

(n) If the three percent or greater program-wide defect rate cannot be reduced within two weeks, the program may be terminated by the Department by notifying the utility and all affected municipalities.

(o) A municipality in which a defect rate equal to or greater than seven percent has been twice reported to the Department and which has reason to believe that the program cannot be successfully implemented within its jurisdiction may notify the Department and the utility of the need for termination of the program in that municipality. The Department, upon verifying the accuracy of the municipality's claim, shall issue a notice to the utility and to the municipality ordering the termination of the program in that municipality.

New Rule, R.1989 d.550, effective November 6, 1989.  
See: 21 N.J.R. 233(a), 21 N.J.R. 3458(a).  
Amended by R.1994 d.28, effective January 18, 1994.  
See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).  
Amended by R.1996 d.512, effective November 4, 1996.  
See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

#### 5:23-2.18B Utility area lighting facility installation program

(a) Whenever an electric utility proposes to undertake installation of area lighting facilities located on private property on metal poles with an underground electric feed, having no ancillary utility facilities attached to said poles, the utility shall follow the procedures set forth in this section.

(b) Installation of an area lighting facility shall be treated as minor work in accordance with N.J.A.C. 5:23-2.17A. The utility shall, within five business days after verbal notice to the enforcing agency of a proposed installation, mail a permit application to the enforcing agency setting forth, at a minimum, the identity of the utility, the street address and location of the site lighting facilities, the number of facilities to be installed and a description of the installation.

(c) The utility shall pay a fee which shall be computed at 25 percent of the otherwise applicable permit fee chargeable for such installations as per the Department fee schedule established under N.J.A.C. 5:23-4.20(c)2i(2) and iii(1).

(d) If any violations are noted by an inspector, the inspector shall notify the affected utility and the Department. Code officials shall not issue "Stop Construction Orders" or "Notices of Violation" for such installations unless expressly authorized to do so by the Department.

New Rule, R.1998 d.362, effective July 20, 1998.  
See: 30 N.J.R. 1122(a), 30 N.J.R. 2644(b).

#### 5:23-2.18C Use and occupancy of swimming pools, spas and hot tubs

(a) It shall be unlawful to continue the use and occupancy of a swimming pool, spa or hot tub until a copy of a valid bonding and grounding certificate has been made available

to the construction official, the pool, spa or hot tub has been inspected, and an electrical certificate of compliance has been issued. This requirement shall apply to any swimming pool, hot tub or spa located on any property other than one or two-family residential property and includes, but is not limited to, pools, hot tubs or spas open for the use of members, residents or the public.

1. The electrical certificate of compliance shall be issued annually by the local enforcing agency upon the presentation of a valid bonding and grounding certificate, satisfactory completion of an inspection by the electrical subcode official and payment of an inspection fee. This certificate shall be evidence that, based upon a visual inspection, the wiring in or around the pool pump and associated electrical equipment is free from electrical safety hazards, and meets the applicable requirements of the 1996 National Electrical Code.

2. The bonding and grounding certificate shall be issued in accordance with N.J.A.C. 5:23-2.20(e).

3. A bonding and grounding certificate shall also be required for swimming pools, spas, or hot tubs which either are newly constructed or have undergone modifications that impact the bonding or grounding system. No additional visual inspection shall be required for the issuance of an electrical certificate of compliance where a construction permit is issued for the electrical work pertaining to the pool, spa, or hot tub.

(b) The most recent bonding and grounding certificate and electrical certificate of compliance shall be posted in accordance with N.J.A.C. 5:23-3.5(f).

New Rule, R.2000 d.47, effective February 7, 2000.  
See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).  
Administrative correction.  
See: 35 N.J.R. 4861(a).

#### 5:23-2.19 Special technical services

(a) Whenever the construction official and the appropriate subcode official determine that a need for special technical services exists with regard to a particular project for which the municipal enforcing agency is classified to perform plan review, the construction official may require the applicant to obtain and furnish to the construction official, at the applicant's expense, a report from a licensed engineer or registered architect. Such report shall contain the information deemed necessary by the construction official to aid in his determination. Such may include, but not be limited to:

1. Analysis of materials and installation or design methods not covered by the provisions of the subcodes;
2. Site investigation;
3. Structural analysis;
4. Building systems analysis (that is, mechanical, electrical, vertical transportation, and so forth).

**5:23-2.20 Tests and special inspections**

(a) All tests required by the provisions of the regulations shall be made and conducted under the supervision of the enforcing agency and in accordance with such inspection and test procedures as may be prescribed by the provisions of the regulations, with the expense of all test and inspections to be borne by the owner or lessee, or the contractor performing the work.

(b) All special inspections, as provided in the building subcode, shall apply to Class I buildings. A special inspector shall be independent of the contractor and shall be responsible to the building owner or building owner's agent.

(c) The construction official may accept tests and test reports of the Department and other government agencies, as well as signed statements and supporting inspection and test reports filed by qualified licensed professionals or approved agencies or firms.

(d) The construction official may accept a Chimney Certification for Replacement of Fuel-Fired Equipment (Form F-370), signed by the contractor who installed the replacement fuel-fired equipment, in lieu of requiring the removal and reinstallation of the chimney vent connector for purposes of inspection of the chimney or vent. Certifications from homeowners shall not be accepted in lieu of the required inspection.

(e) The bonding and grounding certificate for swimming pools, spas and hot tubs, shall be issued by a recognized electrical testing agency or a New Jersey State licensed electrical contractor. This certificate shall verify the continuity and integrity of the bonding and grounding system. It shall be valid for five years from the date of issuance.

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

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

Special inspections added.

Amended by R.1995 d.249, effective June 5, 1995, (operative October 1, 1995).

See: 27 N.J.R. 619(a), 27 N.J.R. 2187(a).

Added (c).

Amended by R.1996 d.512, effective November 4, 1996.

See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

Amended by R.1997 d.376, effective September 15, 1997.

See: 29 N.J.R. 2741(a), 29 N.J.R. 4102(a).

In (c), inserted "Form (F-370)", substituted "contractor" for "person" and added last sentence.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Added (d).

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

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

Added a new (b); recodified former (b) through (d) as (c) through (e).

**5:23-2.21 Construction control**

(a) Responsibilities: The provisions of this section shall define the construction controls required for all buildings involving professional architecture/engineering services and delineate the responsibilities of such professional services

together with those services that are the responsibility of the contractor during construction.

(b) Professional architecture or engineering services:

1. Design: All new, renovation, alteration, reconstruction, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by the statutory requirements of the professional registration and licensing laws of this State, shall be prepared by registered architects or licensed engineers. All plans, computations and specifications required for a construction permit application must be prepared by or under the direct supervision of a registered architect or licensed engineer and bear his or her signature and seal in accordance with the State's statutes and regulations governing the professional registration and licensing of architects and engineers.

(c) Responsible person in charge of work: The owner shall designate a person to be in charge of the work who shall be responsible for:

1. Verification of all controlled materials per building subcode requirements of testing, certification and identification;

2. Special inspection of critical construction components;

3. Submission of amended plans and specifications whenever substantial deviations are necessary or desired, or when required to do so pursuant to N.J.A.C. 5:23-2.15(e)4v; and

4. The responsible person in charge of work shall perform the necessary services and be present on the construction site on a regular and periodic basis to determine that, generally, the work is proceeding in accordance with the code and any conditions of the construction permit.

(d) Reporting: At the completion of the construction, the responsible person in charge of work shall submit to the construction official a report as to the satisfactory completion and the readiness of the project for occupancy and shall certify that, to the best of the responsible person's knowledge and belief, such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviations noted.

(e) Construction contractor services: The actual construction of the work shall be the responsibility of the contractor(s) as identified on the approved construction permit and shall involve:

1. Execution of work in accordance with the regulations;

2. Execution and control of all methods of construction in a safe and satisfactory manner;

3. Execution of all work in accordance with the code and those portions of the plans and specifications controlled by the code;

4. In general, render all such construction services as required to effect a safe and satisfactory installation of the project;

5. Upon completion of the construction, the contractor shall certify to the best of the contractor's knowledge and belief that such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviation specifically noted.

(f) The provisions of this section do not relieve the enforcing agency of any of the responsibilities required by the regulations.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

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

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

Rewrote the section.

### 5:23-2.22 Premanufactured construction

(a) Premanufactured construction certified in accordance with N.J.A.C. 5:23-4A or 4B, and carrying an appropriate label, shall be accepted as conforming to the requirements of the regulations to the extent provided for by the particular label for purposes of local construction inspection approval.

1. Prior to accepting the unit, the appropriate subcode official may require the performance of nondestructive tests.

2. In the case of visible signs of damage and/or any visible code violations, the construction official shall consider the seriousness of the nonconformance or damage and accordingly issue a Temporary Certificate of Occupancy or Certificate of Occupancy or deny such Certificate. If a Temporary Certificate is issued or a Certificate is denied, the construction official shall request that the label-issuing agency reaffirm in writing that the assembly still conforms to the regulations and notify the Department in writing.

3. No inspection requiring disassembly, damage to, or destruction of certified premanufactured construction shall be conducted.

(b) The appropriate subcode officials shall inspect the installation of any premanufactured unit or assembly and all work installed or completed on site to determine compliance with the regulations and the approved plans.

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

### 5:23-2.23 Certificate requirements

(a) New buildings: A building or structure hereafter erected shall not be used or occupied in whole or part until a form of certificate of occupancy shall have been issued by the construction official.

1. The enforcing agency shall upon application by the owner issue a certificate of occupancy when all requirements of the regulations have been met.

(b) Buildings hereafter renovated or altered: A building or structure hereafter renovated or altered shall not be occupied or used until the certificate of approval shall have been issued by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as is otherwise provided in the regulations. Any use or occupancy which was not discontinued during the work of renovation or alteration shall be discontinued within 30 calendar days after the completion of the alteration, unless the certificate of approval is secured from the enforcing agency.

(c) Building hereafter reconstructed: A building or structure, or portion thereof, hereafter reconstructed shall not be used until a certificate of occupancy shall have been issued for the entire building or structure or the portion being reconstructed, as the case may be, by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(d) Building hereafter extended: No addition which increases the height or area of an existing building or structure shall be used until a certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(e) Existing buildings: Upon request of the owner of an existing building or structure, the construction official, with the approval of the subcode officials, shall issue a certificate of continued occupancy provided that there are not violations of law or orders of the construction official pending and it is established after inspection and investigation of available municipal records that the alleged use of the building or structure has lawfully existed. The certificate of continued occupancy shall evidence only that a general inspection of the visible parts of the building has been made, and that no violations of N.J.A.C. 5:23-2.14 have been determined to have occurred and no unsafe conditions violative of N.J.A.C. 5:23-2.32(a) have been found. Nothing in this subsection shall prevent the continued lawful use and occupancy of any such lawfully existing building or structure.

(f) Change of use: After a change of use has been made in a building or structure, the reestablishment of a prior use is prohibited unless the building complies with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode, for the prior use.

(g) Temporary certificate of occupancy: Upon the written request for a temporary certificate of occupancy by the holder of a permit, the construction official shall issue, and may renew, a temporary certificate of occupancy for a building or structure or part thereof when the work covered by the permit shall have been substantially completed, provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

1. The temporary certificate of occupancy and each subsequent renewal shall be valid for a reasonable period of time to complete the work, but not less than 60 days. The municipal tax assessor shall be notified when the temporary certificate of occupancy is issued.

2. The request for a temporary certificate of occupancy may be denied when there are outstanding fees or penalties, when the required warranties, licenses or registrations are not in place, or the conditions of prior approvals affecting health and safety of the building occupants have not been met.

(h) Application: A written application for a certificate of occupancy shall be filed with the enforcing agency by the owner or his agent. The application shall include the following:

1. The name and address of the owner or his agent;
2. The location of the building or structure;
3. If a change of use is contemplated, the current and proposed use groups;
4. The statement by the responsible person in charge of work, that to the best of his or her knowledge all work has been completed in accordance with the permit and the regulations;
5. A statement of the final cost of construction work, including the basic structure, all on-site improvements, built-in furnishings and fixtures and all integral equipment exclusive of process or manufacturing equipment;
6. A set of amended drawings, if required by the construction official and the appropriate subcode official(s), when the dimensions, lay out or appearance of the building or structure deviates substantially from the released plans and specifications filed with the construction permit application; and
7. A test and balance report for mechanically ventilated Class I and II buildings of Use Groups B and E submitted by a licensed professional engineer or by a test and balance professional certified by the Associated Air Balance Council or the National Environmental Balancing Bureau. The signed report shall include:
  - i. Minimum quantity of outdoor air required by code;
  - ii. Minimum quantity of outdoor air specified in the design;

iii. Actual measured outdoor cubic feet/minute (CFM) or a derived quantity, if actual measurement is not possible; and

iv. Actual measured total CFM.

(i) Contents of certificate: When a building or structure is entitled thereto, the construction official shall issue a certificate of occupancy within 10 business days after written application therefor.

1. The certificate shall certify the purpose for which the building or structure may be used in its several parts.

2. The certificate of occupancy shall specify: the use group(s), in accordance with the provisions of the building subcode; the maximum live load on all floors as prescribed in the building subcode; the occupancy load in the building and all parts thereof as defined in the building subcode; and any special stipulations and conditions of the construction permit.

3. The construction official shall affix his signature to the certificate and, by so doing, shall certify that the building or structure has been approved for occupancy by all applicable subcode officials in accordance with the provisions of N.J.A.C. 5:23-3.

(j) No temporary or final certificate of occupancy shall be granted until all required utilities, including but not limited to water, sewer, electric and gas are installed and in service.

(k) Equipment listed below, which has been determined by the Department to create a significant potential hazard to public health and safety, shall be granted a certificate of compliance by the construction official based upon the findings of the appropriate subcode official or approved agency for the time period specified. Such equipment shall periodically be reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of a certificate of compliance, and any violation shall be corrected before a new certificate may be issued. No device shall continue in operation unless a valid certificate of compliance has been reissued.

1. High pressure boilers: 12 months;
2. Refrigeration systems: 12 months;
3. Pressure vessels: 12 months;
4. Backflow preventers used to isolate high hazard sources of contamination as defined in the plumbing subcode: 12 months.
5. Swimming pools, spas and hot tubs: 12 months.

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

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

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

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

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

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

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

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

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

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

(p) The continued validity of a certificate of occupancy shall be contingent upon maintenance of the level of code compliance existing at the time of issuance of the certificate of occupancy and upon compliance with any orders issued by the construction official pursuant to N.J.A.C. 5:23-4.5(h)3.

Amended by R.1984 d.120, effective April 16, 1984.

See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

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

Amended by R.1987 d.91, effective February 2, 1987.

See: 18 N.J.R. 2348(a), 19 N.J.R. 289(c).

Added new (i)2; renumbered (i)2-9. as (i)3.-10.

Amended by R.1988 d.167, effective April 18, 1988.

See: 20 N.J.R. 223(b), 20 N.J.R. 893(b).

Added text to (b) "after the completion of the alteration".

Amended by R.1991 d.180, effective April 1, 1991.

See: 23 N.J.R. 257(a), 23 N.J.R. 1028(b).

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

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

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

Amended by R.1992 d.147, effective April 6, 1992.

See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.

Amended by R.1993 d.421, effective September 7, 1993.

See: 25 N.J.R. 2161(a), 25 N.J.R. 4073(a).

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

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

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

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

Rewrote (j).

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

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

Added (m)5.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

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

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

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

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

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

Rewrote k(4).

Amended by R.2001 d.347, effective October 1, 2001.

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

Rewrote (g).

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

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

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

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

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

Added (p).

**Law Review and Journal Commentaries**

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

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

**Case Notes**

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

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

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

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

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

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

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

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

**5:23-2.24 Conditions of certificate of occupancy**

(a) Certificate of occupancy shall be conditioned upon the following:

1. That the completed project meets the conditions of the construction permit, and all prior approvals and has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code;
2. That all required fees have been paid in full;
3. That all necessary inspections have been completed and that the completed project meets the requirements of the regulations;
4. That all violations have been corrected and that any assessed penalties have been paid;

5. That all protective devices and equipment required to be installed by the regulations will continue to be operational as required by the regulations.

(b) No certificate of occupancy shall be issued for any new home, built by a builder, as such terms are defined in N.J.A.C. 5:25-1.3, except after filing by the builder with the construction official of proof that the new home has been enrolled in either the State New Home Warranty Security Plan or a private plan approved by the Department of Community Affairs. If the new home is enrolled in the State New Home Warranty Security Plan, proof shall be in the form of a validated copy of the Certificate of Participation, required pursuant to N.J.A.C. 5:25-5.5, and proof of payment of the warranty premium.

(c) No certificate of occupancy shall be issued for any new home built by an owner or in which any design, construction, plumbing or electrical work has been done by the owner unless the owner shall file with the construction official an affidavit in which he certifies that all work has been done in conformity with applicable law, acknowledges that work done by him or by any subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act (N.J.S.A. 46:3B-1 et seq.) and states that he will disclose this to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy. The affidavit shall be filed on a form prescribed by the Department of Community Affairs.

(d) No certificate of occupancy shall be issued for any building used or intended to be used as a rooming house or a boarding house, as such terms are defined in section 3 of the Rooming and Boarding House Act of 1979 (P.L. 1979, c.496; N.J.S.A. 55:13B-1 et seq.), except after filing by the owner with the construction official of a photocopy of a license to own a rooming or boarding house issued to the owner by the Department of Community Affairs.

(e) No certificate of occupancy shall be issued for a hotel or multiple dwelling, as defined in the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.), except after filing by the owner with the construction official of a photocopy of a certificate of registration issued by the Bureau of Housing Inspection of the Department of Community Affairs.

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless all of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12.

(g) No certificate of occupancy or certificate of approval shall be issued for any building or project that includes a vapor delivery liquefied petroleum gas installation that is greater than 250 gallons, but not more than 2,000 gallons, except after filing by the owner with the construction official of a photocopy of a notice of LP gas installation filed, pursuant to N.J.A.C. 5:18-6.4(a), with the New Jersey De-

partment of Community Affairs, Division of Codes and Standards, Bureau of Code Services, PO Box 816, Trenton, New Jersey 08625-0816.

(h) No certificate of occupancy shall be required in the case of minor work as provided for by N.J.A.C. 5:23-2.17A.

Amended by R.1991 d.509, effective October 7, 1991.  
See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Text added at (f).

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

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

Rewrote (f).

Amended by R.2001 d.141, effective May 7, 2001.

See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

Added new (g); recodified former (g) as (h).

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

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

Rewrote (a)1.

Amended by R.2003 d.200, effective May 19, 2003.

See: 35 N.J.R. 7(a), 35 N.J.R. 2187(a).

In (g), amended the N.J.A.C. reference and substituted "Bureau of Code Services" for "Bureau of Boiler and Pressure Compliance".  
Administrative correction.

See: 35 N.J.R. 3608(a).

#### Case Notes

Citation to former N.J.A.C. 5:23-2.7; municipal requirement for payment of property taxes before permit issuance invalid as preempted by legislation. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

#### 5:23-2.25 Establishment of fees

The municipality, in accordance with this chapter, shall establish by ordinance enforcing agency fees for the following activities: plan review; construction permits; certificate of occupancy; elevator device inspections and tests; demolition permit; moving of building permit; lead abatement clearance certificate; annual electrical inspection of swimming pools, spas and hot tubs; and sign permit. The fee shall be collected prior to the issuance of the permit or certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Elevator activities added.

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Administrative correction.

See: 29 N.J.R. 2267(a).

Administrative correction.

See: 29 N.J.R. 3721(a).

Deleted reference to certificate of compliance and certificate of approval.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Inserted a reference to annual electrical inspection of swimming pools, spas and hot tubs in the first sentence.

#### Case Notes

Citation to former N.J.A.C. 5:23-4.8 fee standards; municipal requirement for payment of property taxes before permit issuance invalid as preempted by legislation. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

#### 5:23-2.26 (Reserved)

Repealed by R.2004 d.144, effective April 5, 2004.

See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

Section was "Plan Review Fees".

#### 5:23-2.27 Refunds

In the case of discontinuance of a building project, the volume of the work actually completed shall be computed. Any excess for the uncompleted work shall be returned to the permit holder; except that all penalties that may have been imposed on the permit holder under the requirements of the regulations shall first be collected. Plan review fees are not refundable.

#### 5:23-2.28 Volume computation

(a) General: For the determination of the permit fees, the volume of the structure shall be computed as provided in this section.

(b) Structures with basements: The volume of the structure shall include all enclosed dormers, porches, penthouses and other enclosed portions of the structure extending from the basement or cellar floor to the mean height of a pitched roof, or the average height of the top of the roof beams of a flat roof.

(c) Structures without basements: For structures without basements or cellars, the volume shall be based on the height measured to a level located one-fifth the distance from the first floor level to the bottom of the footings, but not to exceed 2½ feet below the first floor level.

(d) Open sheds: For open sheds and structures of a similar character, the volume shall be measured within the perimeter of the roof for a height from the grade line to the mean roof level.

(e) No fee shall be required for premanufactured construction, assembly or components transported to a construction site. A fee shall be required for work performed at the site, including, but not limited to, foundation systems, structural installations and external utility connections.

(f) No fee shall be required for commercial farm buildings, or portions of, constructed of pre-engineered systems specified in N.J.A.C. 5:23-3.2(d)3. A fee shall be required, unless exempted, for commercial farm building work performed at the site.

As amended, R.1982 d.7, eff. February 1, 1982.

See: 13 N.J.R. 717(a), 14 N.J.R. 142(a).

(e) added.

Amended by R.1995 d.603, effective November 20, 1995 (operative March 20, 1996).

See: 27 N.J.R. 2655(a), 27 N.J.R. 4699(a).