

**5:23-4.4 Municipal enforcing agencies—organization**

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1. Construction official: The construction official shall serve as the chief administrator of the enforcing agency. He shall establish the day to day operating routines of the agency and shall coordinate the activities of the subcode officials. He shall be qualified in accordance with subchapter 5 of this chapter in at least one subcode.

2. Subcode officials: Subcode officials shall enforce the provisions of those subcodes for which they are responsible in accordance with N.J.A.C. 5:23-3 and qualified in accordance with N.J.A.C. 5:23-5 and for which they have been appointed by the appointing authority. Each subcode official shall be responsible for the administration and enforcement of the appropriate subcode, subject to the procedures of the enforcing agency as administered by the construction official. However, each subcode official shall have exclusive decision-making authority with respect to the technical provisions of the subcode for which he has been appointed the official.

New Jersey State Library

3. Interface: Nothing shall prevent one person from serving in more than one position for which he is certified and qualified. However, more than one person shall not be appointed concurrently to the same position.

4. Assistants: The appointing authority may establish positions other than those provided in N.J.A.C. 5:23-5 as is deemed necessary. The commissioner reserves the right to establish categories of certification for such positions. The construction official or appropriate subcode official shall be responsible for the supervision of any such personnel.

5. Whenever the municipality contracts with private on-site inspection agencies for all subcodes, it shall as a minimum appoint a construction official to coordinate activities.

6. Acting appointments: A municipality shall appoint an acting construction official or subcode official any time the absence of such official would impede orderly administration of the Uniform Construction Code and other duties mandated by the municipality. Acting appointments shall be accomplished by any mechanism acceptable to the municipality; providing, however, that a written record shall be kept. Notice to the Department shall be provided within seven days any time an appointment is made for more than 30 days. Acting appointments may not be made for longer than 60 days, nor may they be extended or renewed beyond 60 days unless specific authority to do so is granted in writing by the Department.

i. Only an individual licensed as a construction official may be appointed as an acting construction official and only an individual licensed as a subcode official in a particular subcode may be appointed as an acting subcode official for that subcode. The technical license level of an acting construction or subcode official shall be superior or parallel to the enforcing agency classification of the municipality or such municipal classification shall be downgraded to the technical license level of the acting official for the period of time in the position. Employees of private on-site inspection agencies shall not serve as acting construction officials. Employees of private on-site inspection agencies may serve as acting subcode officials, provided that notice of any such appointment shall be given to the Department by the construction official within seven days of the making of the appointment and that such notice shall contain information as to the form and amount of the payment being made to the agency for the services of the acting subcode officials.

ii. Acting appointments shall not constitute the statutory four-year term for construction and subcode officials or any portion thereof.

iii. Conflict of interest provisions set forth in this subchapter shall apply to acting officials.

iv. Nothing in (b) of this section shall be interpreted as prohibiting licensed officials from serving in more

than one municipality in regular or acting appointments.

7. The municipality shall provide the construction official, each subcode official and each inspector with personal identification which includes at least the name of the municipality, and the name, title and photograph of the individual. The identification shall be validated by the municipality.

8. A municipality may, in its discretion, employ a mechanical inspector to perform plan review and mechanical inspections, with oversight by a designated subcode official, for Use Group R-3 or R-4 structures.

9. Provisions concerning reappointment of construction and subcode officials in non-civil service municipalities are as follows:

i. At least 30 days prior to the expiration of the statutory four-year term of office of a construction or subcode official, the appointing authority shall give written notice to the official indicating whether or not he or she is going to be reappointed.

ii. In the event that the official is neither reappointed, nor given written notice that he or she is not being reappointed, prior to the date of expiration of the statutory four-year term of office, the official shall be deemed to have been appointed to serve in an acting capacity for a period of not more than 60 days, in accordance with (a)6 above. The municipality is not relieved of the obligation, pursuant to (a)6 above, to notify the Department within seven days any time any acting appointment will exceed 30 days.

iii. In the event that the official is neither reappointed, nor given written notice that he or she is not being reappointed, prior to the expiration of the 60-day period following the date of expiration of the prior statutory four year term of office, the Department, in such circumstance, shall not extend any such acting appointment and the official shall be deemed to have been reappointed, such reappointment being effective retroactively to the date of expiration of the prior statutory four-year term.

(b) The municipality shall establish a central permit office under the direction and supervision of the construction official. This office shall receive applications for construction permits and plan review, issue construction permits and certificates of occupancy, collect fees, penalties, fines and issue notices, and orders. The office shall be open during normal business hours at times to be determined by the municipality. These times shall be posted in a conspicuous place and shall be comparable with the amount of construction activity in the municipality. Nothing herein shall prevent a municipality from establishing branch offices, but the public shall not, unless in the case of an emergency, unforeseen or unavoidable circumstance, be required to do business, except at the central permit office.

(c) The construction official and the subcode officials shall be available for consultation and discussion during normal business hours at scheduled times to be determined by the construction official. All inspections shall take place between 9:00 A.M. and 5:00 P.M. on business days or while construction is taking place, or in the case of emergency, or with the permission of the owner or his representative.

(d) The municipality shall ensure that the enforcing agency has adequate staff to review plans, applications, specifications and to schedule and perform inspections in a timely manner.

Amended by R.1982 d.23, effective February 1, 1982.

See: 13 N.J.R. 863(a), 14 N.J.R. 142(b).

(a)6: text deleted and replaced with new text through (a)6iv.

Notice of correction: "30 days. Acting appointments may not be made for longer than" was omitted from text in (a)6.

See: 20 N.J.R. 2823(a).

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (a)8.

Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).

See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).

Amended by R.1996 d.387, effective August 19, 1996 (operative November 1, 1996).

See: 28 N.J.R. 2434(a), 28 N.J.R. 3923(a).

In (a) added provisions relating to reappointment of construction and subcode officials in non-civil service municipalities.

#### Case Notes

Municipal construction code official's appearance for work for 11 days after his four-year term expired did not confer tenure on him on basis of appointment to second consecutive term. *Cutler v. Borough of Westwood*, 295 N.J.Super. 344, 685 A.2d 44 (A.D.1996).

Township's failure to make a proper temporary appointment in conformance with regulation resulted in plaintiff's appointment as subcode plumbing inspector becoming one of tenure pursuant to N.J.S.A. 52:27D-126(b). *DeStefano v. Washington Twp.*, 220 N.J.Super. 273, 531 A.2d 1090 (L.1987).

#### 5:23-4.5 Municipal enforcing agencies—administration and enforcement

(a) Records and procedures: The municipality shall ensure that the construction official, with the assistance of the subcode officials and other necessary municipal employees, maintains a central file system, by block and lot, for each property in the municipality for which a permit has been issued or requested or for which an action has been taken by the municipal enforcing agency.

1. The files shall contain all information, including inspection reports, correspondence, and so forth, relevant to each application for a construction permit or certificate of occupancy.

2. The files shall contain or indicate the storage location of all plans and specifications too bulky for inclusion in the central file.

3. The files and records of the municipal enforcing agency shall be open to department review and audit and public inspection during normal business hours.

i. File copies of all documents in connection with building operations shall be retained in the official records as provided by law.

ii. Files and records shall be maintained in a manner consistent with the Municipal Procedures Manual established by the commissioner for this purpose.

#### (b) Forms:

1. The construction official shall ensure that all necessary forms and applications are available to the public at the central permit office.

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
F100 (REV 3/96)	Construction Permit Application
F110 (REV 3/96)	Building Subcode Technical Section
F120 (REV 3/96)	Electrical Subcode Technical Section
F130 (REV 3/96)	Plumbing Subcode Technical Section
F140 (REV 3/96)	Fire Subcode Technical Section
F145 (6/96)	Mechanical Inspector Technical Section
F150 (REV 3/96)	Elevator Subcode Technical Section
F-155	Elevator Subcode Multiple Devices
F-160B	Application for a Variation
F170 (REV 3/96)	Construction Permit, Required Inspection
F180 (REV 3/96)	Construction Permit Notice
F190 (REV 3/96)	Permit Update
F210 (REV 3/96)	Notice of Violation and Order to Terminate/Notice Order to Pay Penalty
F221 (REV 3/96)	Inspection Sticker Approval for Building
F-222A	Inspection Sticker Approval for Electric
F223 (REV 3/96)	Inspection Sticker Approval for Plumbing
F-224A	Inspection Sticker Approval for Fire Protection
F-225	Inspection Sticker Approval for Elevator
F-230B	Inspection Sticker—Not Approved
F240 (REV 2/97)	Notice of Unsafe Structure/Imminent Hazard
F-245A	Unsafe Structure Notice
F250 (REV 3/96)	Stop Construction Order
F-255A	Stop Construction Notice
F260 (REV 3/96)	Certificate
F270 (REV 3/96)	Application for Certificate
F310 (REV 3/96)	Elevator Inspection
F-320A	Elevator Notice
F-325	Notice of Elevator Device Sealed Out of Operation
F326	Accident/Incident Report
F-350B	Cut-In Card
F360 (REV 2/97)	Denial of Permit
F370 (REV 3/96)	Chimney Certification for Replacement of Fuel Fired Equipment
F380	Hydraulic System Data Plate

3. The following standardized forms established by the Commissioner are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
F-200A	Inspection Notice
F-280B	T.C.O. Control Card
F-290A	Ongoing Inspections Control Card
F-300A	Ongoing Inspections Schedule
F375	Tickler/X-Ref Card

4. No forms other than those established by the Commissioner shall be required of the public in connection with the administration and enforcement of the State Uniform Construction Code. The municipal enforcing agency may use additional forms for its own internal processing and recordkeeping. Nothing in this section pertaining to forms or in the forms themselves shall be deemed to affect the requirements for plans and specifications or documentation of prior approvals. Where there is insufficient space on a form for all required information, the form shall be used with attachments.

5. Printing of forms: The municipal enforcing agency shall arrange for the printing of all forms. Other interested persons may also arrange for the printing of forms or they may purchase and use forms printed by others. The municipal enforcing agency may provide for the inclusion of its name and other appropriate identifying information on the forms it has printed. However, the municipal enforcing agency shall accept forms not having municipal identification and shall, in any such case, insert the name of the municipality. All required forms shall be exact replicas of the forms required by the Commissioner, conforming in content, size, format and colors, except that all multi-part forms may be printed with an additional copy so long as the additional copy shall be in a color distinct from those specified by the Commissioner. Forms F-110A, F-120A, F-130A and F-140A may have the Subcode Technical Sections printed in any color or colors of ink as desired and Form F-310A (Elevator Inspection) may be printed as a multipart form on separate pages with up to four copies of each page.

(c) Logs:

1. The following standardized logs established by the Commissioner are required to be maintained by the municipal enforcing agency:

Log No.	Name
L700 (REV 2/97)	Permit Fee Log
L-710A	Inspection Log
L720 (REV 2/97)	Certificate Log
L730 (REV 3/96)	Ongoing Inspection Log

2. The municipal enforcing agency shall maintain the required logs either on log sheets established by the commissioner or on log sheets or ledger books of its own

choice or design, provided that all required entries are maintained.

(d) Monthly reports:

1. The following standardized report forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department by the tenth business day following the end of each calendar month:

Report No.	Name
	Municipal Monthly Activity
R-811B	Report Certificates
R-812B	Municipal Monthly Activity Report Permits

2. Municipalities currently submitting monthly reports electronically shall continue to do so. Municipalities that do not already submit monthly reports electronically using UCCARS I shall begin to do so according to the following schedule:

i. By December 31, 1992, all municipalities issuing 600 or more permits per year as determined by the Department shall submit monthly reports electronically.

ii. By December 31, 1993, all municipalities issuing fewer than 600, but more than 200, permits per year as determined by the Department shall submit monthly reports electronically.

iii. All other municipalities shall have the option of submitting monthly reports electronically or by mail. Any municipality which issues more than 200 permits per year as determined by the Department for any future year shall submit monthly reports electronically beginning during the following year.

iv. A municipality that determines that compliance with this schedule would impose an undue hardship may apply to the Department for an extension of time. A request for an extension shall be in writing and shall set forth the reason(s) for such extension and the period of time for which the extension is sought. The Department shall give the municipality written notice of its determination in response to the extension request.

3. As long as funding permits, the Department shall provide the UCCARS I software, training and technical support for the system free of charge to municipalities. Municipalities may submit monthly reports electronically using an alternative system compatible with UCCARS as determined by the Department and capable of transmitting a monthly report based on UCCARS specifications.

4. Municipalities, at their option, may choose to add UCCARS II and III systems to their UCCARS I System and may obtain them, at no cost, from the Department, when available.

(e) Quarterly reports: The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New

Jersey training fees and must be submitted quarterly, with the accompanying fees, pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R840 (REV 3/96)	State Training Fee Report

(f) The following standardized report form established by the Commissioner is optional for use by the municipal enforcing agency:

Report No.	Name
R-800A	Inspector's Report

(g) Exceptions: Exceptions may be made by the municipal enforcing agency to those requirements for records and procedures, forms, logs, and reports as stated in this section and in the Municipal Procedures Manual established by the commissioner only with the express written authorization of the Department. Requests for exceptions shall be in writing and shall detail the requirement(s) to which an exception is sought, the reason(s) for such exception and the duration for which the exception is sought, and shall be accompanied by any appropriate documentation and examples of alternative procedures, forms, logs or reports.

(h) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i. Provide that applications are available, and assist the public in preparing the applications whenever necessary;

ii. Review all applications for completeness as to form and for verification of prior approvals. He may request additional documentation concerning prior approvals whenever it is deemed necessary;

iii. Upon receipt of the completed application, the construction official shall determine the proper fee for the work required;

iv. Collect all fees and penalties and ensure that funds are properly accounted for;

v. Ensure that the proper subcode official shall have an adequate time period to review appropriate applications, plans and specifications;

vi. Ensure that all requests for variation are properly prepared, documented and referred to the appropriate subcode officials;

vii. Issue the construction permit upon receiving the approval of all appropriate subcode officials;

viii. Record all notices of violation upon receiving notification of the appropriate subcode official, and determine all penalties for noncompliance with the penalty notices;

ix. Ensure that all required inspections are scheduled and performed within three business days of the time for which inspection has been requested;

x. Ensure that the reports of all inspections are completed and properly filed;

xi. Record stop work orders, upon notification of the appropriate subcode official;

xii. Ensure that all final inspections have been completed prior to the issuance of a certificate of occupancy.

(1) Ensure that all inspection required for the purpose, has been completed prior to the issuance of temporary certificate of occupancy;

xiii. Issue the certificate of occupancy, upon receiving the approval of all appropriate subcode officials.

(1) Issue the temporary certificate of occupancy, upon receiving the approval of all appropriate subcode officials;

xiv. Ensure, in the case of a change of use, or upon a request for a certificate of continued occupancy, that each subcode official gives an approval based on an inspection and the review of all submitted data before issuing a certificate of continued occupancy;

xv. Prepare and obtain reports required in the regulations;

xvi. Attend meetings and hearings as required by the regulations;

xvii. Carry out such other functions as are necessary and appropriate to the position of construction official;

xviii. Coordinate the activities of the subcode officials in enforcement of the energy radon hazard, elevator safety and mechanical subcodes;

xix. Reply within three business days to any request from the municipal search officer for information concerning construction permits or certificates of occupancy;

xx. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy; and

xxi. File with the Department a notice of the execution of each contract with a private on-site inspection agency, which notice shall specify the subcode(s) covered by the contract, within 10 days after the effective date of the contract.

2. Nothing contained herein shall prevent the construction official from overruling a decision of a subcode official if he is qualified and certified in that subcode pursuant to subchapter 5 of this chapter.

(i) Duties of subcode officials:

1. The subcode official shall enforce the regulations and:

- i. Review those aspects of the application, plans and specifications appropriate to his subcode for approval and release to the construction official for issuance of the permit;
  - ii. Receive and review directly from the applicant applications involving only one trade or subcode and minor or emergency work for approval and release to the construction official for issuance of the permit;
  - iii. Collect fees for permit applications involving only trade or subcode and minor or emergency work and forward same to the construction official for proper accounting;
  - iv. Comply with the time limitations for review as determined by the construction official;
  - v. Review requests for variations as necessary;
  - vi. Perform all required inspections within three business days of the time for which inspection has been requested;
  - vii. Issue in the name of the enforcing agency notices of violation and notify the construction official of same. The subcode official may issue verbal orders at the jobsite and shall record such orders in his inspection report;
  - viii. Complete reports of all inspections performed;
  - ix. Issue stop work orders in the name of the enforcing agency and notify the construction official of same;
  - x. Perform final inspection and notify construction official of approval in order that the construction official may issue certificate of occupancy;
  - xi. Make inspection, review submitted data and notify construction official of approval in the case of a change of use, or a request for a certificate of continued occupancy;
  - xii. Assist the construction official in the preparation of all reports required in the regulations;
  - xiii. Attend meetings and hearings as required by the regulations;
  - xiv. Issue documentation and certification, such as cut-in cards to utilities and/or public agencies if required by the regulations;
  - xv. Carry out such other functions as are necessary and appropriate to the position of subcode official.
2. In the course of enforcing the regulations, the fire protection subcode official shall cooperate, to the greatest extent possible, with the local fire service, which is the local fire department or district having jurisdiction.
    - i. The fire protection subcode official shall, upon request of the local fire service, allow a designated representative of the local fire service reasonable access to, and opportunity to review, plans submitted to the fire protection subcode official for his approval.
    - ii. The fire protection subcode official shall consult with the local fire service prior to granting any variations from the requirements of the fire protection subcode. If the fire protection subcode official is not himself a member of the local fire service, he shall, upon receipt of an application for a variation, forward a copy thereof to the local fire service and shall not grant a variation until he has received the comments of the local fire service or until 10 business days have passed, whichever comes first.
    - iii. The participation of the local fire service in the code enforcement process shall in no way be construed as reducing the responsibility of the fire protection subcode official for the proper enforcement of the fire protection subcode. Advice rendered by the local fire service shall in no way be binding upon the subcode official.
- (j) Conflict of interest:
1. No person employed by an enforcing agency as construction or subcode official or as an inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or any close relative or household member, or his or her superior within the enforcing agency or any close relative or household member of such superior, has an economic interest. For purposes of this paragraph, "close relative" shall mean and include a spouse, sibling, ancestor or descendant, or the spouse of any of them.
    - i. Where an inspection or enforcement procedure is necessary or required in any such property or business, and there is no other person employed by the enforcing agency who is qualified, pursuant to this chapter, to perform the inspection or enforcement procedure and who is not a subordinate of the person with the direct or indirect economic interest in such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department.
    - ii. A separate log shall be maintained by the enforcing agency of all inspections and enforcement procedures performed, when permitted in accordance with (j)1i above, with regard to any properties or businesses in which any persons employed by the enforcing agency have a direct or indirect economic interest.
  2. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration, or demolition of buildings or structures within any municipality in which



he is so employed by an enforcing agency, and in any municipality adjacent to any municipality in which he is thus employed.

3. Persons subject to this subsection shall annually report any income or benefits received from any business or property subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Uniform Construction Code regulations, to the municipal governing body. This report shall include a list of all sources of income, but need not list the amount.

4. No person employed by a municipal enforcing agency as a construction official, subcode official or inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity in any proceeding involving the enforcement of the Uniform Construction Code except on behalf of another enforcing agency, or as a court-appointed witness.

i. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to an appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

5. This section shall not apply to:

i. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange.

ii. Any such business or employment outside the State;

iii. Dual employment by two or more enforcing agencies;

iv. Any business or employment which is not subject to the regulations.

v. Service as an instructor in a code enforcement training program.

6. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.

Amended by R.1983 d.611, eff. January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

Deleted old (b)2.-3. and (c) and added new (b)2, (c), (d) and (e). Renumbered old (d)-(f) as new (f)-(h).

Amended by R.1984 d.303, effective July 16, 1984.

See: 16 N.J.R. 950(a), 16 N.J.R. 1968(b).

Added (g)2.

Amended by R.1990 d.61, effective February 5, 1990.

See: 21 N.J.R. 3346(b), 22 N.J.R. 351(b).

Form numbers updated, new (d)2. added and reference made to reports and fees being submitted quarterly.

Amended by R.1990 d.226, effective May 7, 1990.

See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Radon mitigation added to (f)1xviii.

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

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

Elevator safety added at (f)1xviii; conflict of interest provision added at (h).

Amended by R.1992 d.47, effective February 3, 1992.

See: 23 N.J.R. 3440(a), 24 N.J.R. 405(a).

Electronic monthly reporting added at (d)2.-4.

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (b).

Amended by R.1992 d.243, effective July 6, 1992.

See: 24 N.J.R. 678(a), 24 N.J.R. 2422(a).

Conflict of interest and exception provisions added.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Report form number changed at (e).

Amended by R.1993 d.581, effective November 15, 1993.

See: 25 N.J.R. 3693(a), 25 N.J.R. 5146(a).

Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).

See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).

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).

In (b)2 added Form No. F-370.

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.64, effective February 18, 1997 (operative May 19, 1997).

See: 28 N.J.R. 4695(a), 29 N.J.R. 550(a).

In (b)2, amended form references.

Amended by R.1997 d.378, effective September 15, 1997.

See: 29 N.J.R. 2742(a), 29 N.J.R. 4103(a).

In (b)2 and (c)1, amended form designations and in (b)2 deleted form F-330A and F-340A.

Amended by R.1997 d.419, effective October 6, 1997.

See: 29 N.J.R. 3406(a), 29 N.J.R. 4287(a).

In (j)1, inserted “, or his or her superior within ... any such superior,”; in (j)1i inserted “, and there is no other person ... property or business,”; and added (j)1ii.

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

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

In (b)2, inserted a reference to Form No. F380.

Amended by R.2000 d.413, effective October 16, 2000.

See: 32 N.J.R. 2278(a), 32 N.J.R. 3783(a).

In (j)1, substituted references to close relatives or household members for references to members of the immediate family, and added the second sentence; and deleted former (j)7.

#### Case Notes

Former N.J.A.C. 5:23-4.3 regarding conflict of interest valid. *New Jersey State Plumbing Inspectors Assn., Inc. v. Sheehan*, 163 N.J.Super. 398, 394 A.2d 1244 (App.Div.1978), certiorari denied 79 N.J. 484, 401 A.2d 239 (1979).

Monetary penalty against builder for code violations was not reduced for financial hardship, but was reduced by half to secure prompt compliance. *Bureau of Housing Inspection v. Regency Village Apartments*, 95 N.J.A.R.2d (CAF) 37.

Fraud and deceit while practicing as a licensed code enforcement official or inspector warranted license revocation. *Regulatory Affairs v. Zieniuk*, 95 N.J.A.R.2d (CAF) 15.

Conflict of interest precluded employment as elevator inspector. *Kunz v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 32.

#### 5:23-4.5A Selection of private on-site inspection and plan review agencies

(a) Whenever a local governing body having jurisdiction elects to contract with a private onsite inspection and plan review agency to carry out the enforcement of one or more subcodes, as permitted by N.J.A.C. 5:23-4.14, the agency shall be selected in accordance with the provisions of this section.

(b) Prior to the selection of an on-site inspection agency, the local enforcing agency shall notify each private on-site agency authorized by the Department to serve as a subcode official for the subcode(s) to be contracted. The notification, which shall specify the term of the proposed contract, shall be delivered by certified mail, return receipt requested. The notice shall specify any local procedural requirements, including, but not limited to, staffing and response time requirements exceeding the minimum standards set forth in the code, with which the construction official and/or the governing body would expect a private on-site agency to comply in order to effectively enforce a subcode in accordance with the performance standards of the local enforcing agency. No other notice shall be required.

1. The notice shall specify that a written, sealed bid is requested, together with a qualification statement containing the information set forth in N.J.A.C. 5:23-4.5A(d), shall identify the subcode(s) for which a bid is requested, shall state the date and time by which bids and accompanying qualification statements must be submitted, which shall not be less than 30 days following the date of mailing of the request for bids, and shall state the name and address of the person to whom bids and accompanying qualification statements shall be mailed or delivered.

2. All bids shall set forth the fees which the private on-site agency proposes to charge for work done by it in the municipality. Such fees shall be expressed as a uniform percentage, by subcode, which shall not exceed 100 percent, of the fees charged, as of the date on which the bids are opened, by the Department when it serves as an enforcing agency, which fees are set forth at N.J.A.C. 5:23-4.20.

3. The contract shall be awarded to the bidder that offers to charge the lowest percentage of the Department's fees and is determined by the governing body, after consultation with the construction official, to be able to effectively enforce the subcode(s) for which the bid was submitted.

4. The amounts to be charged by a private on-site agency awarded a contract pursuant to this section shall be the amounts set forth in N.J.A.C. 5:23-4.20 and/or 5:23-12.6(a) and (b) as of the date of the opening of the bids, multiplied by the percentage set forth in the bid. Such amounts shall be in effect for the entire contract period and shall not be affected by any subsequent increase in the fees set forth in N.J.A.C. 5:23-4.20 or 5:23-12.6(a) and (b).