

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, a warranty is not applicable.

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.

Case Notes

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).

5:25-3.2 Warranty coverage

(a) The warranty made applicable by these regulations shall be as follows:

1. **One Year Warranty:** For a period of one year from the warranty date each new home shall be free from:

i. Performance standard defects (see N.J.A.C. 5:25-3.5)

ii. Appliance fixture and equipment defects (see N.J.A.C. 5:25-1.3).

iii. Mechanical and electrical systems defects (see N.J.A.C. 5:25-1.3 and 5:25-3.5 (k) and (l)).

iv. Major structural defects (see N.J.A.C. 5:25-1.3 and 5:25-3.7).

2. **Two Year Warranty:** For a period of two years from the warranty date each new home shall be free from:

i. Appliance, fixture and equipment defects only if such defects are covered under a manufacturer's warranty (see N.J.A.C. 5:25-1.3).

(1) NOTE: No warranty for appliances, fixtures or equipment shall exceed the length and scope of the warranty offered by the manufacturer.

ii. Mechanical and electrical system defects (see N.J.A.C. 5:25-3.6).

iii. Major structural defects (see N.J.A.C. 5:25-1.3 and 5:25-3.7).

3. **Ten Year Warranty:** For a period of 10 years from the warranty date on each new home shall be free from:

i. Major structural defects (see N.J.A.C. 5:25-1.3).

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.

Case Notes

One-year warranty on attached patios. *Aronsohn v. Mandara*, 98 N.J. 92, 484 A.2d 675 (1984).

Condominium association's failure to show major structural defects through actual damage to load-bearing system requires denial of new home warranty claim. *Pier House View Condominium Association v. Department of Community Affairs*, 96 N.J.A.R.2d (CAF) 1.

Claims under new home warranty program were either untimely filed or were insufficient for failure to establish major structural defects. *Harborview Condominium v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 38.

Defect not a warranted defect. *Seltzer v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 52.

5:25-3.3 Builder responsibilities

(a) Each builder shall be responsible for the correction of any defect which appears during any of the warranty period specified in this section, unless such responsibility is otherwise assumed by the private plan of which he is a member. Participants in the State Plan shall be responsible for correction of defects for the first two years of the warranty.

(b) The builder's responsibility in the case of a defect covered by this warranty shall include removal of the defects by repair or replacement or payment of the reasonable cost of repair or replacement. The choice as between repair,

replacement or payment is the builders. The builder's responsibility shall include actual reasonable shelter expenses during repairs.

(c) Steps taken by the builder to correct defects shall not be deemed to extend the term of the warranty beyond that specified in this section.

(d) Written notice of a defect in any item under the warranty must be received by the builder not later than seven calendar days after the date on which the warranty on that item expires.

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).

Old (d) deleted; (e) recodified to (d).

Case Notes

Repair of water streaming could only be accomplished by waterproofing as recommended by warranty analyst under arbitration award. *Halaby v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 26.

Dismissal; homeowner prevented the builder from making repairs. *Gerling v. R. Cola Construction Co., Inc.* 94 N.J.A.R.2d (CAF) 54.

New Home Warranty Program; homeowner preventing builder from correcting defects. *Baker v. MVN Homes, Inc.*, 94 N.J.A.R.2d (CAF) 34.

Builder required to make repairs. *Rigas v. Bureau of Homeowner Protection, New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 19.

5:25-3.4 Warranty exclusions

(a) The following are not included in the warranty required by this subchapter:

1. Any portion of a covered home which is not completed by the warranty date; except that, after completion, such portions will be covered until the end of the warranty period specified for that portion, pursuant to N.J.A.C. 5:25-3.2. Builder failure to complete construction of such portions may constitute the basis for denial, supervision, or revocation of registration pursuant to N.J.A.C. 5:25-2.5. Any item for the completion of which funds are being held in escrow shall be deemed to be an incompleteness rather than a defect. If such item exhibits a defect after the release of the escrowed funds, then it shall be included in the warranty. In all cases, the warranty period shall be deemed to have commenced on the warranty date.

2. Defects in outbuilding (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home are covered), swimming pools and other recreational facilities, driveways, walkways, unattached patios, boundary walls, retaining walls which are not necessary for the home's structural stability, fences, landscaping (including sodding, seeding, shrubs, trees and plantings), offsite improvements, or any other improvements not a part of the home itself.

3. Bodily injury, damage to personal property, or damage to real property which is not part of the home.

4. Any damage to the extent it is caused or made worse by:

i. Negligent or improper maintenance or improper operation by anyone other than the builder or his employees, agents or subcontractors, or;

ii. Failure of anyone other than the builder or his employees, agents or subcontractors to comply with the warranty requirement of manufacturers of appliances, equipment or fixtures, or;

iii. Failure to give notice to the builder of any defect within the time frame established under N.J.A.C. 5:25-3.3(e) and 5:25-5.5(b) or the applicable private warranty plan; or

iv. Changes of the grading of the ground by anyone other than the builder, or his employees, agents or subcontractors, or;

v. Failure to take timely action in emergent cases to minimize any loss or damage.

5. Any defect in, or caused by, materials or work supplied by anyone other than the builder, or his employees, agents or subcontractors. The builder shall, however, be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder which is not in accordance with accepted industry standards;

6. Normal wear and tear or normal deterioration in accordance with normal industry standards;

7. Accidental loss or damage from acts of nature such as, but not limited to; fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. However, soil movement (from causes other than flood and earthquake) is not excluded;

8. Insect damage;

9. Any loss or damage which arises while the home is being used primarily for non-residential purposes;

10. Changes, alterations, or additions made to the home by anyone after initial occupancy, except those performed by the builder as his obligation under this program;

11. Any defect caused to a finished surface material or any work supplied by anyone other than the Builder/Warrantor, or his employees, agents, or sub-contractors in that, it is determined the installer has accepted the Builder/Warrantor's surface to apply the finish material;

12. Any materials and/or workmanship furnished and installed by the Builder/Warrantor that does not comply with the specifications in a sales agreement or contract which is not defective;

13. Consequential damages to personal property are excluded, consequential damages to real property as a result of a defect or repair of a defect are covered.

(b) Other exclusions are included in the performance standards (5:25-3.5) to better define those standards and are identified by "Exclusion".

New Rule R.1986 d.141, effective May 5, 1986.
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).
Old section 3.4 recodified to 3.5.

Case Notes

Unattached patios not warranted (citing former N.J.A.C. 5:25-3.3).
Aronsohn v. Mandara, 98 N.J. 92, 484 A.2d 675 (1984).

Unilateral repairs without resorting to required claims procedures precluded coverage under new home warranty program. *Elliott v. Department of Community Affairs*, 95 N.J.A.R.2d (CAF) 81.

Escrow agreement excluded defects; New Home Warranty Program. *Chaykowsky v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 37.

Bureau of Homeowner Protection found claims of defects were not warranted. *Hsueh v. BLS Building Group, Inc.*, 93 N.J.A.R.2d (CAF) 45.

Defects not covered by warranty. *Narol v. New Home Warranty Program*, Bureau of Homeowner Protection, 92 N.J.A.R.2d (CAF) 65.

Wet basement problems; New Home Warranty Program. *N.J.S.A. 46:3B-10 et seq. Sussman v. Ocean Heights Realty Co.*, 91 N.J.A.R.2d (CAF) 9.

5:25-3.5 Performance standards

(a) The following performance standards set minimum standards which prescribe the level for quality of materials and performances in workmanship for the construction of new homes.

1. To the extent that detailed minimum performance standards for construction have not been enumerated in these Performance Standards, builders shall construct homes in accordance with good industry practice which assures quality of materials and workmanship. Likewise, the validity of any home buyer's claims for defects for which a standard has not been enumerated here shall be determined on the basis of good industry practice which assures quality of materials and workmanship, and any conciliation or arbitration of such claims shall be conducted accordingly.

2. The Performance Standards list specific items with each separate area of coverage.

(b) Rules concerning site work are as follows:

1. Grading:

i. Possible Deficiency: Settling of ground around foundation, utility trenches or other areas on the prop-

erty where excavation and back fill have taken place that affect drainage away from the house.

(1) Performance standard: Settling of ground around foundation walls, utility trenches or other filled areas: which exceeds a maximum of six inches from finished grade established by the Builder/Warrantor.

(2) Builder/Warrantor responsibility: If Builder/Warrantor has provided final grading, Builder shall fill settled areas affecting proper drainage, one time only, during the first year Warranty period. Builder/Warrantor is then responsible for removal and replacement of shrubs and other landscaping installed by the Builder/Warrantor affected by placement of the fill.

2. Drainage:

i. Possible Deficiency: Improper grades and swales which cause standing water and affects the drainage in the immediate area surrounding the home.

(1) Performance standard: Necessary grades and swales shall be established to provide proper drainage away from the house. Site drainage under this warranty is limited to those immediate grades and swales surrounding the home. Standing or ponding water within the immediate surrounding area of the home shall not remain for a period longer than 24 hours after a rain. Where swales are draining from adjoining properties or where a sump pump discharges, an extended period of 48 hours is to be allowed for the water to dissipate. The possibility of standing water after an unusually heavy rainfall should be anticipated and is not to be considered a deficiency. No grading determination is to be made while there is frost or snow or when the ground is saturated.

(2) Exclusion: Standing or ponding water on the property which does not directly affect the immediate area surrounding the foundation of the home, caused by unusual grade conditions, retainage of treed areas, or sodding done by the homeowner is not considered a defect.

(3) Builder/Warrantor responsibility: Responsible for initially establishing the proper grades, swales and drainage away from the home.

(4) Owner responsibility: The owner is responsible for maintaining such grades and swales once properly established by the Builder/Warrantor to prevent run-offs and erosion of the soil.

(5) Exclusion: Soil erosion and runoff caused by failure of the owner to maintain the properly established grades, drainage structures and swales, stabilized soil, sodded, seeded and landscaped areas; are excluded from the Warranty.

ii. Possible Deficiency: Grassed or landscaped areas which are disturbed or damaged due to work on the property in correcting a deficiency.

(1) Performance standard: Landscaped areas which are disturbed during repair work is a defect.

(2) Builder/Warrantor responsibility: Restore grades, seed and landscape to meet original condition.

(3) Exclusion: Replacement of trees and large bushes which existed at the time the house was constructed or those added by the owner after occupancy or those which subsequently die are excluded from Warranty Coverage.

(c) Rules concerning concrete are as follows:

1. Cast-in place concrete:

i. Possible Deficiency: Basement or foundation wall cracks, other than expansion or control joints.

(1) Performance standard: Non-structural cracks are not unusual in concrete foundation walls. Cracks one-eighth inch in width or greater are considered excessive.

(2) Builder/Warrantor responsibility: Repair non-structural cracks in excess of one-eighth inch by surface patching. These repairs should be made toward the end of the first year of ownership to permit normal stabilizing of the home by settling.

ii. Possible Deficiency: Cracking of basement floor.

(1) Performance standard: Minor cracks in concrete basement floors are common. Cracks exceeding one quarter inch width or one quarter inch in vertical displacement is a deficiency.

(2) Builder/Warrantor responsibility: Repair cracks exceeding maximum tolerance by surface patching or other methods, as required.

iii. Possible Deficiency: Cracking of attached garage floor slab.

(1) Performance standard: Cracks in garage floor slabs in excess of one quarter inch in width or one quarter inch in vertical displacement is a deficiency.

(2) Builder/Warrantor responsibility: Repair excessive cracks by chipping out and surface patching or other methods, as may be required.

iv. Possible Deficiency: Cracks in attached patio slab.

(1) Performance standard: Cracks in excess of one quarter inch in width or one quarter inch in vertical displacement are defects. An "attached patio" is defined as a concrete patio slab on grade which is an integral part of the home being structurally supported by footings, block walls, or reinforced concrete and connected to the foundation.

(2) Exclusion: Patio slabs which are poured separately, and abut the house are excluded from warranty coverage.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall make repairs as required. Where cracks are caused by settlement or improper installation, Builder/Warrantor shall replace that portion which has settled and finish as close as possible to match the existing surface. Where a major portion of the patio has cracked, the entire slab shall be replaced.

v. Possible Deficiency: Cracks in concrete slab-on grade floors, with finish flooring.

(1) Performance standard: Cracks which rupture or significantly impair the appearance or performance of the finish flooring material, is a deficiency.

(2) Builder/Warrantor responsibility: Determine the cause for the cracking, and correct (remove and replace if required). Repair cracks as required, so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring. (See "(h). FINISHES").

vi. Possible Deficiency: Uneven concrete floor slabs.

(1) Performance standard: Except for basement floors or where a floor or portion of floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions or area of unevenness exceeding $\frac{1}{4}$ inch in 32 inches, or slopes in excess of $\frac{1}{240}$ of room width or length (i.e.: 10.0 wide room-not to exceed $\frac{1}{2}$ inch out of level).

(2) Builder/Warrantor responsibility: Determine cause and repair/replace to meet the Standard. Where applicable, surface patching is an accepted method of repair. Reinstall or replace any finish flooring material as necessary.

vii. Possible Deficiency: Pitting, scaling or spalling of concrete work.

(1) Performance standard: Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use is a deficiency.