which is caused by new development in the immediate area or can be directly traced to an act of nature;
8. Water seepage in basement or crawlspace after the first year of coverage.

(d) In the case where a major structural defect exists and the home is rendered uninhabitable, the Builder/Warrantor shall be responsible to pay for reasonable shelter expenses of the Owner until the home is made habitable should the condition occur during the first two years of the warranty. The State Plan or private plan will assume such responsibility during the third through tenth year coverage.

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

Recodified from 3.6; old text deleted and new substituted.

### 5:25-3.8 Limit on liability

The liability of a builder under the new home warranty shall be limited to the purchase price of the home in the first good faith sale thereof or the fair market value of the home on its completion date if there is no good faith sale. In the event a Certificate of Participation misstates the purchase price or the commencement date and the homeowner fails to notify the New Home Warranty Program within 45 days from the actual warranty commencement date, the limit of liability shall be as stated on the Certificate of Participation at the time of validation.

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

Recodified from 3.7 and added text "In the event ... time of validation."

### 5:25-3.9 Warranty minimum

It is the intent of this subchapter to specify the scope, applicability and standards pertaining to the minimum warranty required to be given by every builder to every owner. Nothing herein is intended to limit the right of any builder to offer a warranty which exceeds this specified minimum whether by reason of scope, applicability or standards.

Recodified from 3.8 by R.1986 d.141, effective May 5, 1986.  
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

### 5:25-3.10 Remedy exclusive

Pursuant to New Home Warranty and Builders' Registration Act (P.L.1977, c.467) the filing of a claim against the warranty specified by this subchapter shall constitute the election of a remedy and shall bar the owner from all other remedies. Nothing herein shall be deemed to limit the owner's right to elect other remedies except that such election shall bar the owner from pursuing the same claim under the warranty specified in this subchapter and in accordance with the procedures related hereto. For the purpose of this section, election of other remedies shall mean the filing of a complaint, counter-claim, cross-claim or third party complaint in any court that alleges matters covered by the warranty in particular or unworkmanlike construction in general.

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

Recodified from 3.9. Added text "For the purpose ... construction in general."

#### Case Notes

Administration was not a proper party to common law action. *Oak Trail Road Homeowners Ass'n v. Royal Mile Corp.*, 246 N.J.Super. 590, 588 A.2d 430 (A.D.1991).

Terms of warranty insurance plan governed party's conflict. *Oak Trail Road Homeowners Ass'n v. Royal Mile Corp.*, 246 N.J.Super. 590, 588 A.2d 430 (A.D.1991).

Where warranty did not reference election of remedies, civil action was not barred. *Postizzi v. Leisure & Technology, Inc.*, 235 N.J.Super. 285, 562 A.2d 232 (A.D.1989).

Private homeowner warranty insurance provided for conciliation, rather than arbitration. *Nolan v. Homes By Brinkerhoff, Inc.*, 230 N.J.Super. 306, 553 A.2d 392 (L.1988).

Ambiguity in private homeowner warranty insurance resolved in favor of buyer. *Nolan v. Homes By Brinkerhoff, Inc.*, 230 N.J.Super. 306, 553 A.2d 392 (L.1988).

## SUBCHAPTER 4. PRIVATE ALTERNATE NEW HOME WARRANTY SECURITY PLANS

### 5:25-4.1 Private plans permitted

Any person wishing to constitute and establish a private plan to provide for insurance coverage, the payment of claims, dispute settlement, and the like, may apply to the Department for approval as provided for in this subchapter. Participation by a builder in such private plans shall fulfill the builder's obligation to participate in a warranty program pursuant to this chapter.

### 5:25-4.2 Requirements

(a) In order to receive or maintain an approval a private plan shall conform to all the requirements specified in this section.

(b) The private plan shall provide financial security adequate to cover the total amount of claims that may be reasonably assessed against participating builders and adequate to cover the costs of operation of the plan.

(c) No private plan shall require any payment by an owner at any time subsequent to the warranty date as a condition of maintaining in effect the warranty prescribed by subchapter 3 of this chapter.

(d) A private plan may provide that either the builder or the warranty guarantor are primarily responsible for satisfying claims against the warranty at any given point during the life of the warranty, but such responsibility shall be clearly disclosed to the owner on or before the warranty date and shall not be modified or changed after the warranty term begins to run.

(e) A private plan shall provide a complaint, claims and payment procedure which:

1. Provides for an attempt at informal settlement of any claim arising out of the warranty between the builder and the owner and requires that any owner desiring to make a claim provide written notice of the complaint to the builder.

2. Provides for conciliation and/or arbitration of any warranty claim dispute by an independent third party selected and appointed in a manner approved by the

Department and disclosed to the owner on or before the warranty date.

3. Provides the owner with an opportunity to accept or reject a conciliation decision in satisfaction of the claim and notice of the opportunity to appeal that decision to a court of competent jurisdiction.

4. Provides fixed periods of time for action by either party pursuant to the arbitration or conciliation decision.

(f) Private plans shall provide for written notice to the owner concerning warranty coverage and the claims and dispute settlement procedures utilized, expressing in plain language the scope, applicability and standards for the warranty and the forms, procedures and processes involved in making a claim under the warranty. The form and content of the written notice shall be approved by the Department.

(g) Private plans shall maintain such loss and payment records as the Department may require and shall provide such reports as the Department may require including, but not limited to the following:

1. Once every 12 months a report showing the number of builders participating, the number of homes covered in each of these categories (first year, second year, third through tenth years), the total number and total amount of claims paid during the reporting period and the total amount of funds available to pay such claims.

2. Once every three months a report showing the names, addresses and builder registration numbers of any new builders admitted to coverage.

3. Within ten days, all private plans shall notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination as it relates to N.J.A.C. 5:25-2.5 "Denial, Suspension and Revocation of Registration."

(h) A private plan shall disclose to the Department in writing each occurrence and the circumstances surrounding the decision of the program to refuse to honor a claim awarded by an arbitrator not later than the date upon which an appeal to a court of competent jurisdiction is filed.

(i) Rules concerning notification of non-payment of warranty premium by enrolled builders are:

1. The private plan shall document for the Department in writing all procedures taken to collect warranty premiums from enrolled builders negligent in such payment. Such documentation shall include the following steps:

i. The private plan must notify the enrolled builder immediately upon the discovery of any failure to pay such premium and shall give such builder not more than ten days in which to pay. The private plan shall notify the Department of the failure of any builder to remit such a premium within the ten-day period.

ii. The private plan shall also investigate all homes constructed by the enrolled builder to determine all instances of non-payment of warranty premiums. The private plan shall report its findings to the Department within ten days of the completion of its investigation.

(j) The private plan shall have a warranty guarantor which shall conform to all of the following requirements:

1. The warranty guarantor shall either possess a Certificate of Authority issued by the New Jersey Department of Insurance to write the kind of insurance specified in N.J.S.A. 17:17-1.1(g) or be designated by the Department of Insurance as an eligible surplus lines carrier under N.J.S.A. 17:22-6.45.

2. The warranty guarantor shall furnish to the Department satisfactory evidence that the form of any insurance policy to be used to provide coverage for the private plan has been approved by the New Jersey Department of Insurance with respect to its compliance with the provisions of State insurance law.

3. The warranty guarantor shall have and shall maintain an A.M. Best and Company, Inc. rating of "A" or "A+" and shall otherwise be and remain in a financial condition adequate, considering all circumstances including reinsurance arrangements, to cover the risk assumed under the private plan.

4. The terms and conditions of any insurance agreement insuring the private plan shall be subject to approval by the Department as providing the coverage with respect to the warranties required to be provided under said plan. Such terms and conditions shall not be modified or altered without the prior consent of the Department.

5. The warranty guarantor shall agree to provide to the Department such information concerning the settlement of claims and its financial condition as may reasonably be required to demonstrate its initial qualifications to act as a warranty guarantor, the performance of its obligations under the terms of its insurance agreement and its continued satisfaction of the requirements as to financial condition expressed herein.

Amended by R.1980 d.158, eff. April 15, 1980.

See: 12 N.J.R. 249(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.

(k) If at any time during the period of approval any material fact stated or described in the application for approval shall change, the applicant shall file an amended application with the Department within 30 days the change takes place. No change, except as may be made outside the control of the applicant, shall be made without prior approval of the Department.

1. Whenever a private plan shall seek to substitute one warranty guarantor or administrator for another, such shall be permissible, provided that the rights and benefits due owners under the plan, shall not be materially affected.

Repeal and New Rule, R.1986 d.141, effective May 5, 1986.  
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

#### 5:25-4.4 Revocation or suspension of approval

(a) If the Department shall establish that any private plan has committed any of the following, its approval may be revoked or suspended:

1. Willfully made a misstatement of a material fact in the application for approval.
2. Established a pattern of unreasonable delay in the processing and disposal of warranty claims.
3. Unreasonably refused to honor a warranty claim or claims.
4. Failed to conform to N.J.A.C. 5:25-4.2(i).
5. Undertaken to change, changed or become aware of a change in circumstances which induced the Department to approve the plan without having filed an amended application for approval.
6. Violated any of the provisions of section 6 of this subchapter.
7. Deviated in a significant way from the complaint and claims process upon which the approval was based.

#### 5:25-4.5 Denial, suspension or revocation hearing

(a) Whenever the Department shall believe that it has cause to suspend, deny or revoke approval, the following procedure shall apply:

1. Notice: The applicant or approved program shall be furnished with a written notice describing the reasons for denial or revocation and fixing the time and place for a hearing on the matter.
2. Hearing: The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act (P.L. 1968, C.410 c.52:14B-1 et seq.) applicable to contested cases. Upon the conclusion of the hearing, the hearing officer shall issue a recommended report and decision, a copy of which shall be furnished the Commissioner and the applicant. Each party shall be afforded 15 days in which to file exceptions, objections and replies hereto.
3. Decision: The Commissioner shall, upon the expiration of the period permitted for the filing of exceptions, objections and replies, issue a decision within 45 days

which adopts, rejects, or modifies the recommended report and decision. The decision of the Commissioner shall be final. Failure of the Commissioner to issue a decision within 45 days shall be deemed an affirmation of the decision below.

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

#### 5:25-4.6 Responsibilities; prohibitions

A private plan shall provide insurance coverage for all of the new homes constructed by its member builders irrespective of the fact that a member builder has not paid a premium on specific homes, or because of the increase in risk of any particular project or home, due to its size, location, or otherwise.

### SUBCHAPTER 5. THE STATE NEW HOME WARRANTY SECURITY PLAN

#### 5:25-5.1 Fund administrator

Responsibility for administering the State plan is hereby delegated to the Director, Division of Housing and Development. The Director shall establish such procedures and controls as may be necessary to account for the fund and shall approve all payments from the fund.

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.

#### 5:25-5.2 Claim eligibility

(a) The following owners are eligible to file a claim against the State fund:

1. Owners having a warranty claim which occurs during years 3-10 of the warranty;
2. Owners having a warranty claim against a builder participating in the State Plan, who has refused to honor or is unable to honor the claim;
3. An owner who has a warranty claim against a builder who, contrary to law, was not a participant in the State Plan;
4. An owner who has a valid warranty claim against a private plan which is unable to pay.

(b) An owner who elects a remedy other than the filing of a warranty claim with an approved private plan or the State plan shall not be eligible thereafter to file a claim against the State fund. The State fund shall not be liable for any claim not filed in accordance with this chapter.

(c) No person who is not an eligible owner, as determined in accordance with (a) above, shall be entitled to file a claim against the State fund. No builder or other seller of a new home shall be eligible to file a claim against the State fund or to obtain indemnification or other relief from the State fund, whether in a third-party action or otherwise.

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

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

Text at (b) and (c) added to clarify suspension and revocation circumstances.

#### Case Notes

Election of nonadministrative remedy does not preclude 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).

#### 5:25-5.3 Builder participation; new home warranty and security fund

Any builder not participating in a private plan shall be required to participate in the State Plan. The State Plan shall cover any new home purchased from a builder except a home enrolled in and warranted under a private plan.

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

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

#### 5:25-5.4 Warranty contributions, amount, date due

(a) Each builder not participating in an approved private plan shall contribute to the State plan in an amount equal to a percentage of the purchase price of the home, or of the fair market value of the home on its completion date if there is no good faith arms' length sale, determined in accordance with (b) below, each time he sells a home. When the cost of land is not included in the sale, the purchase price shall be deemed to be 125 percent of the contract amount and shall be the basis for calculating the premium and the dollar value placed on the Certificate of Participation.

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgagee in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services that may be required pursuant to the warranty, or may, at his option, pay 0.8 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in his place with regard to any claims made pursuant to this subchapter, but shall not stand in his place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in the place of the seller. The Department shall inspect the new home for any defects. The list of defects shall be attached to the Certificate of Participation. Uncompleted portions shall be excluded from the warranty coverage until completed, in accordance with N.J.A.C. 5:25-3,4(a)1. The additional amount paid shall not be passed through to the owner.

2. Where a builder is under contract with a property owner to fully construct a new home and provide the required warranty coverage and fails to complete the contract and obtain a certificate of occupancy, the owner may apply to the Department for a new home warranty and pay a premium of 0.8 of one percent of the purchase price of the home. Such procedure, and the coverage thereby secured, shall be as defined in N.J.A.C. 5:25-5.4(a)1. A warranty shall not be issued when the home is less than 80 percent complete or it is determined by the Department that the cause of the builder's not completing the home was the owners' failing to meet their responsibility under the contract.

3. Each payment shall be forwarded to the Department at least 10 days prior to date of settlement and shall be accompanied by a completed and executed Certificate of Participation on the form prescribed by the Director. The Department shall then validate the Certificate of Participation and return four validated copies to the builder.

4. In such instances where the Department determines that there have been an excessive number of awards against the New Home Warranty Security Fund on the part of an individual builder, due to negligent construction practices, the Department may levy a surcharge against such builder.

(b) The contribution percentage to be paid for each new home by a builder not participating in an approved private plan shall be determined as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.2;

2. If, for at least seven years but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.25;

3. If, for at least five years but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.3;

4. If, for at least two years but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.35;

5. If a builder has not previously been registered, or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.375;

6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.5.

7. If, at any time while a builder's contribution percentage is 0.5 by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.7.

8. Whenever a builder is or has been a builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, of any builder entity, the claim and payment record of that other entity, shall, if less favorable than that of the builder individually, be attributable to the builder for purposes of this subsection.

9. Whenever a builder is a corporation, partnership or subsidiary, the claim and payment record of any builder designee, officer, or stockholder or partner with at least a ten percent ownership interest, or of any corporation, partnership or subsidiary, having any builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, in common with the builder, shall, if less favorable than that of the builder, be attributable to the builder for purposes of this subsection.

10. If a builder is an individual or group of individuals who is or are the sole owner(s) of another builder that is a corporation, partnership or subsidiary, or if a builder is a corporation, partnership or subsidiary having the same builder designee, officers, and stockholders or partners with at least a ten percent ownership interest, as another builder, the claim and payment record of the one builder shall be attributable to the other for purposes of this subsection.

11. For purposes of this subsection, "10 years" shall mean the 120 month period immediately prior to the date of enrollment of a new home under the State Plan, "seven years" shall mean the 84 month period immediately prior to such date, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall

mean the 24 month period immediately prior to such date; exclusive, in all cases, of any consecutive 12 month period in which no new homes were enrolled in the State Plan or in any approved private plan. Thus, for example, a builder who had no payments or adverse final determinations for 10 years but enrolled no homes during one of those years would not be eligible for the 10 year rate until another year had passed in which he both enrolled at least one new home and had no payments or adverse final determinations.

(c) The establishment of a contribution percentage for a builder that is in excess of the minimum amount shall be in addition to, and not to in lieu of, any punitive action taken pursuant to N.J.A.C. 5:25-2.5 or 2.6 or any surcharge levied pursuant to (a)4 above.

(d) The initial contribution percentage for each builder shall be established as of January 1, 1993 of this subsection. Thereafter, the contribution percentage rate for each builder shall be reviewed by the Division, and revised if necessary, when the builder's registration is renewed. The Department may change the contribution percentage, and make the change effective at a time prior to renewal at any time that a payment is made or there is a final determination that a payment must be made.

(e) There shall be no appeal from the establishment of a contribution percentage except upon the grounds that the record used by the Division for that purpose is either incorrect or incomplete. In any case in which a determination of builder responsibility for a payment was not appealed as required in this chapter or was unsuccessfully appealed, the builder shall not have the right to appeal a contribution percentage determination based on any such prior determination of builder responsibility.

(f) "Claim against the builder" shall include any claim covered by the one-year, two-year, and/or 10-year warranty, as set forth in N.J.A.C. 5:25-3.2. No major structural defect that a builder is not obligated to repair shall be charged against a builder for purposes of determining the builder's contribution percentage, if the Department finds that such major structural defect was entirely attributable to a product failure that was not known to the builder at the time of construction and was caused by factors beyond the builder's control.

Amended by R.1980 d.316, eff. 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.1992 d.246, effective June 15, 1992.

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

Use of State plan as remedy specified.

Amended by R.1992 d.395, effective October 5, 1992.

See: 24 N.J.R. 2663(a), 24 N.J.R. 3525(c).

Fixed rate builder's premium deleted; premium rate now based on builder's record.

Administrative Correction.

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

## Case Notes

Election of nonadministrative remedy does not preclude 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).

**5:25-5.5 Claims procedure****(a) Builder responsibilities rules are:**

1. The builder shall provide to the owner, on or before the warranty date for each new home, a full statement of warranty coverage and warranty claims procedure in such form as shall be prescribed by the Director.

2. Upon receipt of the four validated copies of the Certificate of Participation returned by the Department pursuant to N.J.A.C. 5:25-5.4(a)2, the builder shall distribute said validated copies in the following manner.

i. On the warranty date, one copy (the owner's settlement copy) shall be furnished to the owner.

ii. Within 10 days of the warranty date, one copy shall be furnished by the builder to the mortgagee, if any, of the new home.

iii. One copy shall be furnished to the local construction official as part of the application for a certificate of occupancy.

iv. One copy shall be retained by the builder as a file copy.

3. The Certificate of Participation shall be in such form and contain such information as shall be prescribed by the Director. A late payment fee shall be assessed and, having been assessed, shall be paid for each failure to remit payments due the Department on time, as provided in N.J.A.C. 5:25-5.4. Such late payment fee shall not exceed \$50 for the first 30 days, or for any part thereof, and \$500 for each 30-day period or part thereof thereafter.

4. The builder shall, on or before the warranty date, provide the owner with written notice concerning the business address to which notifications concerning alleged defects can be directed. The builder shall further provide written notice by regular mail of the new address to which notifications may be directed should the business address of the builder change at any time during the first two years following the warranty date.

5. Whenever an owner shall provide a builder with a notice of defect, then the builder shall arrange, with the owner, a mutually agreeable time for an inspection of the defect. Upon completion of the inspection, but in no case later than 30 days from receipt of notice of the defect, the builder shall provide the owner with a written statement setting forth the action he will take to correct the defect and the time by which the defect will be corrected.

**(b) Owner responsibilities rules are as follows:**

1. Except as specifically required in N.J.A.C. 5:25-3.4, any owner who believes he has a covered defect shall provide written notice of the nature of the defect(s) to the builder not later than seven calendar days after the date on which the warranty on that item expires. The notice shall be delivered to the builder's business address.

2. Upon providing written notice to the builder the owner shall allow the builder 30 days in which to respond and shall make both himself and the home available to the builder for purposes of inspection of defects, between 9:00 A.M. and 6:00 P.M., Monday through Friday, or other mutually agreeable time.

3. If the matter cannot be resolved through the informal dispute settlement process established in (a)5, (b)1 and 2 above, then the owner may file Notice of Claim and demand, for dispute settlement with the Division. The Notice of Claim shall be filed not later than 14 days after the expiration of the 30 day period provided in (b)2 above. The claim shall state the name of the builder, the date on which the notice of defect was given to the builder, the Certificate of Participation number and a copy of the written notice of the defect, as prescribed in (b)1 above.

i. Except in the case of claims which relate to structural problems or emergencies, a notice of claim shall not be submitted until the expiration of 120 days from the warranty date.

ii. An owner may not file more than one claim for the same defect. However, a new claim may be filed by the owner if new facts arise which could not previously have been known with reasonable diligence.

iii. Where a claimed defect is filed that cannot be observed or determined under normal conditions it is the owner's responsibility to substantiate that the condition does exist. Any cost involved shall be paid by the owner and if properly substantiated, reimbursement shall be made by the builder or the State Plan, whichever is liable for the claim.

4. Where an owner of a new home has not received a valid Certificate of Participation pursuant to (a)1 above from the builder then the owner may file both the notice of defect and the notice of claim and demand for conciliation with the Division directly and need not provide notice to the builder. In the event the builder subsequently pays the warranty premium the Department shall give him notice of any pending claims and the status thereof.

**(c) Rules concerning Departmental responsibilities and formal claims resolution process are:**

1. The Division shall, upon receipt of Notice of Claim, designate a conciliator and schedule a conciliation hearing. Whenever possible, such hearing shall take place at the warranted premises. Any resulting agreement shall be in writing, listing the specific actions to be taken by the builder to repair or replace defects in the home and a date by which corrections shall take place.

2. When the defect is corrected or a monetary settlement is made in lieu thereof, the builder shall present the owner with a release for execution. One copy of the signed release shall be retained by the builder, one by the owner, and one copy shall be forwarded to the Division.

3. If all or any part of the dispute remains unresolved after conciliation, the Department shall provide one of the following options:

i. Arbitration:

(1) Where both parties agree, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. The arbitrator for both the State and private plans shall possess proof of satisfactorily passing the course and tests for the One and Two Family Dwelling Code and such proof shall be obtained within two years from the effective date of these regulations.

(2) The decision of the arbitrator shall be binding on both parties and reviewable only under such circumstances and to such extent as is available pursuant to the New Jersey Arbitration Act. The decision shall fix responsibility, the extent of the defect, and the date by which it must be corrected. In all cases where both parties elect to arbitrate the claims dispute and an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either party or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

(3) Each party and the Division shall receive one copy of the arbitrator decision.

(4) Whenever arbitration shall result in a finding for the owner, the arbitrator shall prescribe that the builder correct the defect or make necessary replacements.

(5) In lieu of separate conciliation and arbitration, the Division may provide, at its sole option and discretion, for an expedited dispute settlement process wherein conciliation and arbitration are performed simultaneously and any agreement arrived at or decision rendered shall be binding as provided in (c)3i(2) above. Such arbitration shall be subject to the same rules and regulations as defined in (c)3i(3) above.

ii. Administrative hearing:

(1) Where both parties do not agree to arbitration, the Bureau of Homeowner Protection shall thoroughly review the matter and shall make a decision as to the merits of the claim. This decision shall be binding on both parties, provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice

of such decision the Division shall then provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(2) Such hearing shall be held within 30 days of demand by either party, as in (c)3ii(1) above, and a recommended report and decision shall be issued within 45 days of the hearing. Each party shall be permitted 15 days from the date of their receipt of the recommended report and decision to file written exceptions, objections, or argument before the Commissioner, who shall, within 45 days thereafter, issue a final decision which adopts, modifies or rejects the recommended decision. Failure of the Commissioner to issue a decision within 45 days shall constitute affirmation of the recommended decision.

(d) Claim on common elements rules are as follows:

1. Claims including common elements in a condominium or cooperative may only be made by an authorized representative of the association. Where, however, the builder retains control of more than 50 percent voting interest in the association, claim may be made by the owners of unit interest directly to the Bureau or the applicable private plan administrator. The claimed common element defect will then be part of the unit claim and processed according to (c) above.

(e) Final payment in event of builder default rules are as follows:

1. If any builder, after receiving the decision of the arbitrator, the Bureau of Homeowner Protection or the Director, as the case may be, refuses to correct any defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2. The amount of the award shall, in all cases, be based upon the lower or lowest of two or more bona fide estimates acceptable to the Division for the work intended to be covered. Payment shall be made jointly to the owner and to the contractor performing the work upon certification by both of them that the work is complete and the defect has been removed, provided, however, that payment may be made to the owner only, upon presentation of proof that the contractor has been paid. An owner electing to perform the work himself shall receive payment in an amount not to exceed the cost of the materials upon certification by him of the completion of the work and the removal of the defect. Payment shall be made only for work authorized in writing by the

Department and upon completion to the Department's satisfaction.

3. In the event that an owner refuses to accept the amount certified by the Director as being in settlement of all claims against the fund for the defect at issue, the Director shall provide an opportunity for an Administrative Hearing pursuant to the Administrative Procedure Act.

4. When a payment is made under these regulations the owner shall assign to the State all rights, title and interest in any claim or cause of action the owner may have against the builder arising out of the claim for which payment is made. The owner shall execute and deliver any instruments and do whatever else is necessary to secure such rights and shall do nothing to prejudice such right.

(f) Nothing herein shall limit the right of an owner to seek a remedy directly in court pursuant to Section 9 of the Act, without regard to the dispute settlement procedures made available in accordance with this subchapter; provided, however, that the New Home Warranty Security Fund shall have no liability if a remedy other than dispute settlement in accordance with this subchapter is elected by the owner of a new home.

(g) All claims filed with the State Plan after the expiration of the first two-year warranty period shall be filed with and processed by the Division. All payments made by the Division on such claims shall be from the New Home Warranty Security Fund.

1. Upon receipt of a claim, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 above, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2. The provisions of (e)2, 3 and 4 above shall apply in all cases in which claims are filed with the State Plan after the expiration of the first two-year warranty period.

Amended by R.1980 d.158, effective April 15, 1980.

See: 12 N.J.R. 249(d).

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.1981 d.181, effective June 4, 1981.

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

(c)3ii(1): "The Bureau . . . notice of such decision" added.

(e)1: "the Bureau of Construction Code Enforcement" added.

Amended by R.1982 d.386, effective November 1, 1982.

See: 14 N.J.R. 944(a), 14 N.J.R. 1210(a).

Added seven day limit to (b). Notice of Claim within 14 days after 30 day expiration period added to (b)3.

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).

New Home Security Fund liability limited.

Amended by R.1994 d.50, effective February 7, 1994.

See: 25 N.J.R. 4986(a), 26 N.J.R. 796(b).

#### Case Notes

Procedural requirements under former regulation; reimbursement amount to owner from builder to be determined by Bureau of Construction Code Enforcement. *Kratchman v. Gabriel S. DiMedio, Inc.*, 5 N.J.A.R. 202 (1981).