

**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**

Builder was responsible for repair or replacement of defective cabinetry installed in new home. *William Iellimo Builder & Contractor v. Wirstiuk*, 96 N.J.A.R.2d (CAF) 52.

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).

Homeowners' demolition of defective deck prior to inspection precludes relief under New Home Warranty Protection Program. *Precourt v. Bureau of Homeowner Protection*, 96 N.J.A.R.2d (CAF) 68.

Structural damage due to neighbor's excavation blasting not covered under New Home Warranty Program. *Williamson v. Community Affairs Department, Homeowner Protection Bureau*, 96 N.J.A.R.2d (CAF) 33.

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 property 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.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to repair or replace defective concrete surfaces.

(3) Exclusion: Deterioration caused by salt, chemicals, implements used and other factors beyond Builder/Warrantor control.

viii. Possible Deficiency: Excessive powdering or chalking of concrete surfaces.

(1) Performance standard: Excessive powdering or chalking of concrete surfaces is a deficiency, but should not be confused with normal surface dust that may accumulate for a short period after the home is occupied.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to treat, repair or resurface defective areas.

ix. Possible Deficiency: Separation of brick or masonry edging from concrete slab and step.

(1) Performance standard: It is common for the joint to crack between concrete and masonry due to the dissimilarity of the materials. Cracks in excess of one quarter inch is a deficiency.

(2) Builder/Warrantor responsibility: Grout crack fully and reset loose masonry where required. Replacement of masonry material, if required, shall match the existing as close as possible.

2. Construction and control joints:

i. Possible Deficiency: Separation or movement of concrete slabs within the structure at construction and control joints.

(1) Performance standard: None.

(2) Exclusion: Concrete slabs within the structure are designed to move at construction and control joints and is not a deficiency.

(3) Builder/Warrantor responsibility: None.

(4) Homeowner responsibility: Maintenance of joint material.

(d) Rules concerning masonry are as follows:

1. Unit masonry (brick, block and stone):

i. Possible Deficiency: Cracks in non-bearing or non-supporting walls.

(1) Performance standard: Small shrinkage cracks are not unusual running through masonry and mortar joints. Cracks in excess of one-eighth inch in width is a deficiency.

(2) Builder/Warrantor responsibility: Repair non-structural shrinkage cracks in excess of  $\frac{1}{8}$  inch by pointing or patching. Repairs shall be made near the end of the first year warranty period.

ii. Possible Deficiency: Cracks in bearing or supporting masonry walls.

(1) Performance standard: Vertical or diagonal cracks which do not affect the structural ability of masonry bearing walls, are not unusual. Cracks in excess of one-eighth in width are a deficiency.

(2) Builder/Warrantor responsibility: Repair shrinkage cracks in excess of  $\frac{1}{8}$  inch by pointing or patching. Where the structural integrity of the wall is affected, suitable repair or replacement shall be done to eliminate the condition.

iii. Possible Deficiency: Horizontal cracks in basement and foundation walls.

(1) Performance standard: Horizontal cracks in the joints of masonry walls are not common but may occur. Cracks one-eighth inch or more in width are deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair cracks between one eighth and three sixteenths inch in width by pointing and patching. Cracks exceeding three sixteenths inch shall be investigated by the builder to determine the cause. Builder shall take the necessary steps to remove the cause and make repairs by pointing and patching, reinforcement or replacement of the defective courses.

iv. Possible Deficiency: Cracks in masonry walls or veneer above grade.

(1) Performance standard: Small cracks are common in mortar joints of masonry construction. Cracks one eighth inch or greater in width are deficiencies.

(2) Builder/Warrantor responsibility: Repair cracks and voids in excess of one eighth inch by surface pointing. These repairs should be made toward the end of the first year warranty period to permit the home to stabilize and normal settlement to occur. Builder/Warrantor is not responsible for color variations between existing and new mortar, however, it shall be made to match as close as possible.

v. Possible Deficiency: Cracking, settling, or heaving of stoops and steps.

(1) Performance standard: Stoops and steps are not to settle or heave in excess of one inch in relation to the house structure. Cracks, except hairline cracks less than one eighth inch, are not acceptable in concrete stoops. A separation of up to one half inch is permitted where the stoop or steps abut the house or where an expansion strip has been installed.

(2) Builder/Warrantor responsibility: Take whatever corrective action is required to meet acceptable standards. In a case where repair is made to the concrete surface, it is required that such repair match the adjoining surfaces as closely as possible or the entire area be resurfaced or replaced.

vi. Possible Deficiency: Standing water on stoops, steps, porches and attached concrete patios.

(1) Performance standard: Standing water is a deficiency if it is a hazard to individuals and/or causes damage to the home, or in cases where standing water exists due to settlement or heaving as defined under paragraph (d)1v. above.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to eliminate standing water.

## 2. Stucco and cement plaster:

i. Possible Deficiency: Cracking or spalling of stucco and cement plaster.

(1) Performance standard: Hairline cracks in stucco or cement plaster are common especially if applied directly to masonry back-up. Cracks greater than one eighth inch in width or spalling of the finish surface is a deficiency.

(2) Builder/Warrantor responsibility: Scrape out cracks and spalled areas. Fill with cement plaster or stucco to match finish and color as close as possible.

NOTE: Builder not responsible for failure to match color or texture, due to nature of the material.

(e) Rules concerning carpentry are as follows:

### 1. Rough carpentry:

i. Possible Deficiency: Floors squeak, due to improper installation or loose subfloors.

(1) Performance standard: A large area of floor squeak which is noticeable, loud and objectionable is a defect.

(2) Exclusion: Squeak proof floor cannot be guaranteed, an isolated floor squeak is not a defect.

(3) Builder/Warrantor responsibility: Correct the problem if caused by faulty construction within reasonable repair capability. Where a finished ceiling

exists under the floor, the corrective work may be attempted from the floor side. Where necessary, remove the finish floor material to make the repair and reinstall or replace if damaged.

ii. Possible Deficiency: Uneven wood framed floors.

(1) Performance standard: Floors which are more than one quarter inch out of level within any 32 inch measurement is a deficiency. Floor slope within any room which exceeds one-two hundred fortieths of the room width or length is a deficiency (that is, 10' 0" wide room—not to exceed one-half inch out of level.)

(2) Builder/Warrantor responsibility: Correct or repair to meet the allowances at the above standard.

iii. Possible Deficiency: Bowed stud walls or ceilings.

(1) Performance standard: All interior and exterior frame walls or ceilings have slight variations on the finish surfaces. Bowing should not be visible so as to detract from the finished surface. Walls or ceilings which are bowed more than one quarter inch within a 32 inch horizontal or vertical measurement.

(2) Builder/Warrantor responsibility: Exterior and interior frame walls or ceilings bowed in excess of the allowable standard shall be corrected to meet the allowances of the above standard.

iv. Possible Deficiency: Wood frame walls out of plumb.

(1) Performance standard: Wood frame walls which are out of plumb more than three quarters inch in an eight foot vertical measurement is a deficiency.

(2) Builder/Warrantor responsibility: Make necessary repairs to meet the allowable Standard.

v. Possible Deficiency: Minor warping, checking or splitting of wood framing is common as the wood dries out, and is not considered a deficiency. A condition, which affects the integrity of the member or any applied surface material is a deficiency.

(1) Builder/Warrantor responsibility: Where a problem exists and the surface material is affected, builder shall repair, replace or stiffen the frame member as required.

vi. Possible Deficiency: Exterior sheathing and subflooring which delaminates or swells.

(1) Performance standard: Sheathing and subflooring when properly installed for its intended use and delaminates or swells on the side a finish material has been applied is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace subflooring or

sheathing as required. Replacement of the finish materials when necessary shall be done to match the existing as closely as possible.

## 2. Finish carpentry:

i. Possible Deficiency: Unsatisfactory quality of finished exterior trim and workmanship.

(1) Performance standard: Joints between exterior trim elements, and siding or masonry which are in excess of three-eighths inch is a deficiency. In all cases, the exterior trim abutting masonry and siding shall be capable of performing its function to exclude the elements.

(2) Builder/Warrantor responsibility: Repair open joints and touch up finish coating where required to match existing as close as possible. Caulk open joints between dissimilar materials.

ii. Possible Deficiency: Unsatisfactory quality of finished interior trim and workmanship.

(1) Performance standard: Joints between moldings and adjacent surfaces which exceed  $\frac{1}{8}$  inch in width is a defect.

(2) Builder/Warrantor responsibility: Repair defective joints and touch up finish coating where required to match as close as possible.

iii. Possible Deficiency: Surface defects in finished woodwork and millwork such as checks, splits, and hammer marks.

(1) Performance standard: Finished woodwork and millwork is to be smooth and without surface marks. Finished surfaces which fall beyond the limits of the Quality Standards of the Architectural Woodwork Institute is a deficiency.

(2) Builder/Warrantor responsibility: Correct repairable defects; sanding, filling, or puttying is acceptable to return the surface to its original condition. Replace material not repairable, refinish and restore to match surrounding surfaces as closely as possible.

iv. Possible Deficiency: Exposed nail heads in woodwork.

(1) Performance standard: Material used to fill nail holes has a tendency to shrink and dry up after a period of time and is not considered a deficiency. Nail holes which have not been filled on finished painted wood work is a deficiency.

(2) Exclusion: Nail holes do not have to be filled where the surface finish is not conducive or so designed to have nail holes filled because of the product.

(3) Builder/Warrantor responsibility: Fill nail holes where required and if necessary, touch up paint to match as close as possible.

(f) Rules concerning thermal and moisture protection are as follows:

### 1. Waterproofing:

i. Possible Deficiency: Leaks in basement or in foundation/crawlspace.

(1) Performance standard: Leaks resulting in actual trickling of water through the walls or seeping through the floor are deficiencies.

(2) Exclusion: Leaks caused by landscaping improperly installed by owner, or failure by owner to maintain proper grades are excluded from the warranty. Dampness in basement and foundation walls or in concrete basement and crawlspace floors is often common to new construction and is not a deficiency.

(3) Builder/Warrantor responsibility: Take such action as is necessary to correct basement and crawlspace leaks, except where the cause is determined to be the result of owner negligence. Where a sump pit has been installed by the Builder/Warrantor in the affected area but the sump pump was not contracted for or installed by the Builder/Warrantor, no action is required until a properly sized pump is installed by the owner in an attempt to correct the condition. Should the condition continue to exist, then the Builder/Warrantor shall take necessary action to correct the problem.

### 2. Insulation:

i. Possible Deficiency: Insufficient insulation.

(1) Performance standard: Insulation which is not installed around all habitable areas in accordance with established codes is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install insulation of sufficient thickness and characteristics to meet the codes. In the case of dispute, cost for investigating the sufficiency of insulation and restoring areas to prior condition is to be borne by the homeowner if it is found that the standard has been met by the builder.

### 3. Louvers and vents:

i. Possible Deficiency: Insufficient attic and crawlspace ventilation.

(1) Performance standard: Attics and crawlspaces which are not properly vented causing moisture to accumulate resulting in damage to supporting members or insulation is a deficiency.

- (2) Builder/Warrantor responsibility: The Builder/Warrantor shall install properly sized louvers or vents to correct deficiency.
- ii. Possible Deficiency: Leaks due to snow or driven rain through louvers and vents.
- (1) Performance standard: Improperly installed louvers and vents that permit penetration of the elements under normal conditions is a deficiency.
- (2) Exclusion: Properly installed louvers or vents may at times allow penetration of rain or snow under strong wind conditions and is not a deficiency.
- (3) Builder/Warrantor responsibility: Take necessary steps to eliminate penetration of rain or snow under normal conditions if it is determined the installation was improper.
4. Exterior siding:
- i. Possible Deficiency: Delamination, splitting, joint separation or deterioration of exterior siding.
- (1) Performance standard: Exterior siding with joint separations or which delaminates, splits or deteriorates is a deficiency.
- (2) Builder/Warrantor responsibility: Repair/replace only the damaged siding. Siding to match the original as close as possible, however, the owner shall be aware that the new finish may not exactly match the original surface texture or color.
- ii. Possible Deficiency: Damaged siding or broken shingles.
- (1) Performance standard: Damaged siding or broken shingles is a deficiency if document on a pre-closing walk through inspection form.
- (2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace or repair damaged siding if noted on a pre-closing walk through inspection form. If Builder/Warrantor does not perform a pre-closing walk through then the Builder/Warrantor will be responsible for the deficiency if reported by the owner.
- (3) Owner responsibility: If a pre-closing walk through inspection is performed the deficiency should be reported on such report. If no walk through report exists the deficiency shall be reported in writing within 30 days of occupancy.
- iii. Possible Deficiency: Loose or fallen siding.
- (1) Performance standard: All siding which is not installed properly so as not to come loose or fall off is a deficiency.
- (2) Builder/Warrantor responsibility: Reinstall or replace siding and make it secure.
5. Roofing:
- i. Possible Deficiency: Roof or flashing leaks.
- (1) Performance standard: Roof or flashing leaks that occur under normal weather conditions is a deficiency.
- (2) Exclusion: Where cause is determined to result from severe weather conditions such as ice and snow build-up, high winds and driven rains.
- (3) Builder/Warrantor responsibility: Correct any roof or flashing leaks which are verified to have occurred under normal weather conditions.
- ii. Possible Deficiency: Lifted, curled or torn roof shingles.
- (1) Performance standard: Roof shingles which lift or curl during the first year of warranty coverage or tear loose during normal weather conditions is a deficiency.
- (2) Builder/Warrantor responsibility: Repair or replace lifted, curled or torn shingles.
- (3) Note: See N.J.A.C. 5:25-3.4(a)7. Warranty exclusions for exceptions to Builder/Warrantor Responsibility.
- iii. Possible Deficiency: Standing water on built-up roofs.
- (1) Performance standard: A properly pitched built-up roof is to drain water except for minor ponding. Dead flat roofs will retain a certain amount of water. Excessive ponding of water which causes leaking of the built-up roof is a deficiency.
- (2) Builder/Warrantor responsibility: Repair all leaks due to or caused by standing water.
- (3) Exclusion: Standing or ponding water is not considered a deficiency.
6. Sealants:
- i. Possible Deficiency: Water or air leaks in exterior walls due to inadequate caulking.
- (1) Performance standard: Joints and cracks in exterior wall surfaces and around openings which are not properly caulked to exclude the entry of water or excessive drafts is a deficiency.
- (2) Builder/Warrantor responsibility: Repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiency one time during the first year of the warranty period.
- (3) Owner responsibility: Maintain caulking once the condition is corrected.
7. Sheet metal:
- i. Possible Deficiency: Gutters and downspouts leak.

(1) Performance standard: Gutters and downspouts which leak is a deficiency. Gutters which are improperly pitched to drain water is a deficiency.

(2) Exclusion: Standing water in gutters is acceptable if it does not exceed one inch in depth.

(3) Builder/Warrantor responsibility: Repair leaks and pitch gutters to drain properly to meet standard.

(4) Owner responsibility: Responsible to keep gutters and downspouts free from leaves and debris to prevent overflow.

(g) Rules concerning doors and windows are as follows:

1. Doors: interior and exterior:

i. Possible Deficiency: Warpage of interior or exterior doors.

(1) Performance standard: Interior and exterior doors that warp so as to prevent normal closing and fit is a deficiency. The maximum allowable warpage of an interior door is one-quarter inch when measured from top to bottom vertically or diagonally.

(2) Builder/Warrantor responsibility: Repair or replace as may be required. New doors to be refinished to match the original as close as possible.

ii. Possible Deficiency: Door binds against jamb or head of door frame. Does not lock.

(1) Performance standard: Passage doors that do not open and close freely without binding against the door frame is a deficiency. Lock bolt is to fit the keeper to maintain a closed position.

(2) Builder/Warrantor responsibility: Adjust door and keeper to operate freely.

iii. Possible Deficiency: Door panels shrink and expose bare wood.

(1) Performance standard: None.

(2) Exclusion: Door panels will shrink due to the nature of the material, exposing bare wood at the edges and is not a deficiency.

(3) Builder/Warrantor responsibility: None.

iv. Possible Deficiency: Door panels split.

(1) Performance standard: Door panels that have split to allow light to be visible through the door is a deficiency.

(2) Builder/Warrantor responsibility: If light is visible, fill crack and finish panel to match as close as possible. Correct one time during first year of warranty. If panel cannot be repaired to hide crack, the panel or the door itself shall be replaced and finished to match original.

v. Possible Deficiency: Bottom of doors rub on carpet surface.

(1) Performance standard: Where it is understood by Builder/Warrantor and Homeowner that carpet is planned to be installed as a floor finish, whether by the Builder/Warrantor or Homeowner, the bottom of the doors which rub or disturb the carpet is a deficiency.

(2) Exclusion: Where carpet is selected by the Homeowner having excessive high pile, the Homeowner is responsible for any additional door undercutting.

(3) Builder/Warrantor responsibility: Undercut doors as required.

vi. Possible Deficiency: Excessive opening at the bottom of interior doors.

(1) Performance standards: Passage doors from room to room that have an opening between the bottom of the door and the floor finish material in excess of one and one-half inches is a deficiency. Closet doors having an opening in excess of two inches is a deficiency.

(2) Builder/Warrantor responsibility: Make necessary adjustment or replace door to meet the required tolerance.

2. Garage doors (attached garage):

i. Possible Deficiency: Garage door fails to operate or fit properly.

(1) Performance standard: Garage doors that do not operate and fit the door opening within the manufacturer's installation tolerances is a deficiency. Some entrance of the elements can be expected under heavy weather conditions and is not considered a deficiency.

(2) Builder/Warrantor responsibility: Make necessary adjustments to meet the manufacturer's installation tolerances.

(3) Exclusion: No adjustment is required when cause is determined to result from the owner's installation of an electric door opener.

3. Wood, plastic and metal windows:

i. Possible Deficiency: Malfunction of windows.

(1) Performance standard: Windows which do not operate in conformance with manufacturer's design standards is a deficiency.

(2) Builder/Warrantor responsibility: Consult with manufacturer when necessary and make necessary adjustments for windows to operate and meet the Standard.

ii. Possible Deficiency: Double hung windows do not stay in place when open.

(1) Performance standard: Double hung windows are permitted to move within a two inch tolerance, up or down when put in an open position. Any excessive movement exceeding the tolerance is a deficiency.

(2) Builder/Warrantor responsibility: Adjust sash balances one time only during the first year warranty period where possible instruct the owner on the method of adjustment for future repair.

iii. Possible Deficiency: Condensation or frost on window frames and glass.

(1) Performance standard: None.

(2) Exclusion: Window glass and frames will collect condensation on the frame and glass surface when humidity and temperature differences are present. Condensation is usually the result of temperature/humidity conditions in the home.

(3) Builder/Warrantor responsibility: None.

#### 4. Hardware:

i. Possible Deficiency: Hardware does not work properly, fails to lock or perform its intended purpose.

(1) Performance standard: All hardware installed on doors and windows which does not operate properly is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall adjust, repair or replace hardware as required.

#### 5. Storm doors, windows and screens:

i. Possible Deficiency: Storm doors and windows do not operate or fit properly.

(1) Performance standard: Storm doors and windows when installed and do not operate or fit properly to provide the protection for which they are intended is considered a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary adjustments for proper fit and operation. Replace when adjustment can not be made.

ii. Possible Deficiency: Screen panels do not fit properly. Screen mesh is torn or damaged.

(1) Performance standard: Rips or gouges in the screen mesh reported on a pre-closing walk through inspection report or openings between the screen panel and frame are deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace rips and gouges in the screen mesh if reported on the pre-closing

walk through inspection. The screen panels shall be adjusted to fit properly in frame one time only during the first year of warranty. If there is no pre-closing walk through inspection the Builder/Warrantor is responsible to repair deficiency when reported by owner.

(3) Owner responsibility: The owner shall be responsible to notify Builder/Warrantor within 30 days from the warranty date or the date on which the screens are furnished if there was no pre-closing walk through inspection.

#### 6. Weatherstripping and seals:

i. Possible Deficiency: Drafts around doors and windows.

(1) Performance standard: Weatherstripping is required on all doors leading directly to the outside from a habitable area. Some infiltration is normally noticeable around doors and windows, especially during high winds. Excessive infiltration resulting from opening in poorly fitted doors or windows, or poorly fitted weatherstripping is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall adjust or correct poorly fitted windows or doors, or poorly fitted weatherstripping.

#### 7. Glass and glazing:

i. Possible Deficiency: Broken glass.

(1) Performance standard: Broken glass is a deficiency if it is reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace if reported on a pre-closing walk through inspection report. If no report exists, the Builder/Warrantor shall replace if deficiency is reported by owner.

(3) Owner responsibility: Owner shall notify the Builder/Warrantor within 30 days from warranty date if no pre-closing walk through inspection report exists.

ii. Possible Deficiency: Clouding and condensation on inside surfaces of insulated glass.

(1) Performance standard: Insulated glass which clouds up or has condensation on the inside surfaces of the glass is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace glass in accordance with window and glass manufacturer's requirements.

#### (h) Rules concerning finishes are as follows:

##### 1. Lath and plaster:

i. Possible Deficiency: Cracks in plaster wall and ceiling surfaces.

(1) Performance standard: Noticeable cracks in plaster wall and ceiling surfaces is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair cracks and touch up paint to match as close as possible, one time only. Such conditions should be reported near the end of the first year warranty date to allow for normal movement in the home.

## 2. Gypsum wallboard:

i. Possible Deficiency: Defects caused by poor workmanship such as cracks over door and window frames, over archways, blisters in tape, excess compound in joints, exposed corner beads, nail pops, or trowel marks.

(1) Performance standard: Slight defects such as occasional nail pops, seam lines and cracks are common gypsum wallboard installations. Blisters in tape, cracks over door and window frames and over archways, excess compound in joints, trowel marks, nail popping and exposed corner beads are deficiencies. Nail pops are a defect only when there are signs of spackle compound cracking or falling away.

(2) Exclusion: Depressions or slight mounds at nail heads are not considered deficiencies.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct such defects to acceptable tolerance and repaint affected areas one time only to match as close as possible. Where excessive repair has been made the entire area shall be painted. Such conditions shall be reported near the end of the first year warranty date to allow for normal settlement of the home.

## 3. Hard surface flooring (flagstone, marble, quarry tile, slate, ceramic tile, etc.):

i. Possible Deficiency: Flooring cracks or becomes loose.

(1) Performance standard: Ceramic tile, flagstone or similar hard surfaced sanitary flooring which crack or become loose is a defect. Subfloor and wallboard are required to be structurally sound, rigid and suitable to receive finish.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine and correct the cause for the cracking or loosening of the finish material. Replace cracked material and reset loose flooring.

(3) Exclusion: Cracking and loosening of flooring caused by the Owner's negligence is not a deficiency.

(4) The Builder/Warrantor is not responsible for slight color and pattern variations or discontinued patterns of the manufacturer. It shall not be required to replace the entire finish when the new material consists of less than 25 percent of the finish area.

ii. Possible Deficiency: Cracks appear in grouting of ceramic tile joints or at junctions with other material such as a bathtub or shower.

(1) Performance standard: Cracks in grouting of ceramic tile joints are deficiencies. Regrouting of these cracks is a maintenance responsibility of the homeowner within the life of the home after the first year of warranty.

(2) Exclusion: Open cracks or loose grouting, where the wall surface abuts the flashing lip at a tub or shower basin, are considered Owner's maintenance and any resultant damage to other finish surfaces due to leaks, etc. are not considered a deficiency.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair grouting as necessary one time only within the first year of warranty.

## 4. Resilient flooring:

i. Possible Deficiency: Nail pops appear on the surface of resilient flooring.

(1) Performance standard: Readily apparent nail pops are a deficiency.

(2) Exclusion: See N.J.A.C. 5:23-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct nail pops that have caused damage to the floor material and repair or replace damaged floor covering in the affected area.

(4) Builder/Warrantor is not responsible for discontinued patterns or color variations.

ii. Possible Deficiency: Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

(1) Performance standard: Readily apparent depressions or ridges exceeding one eighth inch is a deficiency. The ridge or depression measurement is taken as the gap created at one end of a six-inch straight edge placed over the depression or ridge with three inches on one side of the defect held tightly to the floor.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall take required corrective action to bring deficiency within acceptable tolerances so as to be not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering, owner neglect or abuse, nor installations performed by others.

iii. Possible Deficiency: Resilient flooring or base loses adhesion.

(1) Performance standard: Resilient flooring or base that lifts, bubbles, or becomes unglued is a deficiency.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace resilient flooring or base as required. Builder is not responsible for discontinued patterns or color variation.

iv. Possible Deficiency: Seams or shrinkage gaps show at resilient flooring joints.

(1) Performance standard: Gaps in excess of one-eighth inch in width in resilient floor covering joints is a deficiency. Where dissimilar materials abut, a gap in excess of three-sixteenths inch is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take required action to correct the cause of the deficiency.

(3) The Builder/Warrantor is not responsible for discontinued patterns or color variations of floor covering.

#### 5. Plywood wall covering:

i. Possible Deficiency: Variations in paneling color; scratches or checks on the finished surface.

(1) Performance standard: Plywood paneling pattern and color will often vary and this is not a deficiency. Scratches on the paneling surface are deficiencies if reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace damaged paneling when the deficiency has been reported on the pre-closing walk through inspection report. Builder is not responsible for discontinued panel or color variations. If no pre-closing walk through was done, the Builder/Warrantor is responsible to repair damage if notified by owner.

(3) If damaged paneling cannot be replaced with new paneling to owner's satisfaction, the deficiency may be repaired within reasonable standard of good materials and workmanship.

(4) The owner shall notify the Builder/Warrantor within 30 days of the warranty date if no pre-closing walk through inspection report exists.

#### 6. Finished wood flooring:

i. Possible Deficiency: Dents, chips, knotpops, open joints or cracks in wood flooring. Dents and chips are deficiencies if reported on a pre-closing walk through inspection report.

(1) Performance standard: Dents, chips, knotpops, open joints or cracks in floor boards of finished wood

flooring which exceed the manufacturer's quality standards of the wood flooring grade are considered deficiencies. Manufacturer's grade quality standards shall be as defined by: Wood and Synthetic Flooring Institute, National Oak Flooring Association and Maple Flooring Manufacturer's Association.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine the cause for deficiencies and correct. Dents and chips are to be corrected if reported on a pre-closing walk through inspection report. If the inspection was not conducted, then the Builder/Warrantor shall correct if notified by the owner. For repairable deficiency, repair cracks, chips or dents by filling and refinishing to match the wood surface as close as possible. For non-repairable deficiencies replace and finish affected area to match remaining flooring as closely as possible.

(3) The owner shall report such deficiencies to Builder/Warrantor within 30 days of the warranty date if there was no pre-closing walk through inspection.

#### 7. Painting:

i. Possible Deficiency: Knot and wood stains appear through paint on exterior.

(1) Performance standard: Excessive knot and wood stains which bleed through the paint are considered deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall seal affected areas where excessive bleeding of knots and stains appear and touch up paint to match.

ii. Possible Deficiency: Exterior paint or stain peels, deteriorates or fades.

(1) Performance standard: Exterior paints or stains that peel or deteriorate during the first year of ownership is a deficiency.

(2) Exclusion: Fading, however, is normal and subject to the orientation of painted surfaces to the climatic conditions which may prevail in the area. Fading is not a deficiency.

(3) Builder/Warrantor responsibility: shall properly prepare and refinish affected areas, matching color as closely as possible. Where finish repairs affect the majority of the surface area, the whole area should be refinished. The warranty on the newly repainted surfaces will not extend beyond the original warranty period.

iii. Possible Deficiency: Painting required as corollary repair because of other work.

(1) Performance standard: Necessary repair of a painted surface required under this warranty is to be

refinished to match surrounding areas as closely as possible.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall refinish repaired areas to meet the standard as required.

iv. Possible Deficiency: Mildew or fungus forms on painted or factory finished surfaces.

(1) Performance standard: None.

(2) Exclusion: Mildew or fungus that forms on a painted or factory finished surface when the structure is subject to various exposures (that is, ocean, lake, riverfront, heavily wooded areas or mountains) is not a deficiency.

(3) Builder/Warrantor responsibility: None.

v. Possible Deficiency: Deterioration of varnish or lacquer finishes.

(1) Performance standard: Natural finishes on interior woodwork which deteriorate during the first year of ownership is a deficiency.

(2) Exclusion: Varnish-type finishes used on the exterior will deteriorate rapidly and are not covered by the warranty.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall refinish affected areas of natural finished interior woodwork, matching the color as closely as possible.

vi. Possible Deficiency: Interior paint coverage.

(1) Performance standard: Interior paint not applied in a manner sufficient to visually cover wall, ceiling and trim surfaces is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repaint wall, ceiling or trim surfaces where inadequate paint has been applied. Where a large area is affected the entire surface shall be repainted.

vii. Possible Deficiency: Paint splatters and smears on finish surfaces.

(1) Performance standard: Paint stains on porous surface which are excessive that detract from the finish and which cannot be removed by normal cleaning methods and are reported on a pre-closing walk through inspection report are considered deficiencies.

(2) Exclusion: Minor paint splatter and smears on impervious surfaces which cannot be easily removed is considered as homeowner maintenance and not a deficiency.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall remove paint stains without affecting the finish of the material, or replace the damaged surface if stain cannot be removed if reported on a pre-closing walk through inspection report. If no such inspection was done, the Builder/Warrantor shall correct if notified by the owner.

(4) The owner shall notify the builder within 30 days of the warranty date if a pre-closing walk through inspection report was not completed.

8. Wallcovering:

i. Possible Deficiency: Peeling of wallcovering installed by builder.

(1) Performance standard: Peeling of wallcovering is a deficiency, unless it is due to owner's abuse or negligence.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace defective wallcovering.

ii. Possible Deficiency: Mismatching in wallcovering pattern.

(1) Performance standard: Mismatched wall covering pattern over a large area that severely detracts from its intended purpose due to poor workmanship is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall remove mismatched wall covering and replace. Builder/Warrantor is not responsible for discontinued patterns or variations in color.

iii. Possible Deficiency: Lumps and ridges and nail pops in wallboard which appear after owner has wallcovering installed by others.

(1) Performance standard: None.

(2) Exclusion: Owner shall insure that the surface to receive wallcovering is suitable and assumes full responsibility should lumps, ridges and nail pops occur at a later date.

(3) Builder/Warrantor responsibility: None.

9. Carpeting:

i. Possible Deficiency: Seams in carpet.

(1) Performance standard: Seams in carpeting that separate due to improper installation is a deficiency.

(2) Exclusion: Carpeting material is not covered under the warranty.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct to eliminate the separation.

ii. Possible Deficiency: Carpeting comes loose or excessive stretching occurs.

(1) Performance standard: Wall to wall carpeting that comes loose is a deficiency.

(2) Exclusion: Stretching that may occur in the carpeting is subject to the quality and surface over which it is laid and is not a deficiency.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall resecure loose carpeting one time during the first year of warranty coverage.

iii. Possible Deficiency: Spots on carpet, minor fading.

(1) Performance standard: Spots or stains on the carpeting is a deficiency if reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall remove spots and stains on a one time basis if reported on a pre-closing walk through inspection report. Replace when excessive spots and stains cannot be removed. If no pre-closing inspection report exists, the Builder/Warrantor shall correct when notified by owner.

(3) Exclusion: Fading is not a deficiency; and builder has no responsibility.

(4) The owner shall notify the Builder/Warrantor within 30 days from the warranty date if no pre-closing walk through inspection report exists.

(i) Rules concerning specialties are as follows:

1. Fireplaces:

i. Possible Deficiency: Fireplace or chimney does not draw properly causing smoke to enter the house.

(1) Performance standard: A properly designed and constructed fireplace or chimney is to function as intended. It is normal to expect that high winds can cause temporary negative draft situations. Similarly, negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In addition, the geographic location of the fireplace or its relationship to adjoining walls and roof may be the cause of negative draft conditions. In some cases, it may be necessary to open a window slightly to create an effective draft. Since negative draft conditions could be temporary, it is necessary the owner substantiate the problem to the Builder/Warrantor by constructing a fire so the condition can be observed.

(2) Builder/Warrantor responsibility: When determined the malfunction is based upon improper construction of the fireplace then take the necessary steps to correct the problem.

(3) Exclusion: Where it is determined that the fireplace is properly designed and constructed, but still malfunctions due to natural causes beyond the builder's control, builder is not responsible.

ii. Possible Deficiency: Chimney separation from structure to which it is attached.

(1) Performance standard: Newly built fireplaces will often incur slight amounts of separation. Separation which exceeds one-half inch from the main structure in any 10 foot vertical measurement is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine the cause of separation and correct. Caulking or grouting is acceptable up to one half inch displacement.

2. Built-in sauna and steam bath units:

i. Possible Deficiency: Refer to the pertinent section of these Standards for deficiencies that may exist in construction, materials, finish and equipment of a steam bath or sauna unit constructed on-site.

(1) Performance standard: Built-in equipment such as sauna and steam bath units are to be constructed and must operate properly under the same applicable standard for finishes and mechanical and electrical equipment involved. Any deficiencies in finish materials or equipment referred to in these standards are considered deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make all necessary repairs or replacements including equipment covered under a manufacturer's warranty.

(j) Rules concerning kitchen cabinets and vanities are as follows:

1. Kitchen or vanity cabinet doors and drawers:

i. Possible Deficiency: Kitchen or vanity cabinet doors and drawers malfunction.

(1) Performance standard: Cabinet doors, drawers and other operating parts that do not function as designed are deficiencies if they are reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace operating parts if a pre-closing report exists. If no report exists, the Builder/Warrantor shall correct if notified by the owner.

(3) The owner shall notify the Builder/Warrantor within 30 days of the warranty date if a pre-closing walk through inspection was not conducted.

ii. Possible Deficiency: Surface cracks, delaminations and chips in high pressure laminates of vanity and kitchen cabinet countertops.

(1) Performance standard: Countertops fabricated with high pressure laminate coverings that delaminate, have chips, scratches, or surface cracks or joints between sheets exceed one sixteenth inch are considered deficiencies if reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace laminated surface covering having chips, cracks, scratches or joints exceeding the allowable width if reported on a pre-closing inspection report. If a pre-closing inspection report was not performed, the Builder/Warrantor shall correct when notified by the owner.

(3) The owner shall notify the Builder/Warrantor within 30 days at the warranty date if a pre-closing walk through inspection report does not exist.

iii. Possible Deficiency: Warping of kitchen and vanity cabinet doors and drawer fronts.

(1) Performance standard: Warpage that exceeds one quarter inch as measured from the face of the cabinet frame to the further most point of warpage on the drawer or door front in a closed position is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct or replace door or drawer front as required.

iv. Possible Deficiency: Gaps between cabinets, ceiling and walls.

(1) Performance standard: Counter top, splash, base and wall cabinets are to be securely mounted. Gaps in excess of one quarter inch between wall and ceiling surfaces is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary adjustment of cabinets and top or close gap by means of moulding suitable to match the cabinet or counter top finish; or other acceptable means.

(k) Rules concerning mechanical systems are as follows:

1. Septic tank systems:

i. Possible Deficiency: Septic system fails to operate properly.

(1) Performance standard: Septic system is to be capable of properly handling normal flow of household effluent. It is, however, possible that due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances, an overflow can occur. Periodic pumping of the septic tank is considered homeowner maintenance, and a normal need for pumping is not a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take corrective action as required, if it is determined that malfunction is due to improper design or construction. Builder is not responsible for malfunctions which occur through owner negligence or abuse. Builder is also not responsible for malfunctions which occur due to acts of nature such as freezing and changes in the ground water table.

(3) Exclusion: The following are considered owner negligence or abuse as an exclusion under the warranty:

(A) Excessive use of water such as overuse of washing machine and dishwasher; including their simultaneous use.

(B) Connection of sump pump, roof drains or backwash from water conditioner, to the system.

(C) Placing of non-biodegradable items in the system.

(D) Addition of any harsh chemicals, greases or cleaning agents; and excessive amounts of bleaches or drain cleaners.

(E) Use of a food waste disposer not supplied by builder.

(F) Placement of impervious surfaces over the disposal area.

(G) Allowing vehicles to drive or park over the disposal area.

(H) Failure to periodically pump out the septic tank, when required.

(4) Note: coverage is for first two years of warranty.

2. Plumbing:

i. Possible Deficiency: Plumbing pipes freeze.

(1) Performance standard: Drain, waste and water pipes are to be adequately protected to prevent freezing during normally anticipated cold weather. Freezing of pipes is a deficiency and covered only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct the condition responsible for pipes freezing, and repair piping damaged by freezing.

(3) The owner is responsible to maintain suitable temperatures in the home to prevent pipes from freezing. Homes which are periodically occupied such as summer homes, or where there will be no occupancy for an extended period of time must be properly winterized or periodically checked to insure a reasonable temperature is maintained. Leaks occurring due to owner's neglect and resultant damage are not the builder's responsibility.

ii. Possible Deficiency: Leakage from any piping.

(1) Performance standard: Leaks in any sanitary soil, waste vent and water piping are deficiencies and are covered during the first and second year of the warranty.

(2) Exclusion: Condensation on piping does not constitute leakage, and is not a deficiency, except where pipe insulation is required.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary repairs to eliminate leakage.

iii. Possible Deficiency: Faucet or valve leak.

(1) Performance standard: A valve or faucet leak due to material or workmanship is a deficiency and covered only during the first year of the warranty.

(2) Exclusion: Leakage caused by worn or defective washers or seal are a homeowner maintenance item.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace the leaking faucet or valve.

iv. Possible Deficiency: Defective plumbing fixtures, appliances or trim fittings.

(1) Performance standard: Fixtures, appliances or fittings are to be judged according to the manufacturer's standards as to use and operation and are covered only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace or repair any fixture or fitting which is outside of acceptable standards as defined by the manufacturer.

v. Possible Deficiency: Stopped up sanitary sewers, fixtures and sanitary drains are deficiencies.

(1) Performance standard: Sanitary sewer, fixtures and sanitary drains should operate and drain properly and are covered during the first and second year of the warranty.

(2) Builder/Warrantor responsibility: Where defective construction is shown to be the cause, the builder shall make necessary repairs.

(3) Exclusion: Sewers, fixtures, and drains which are clogged through the owner's negligence, the owner shall assume repair costs.

(4) NOTE: Builder responsibility for defective sewer lines extends to the property line on which the home is constructed.

vi. Possible Deficiency: Chipped or damaged plumbing fixtures and appliances.

(1) Performance standard: Chips, cracks, or other such damage to plumbing fixtures and appliances are deficiencies if they are included in a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair any chips or cracks if included in the pre-closing inspection report. If repair cannot be made, the fixture or appliance is to be replaced to match the original. If a pre-closing inspection was performed, the Builder/Warrantor shall correct if notified by owner.

(3) The owner shall notify Builder/Warrantor within 30 days of warranty date if no pre-closing walk through inspection was performed.

(4) Exclusion: Where a fixture is built into surrounding wall areas such as a tub or shower basin which requires repair, replacement is not covered under the warranty except where the deficiency causes the fixture to be unuseable.

3. Water supply:

i. Possible Deficiency: Staining of plumbing fixtures due to high iron content in water.

(1) Performance standard: High iron content in the water supply system will cause staining of plumbing fixtures.

(2) Builder/Warrantor responsibility: None. Maintenance and treatment of the water is the homeowner's responsibility.

ii. Possible Deficiency: Drinking water supply is not potable.

(1) Performance standard: All water must be free from contamination that would affect its potability. Potable water is defined as water fit for human consumption. In many cases, well water tests will show contamination that exceeds the recommended amounts permitted under applicable Federal and State standards, however, it still may be considered potable. In order to make this determination, the owner must provide written documentation from an independent testing laboratory or a board of health providing such service stating that the water is unfit for human consumption. Water test reports furnished by a commercial water treatment company cannot be used to make such a determination. Water is considered potable when a certificate of compliance is issued by the local/county board of health. Any recommendation for treatment of the water by the local/county board of health is contractual between owner and builder and cannot be considered a deficiency.

(2) Exclusion: Water which becomes non-potable after certification by a source beyond the control of the builder shall be excluded from coverage.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall supply potable drinking water.

iii. Possible Deficiency: Water supply system fails to deliver water; or pressure is low.

(1) Performance standard: All service connections to municipal water main or private water supply are the Builder/Warrantor's responsibility when installed by him.

(2) NOTE: Low water pressure is defined as follows: Use of the cold water supply at any one single fixture drastically reduces the cold water supply at any one other single fixture.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair as required, if failure to supply water is the result of deficiency in workmanship or materials. If conditions exist which disrupt or eliminate the sources of water supply that are beyond his control, then the builder is not responsible.

iv. Possible Deficiency: Noisy water pipes.

(1) Performance standard: Some noise can be expected from the water pipe system, due to the flow of water. Water hammer in the supply system is a deficiency and is covered only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct to eliminate "water hammer".

(3) Exclusion: Noises due to water flow and pipe expansion are not considered deficiencies.

#### 4. Heating and air conditioning:

i. Possible Deficiency: Inadequate heat.

(1) Performance standard: A heating system shall be capable of producing an inside temperature of 70 degrees Fahrenheit as measured in the center of the room at a height of five feet above the floor, under local outdoor winter design conditions as specified in the latest edition of the New Jersey U.C.C. Energy Subcode and ASHRAE Handbook in effect at the time the home was constructed.

(2) Note for Heating: The outdoor design temperature established by ASHRAE varies geographically throughout the State of New Jersey. There may be periods when the outdoor temperature falls below the design temperature, thereby lowering the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the heating system is controlled by a single thermostat for one or more floor levels.

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

ii. Possible Deficiency: Inadequate cooling.

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

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

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

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

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

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

iv. Possible Deficiency: Refrigerant lines leak.

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

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

v. Possible Deficiency: Condensate lines clog-up.

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

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

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

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

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

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

vii. Possible Deficiency: Ductwork noisy.

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

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

viii. Possible Deficiency: Ductwork separates, becomes unattached.

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

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

(l) Rules concerning electrical systems are as follows:

1. Electrical conductors:

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

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

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

2. Switches and receptacles:

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

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

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring and replace wiring or

breaker if it does not perform adequately or is defective.

ii. Possible Deficiency: Drafts from electrical outlets.

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

(2) Builder/Warrantor responsibility: None.

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

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

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

3. Service and distribution:

i. Possible Deficiency: Ground fault interruptor trips frequently.

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

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

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

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

Recodified with changes from 3.4.

#### Case Notes

Builder and homeowner contract; arbitration as exclusive remedy. *Marchak v. Claridge Commons, Inc.*, 134 N.J. 275, 633 A.2d 531 (1993).

Arbitration clause did not preclude owner's suit against builder for construction defects. *Marchak v. Claridge Commons, Inc.*, 134 N.J. 275, 633 A.2d 531 (1993).

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

Homeowners who failed to carry burden of proof with respect to defects was not entitled to relief under New Home Warranty Program. *Fody v. Passive Solar Homes and the Department of Community Affairs*, 96 N.J.A.R.2d (CAF) 89.

Builder would be required to reimburse State for monies disbursed from New Home Warranty Security Fund to settle homeowners' claim.

Romano v. New Home Warranty Program, Bureau of Homeowner Protection, 96 N.J.A.R.2d (CAF) 82.

Foundation and basement wall cracks caused by improper grading constitute major structural defects covered by New Home Warranty Program. Reddy v. Bureau of Home Owner Protection, 96 N.J.A.R.2d (CAF) 55.

Builder who fails to follow good industry standards in constructing windows and door jambs must make repairs under home warranty program. QMA Builders and Developers v. Groof, 96 N.J.A.R.2d (CAF) 18.

Warranty claims going to kitchen top seams and weather stripping on doors were not based on deficiencies covered by new home warranty. Shost v. Renz, 95 N.J.A.R.2d (CAF) 66.

Repairs that builder failed to fix; New Home Warranty Program. Harris v. C & C Developers, 94 N.J.A.R.2d (CAF) 103.

Bids for repairs rejected; work greatly beyond scope of necessary repairs. Eric v. Bureau of Homeowner Protection, 94 N.J.A.R.2d (CAF) 101.

Homeowners failed to establish basis for repainting entire room and were entitled only to have affected surface refinished. Murphy v. Bureau of Homeowner Protection, 94 N.J.A.R.2d (CAF) 101.

Heating and air conditioning system met the requirements of the New Home Warranty Program. Greene v. Carrington Estates, 93 N.J.A.R.2d (CAF) 16.

Wet spots on basement walls did not constitute a violation of the New Home Warranty and Builders Registration Act. Chen and Wang v. Ryders Lane Development Corp., 92 N.J.A.R.2d (CAF) 114.

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

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

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

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

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

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

### 5:25-3.7 Major structural defects

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

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

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

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

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

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

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

Recodified from 3.6; old text deleted and new substituted.

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

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

#### Case Notes

No recovery under New Home Warranty Program for older home's defects if no major structural damage proven. Rimmer v. Bureau of Home Protection/New Home Warranty Program, 97 N.J.A.R.2d (CAF) 17.

Water damage to bathroom floor and walls fails to qualify as major structural defect under New Home Warranty Program. Klein and Groom v. Bureau of Home Protection, 97 N.J.A.R.2d (CAF) 13.

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.

5. If a builder has not previously been registered, or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.319;

6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.425;

7. If, at any time while the builder's contribution percentage is in an amount determined in accordance with (b)6 above, by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.595;

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

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

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

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

to such date, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall mean the 24 month period immediately prior to such date; exclusive, in all cases, of any consecutive 12 month period in which no new homes were enrolled in the State Plan or in any approved private plan. Thus, for example, a builder who had no payments or adverse final determinations for 10 years but enrolled no homes during one of those years would not be eligible for the 10 year rate until another year had passed in which he both enrolled at least one new home and had no payments or adverse final determinations.

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

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

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

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

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

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

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

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

Substantially amended.

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

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

Use of State plan as remedy specified.  
Amended by R.1992 d.395, effective October 5, 1992.  
See: 24 N.J.R. 2663(a), 24 N.J.R. 3525(c).

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

Administrative Correction.

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

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

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

Amended by R.1997 d.306, effective July 21, 1997 (operative January 1, 1998).

See: 29 N.J.R. 2206(a), 29 N.J.R. 3249(b).

In (a) and (b), decreased the warranty contribution amounts.

#### Case Notes

Election of nonadministrative remedy does not preclude indemnification. *Central Heights Condominium Ass'n, Inc. v. Little Falls Sav. and Loan Ass'n*, 251 N.J.Super. 335, 598 A.2d 233 (A.D.1991).

Premium due under New Home Warranty Act; use of another builder as his construction contractor. *N.J.S.A. 46:3B1 et seq., 46:3B2, 46:3B4, 46:3H4. Monihan v. Bureau of Homeowner's Protection*, 91 N.J.A.R.2d (CAF) 3.

#### 5:25-5.5 Claims procedure

##### (a) Builder responsibilities rules are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Arbitration:

(1) Where both parties agree, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. Any person serving as an arbitrator for either the State Plan or an approved private plan shall possess proof of satisfactorily passing the course of study for building inspector R.C.S., as set forth in N.J.A.C. 5:23-5.20(d)1, and examination module 1A—Building One and Two Family Dwelling or be licensed as a professional engineer or registered or licensed as an architect in any state or hold a license as a subcode official in the State of New Jersey; provided, however, that no person shall serve as an arbitrator in any matter involving a major structural defect claim who is not either a licensed professional engineer or a registered or licensed architect.

(2) The decision of the arbitrator shall be binding on both parties and reviewable only under such circumstances and to such extent as is available pursuant to the New Jersey Arbitration Act. The decision shall fix responsibility, the extent of the defect, and the date by which it must be corrected. In all cases where both parties elect to arbitrate the claims dispute and an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitra-

tor requires clarification, either party or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

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

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

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

ii. Administrative hearing:

(1) Where both parties do not agree to arbitration, the Bureau of Homeowner Protection shall thoroughly review the matter and shall make a decision as to the merits of the claim. This decision shall be binding on both parties, provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice of such decision the Division shall then provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1981 d.181, effective June 4, 1981.

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

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

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

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

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

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

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

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

Substantially amended.

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

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

Stylistic revisions.

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

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

New Home Security Fund liability limited.

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

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

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

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

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

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

In (c)3i, rewrote (1).

#### Case Notes

Home owner who refused to supply name of contractor doing repairs was not entitled to payment of claim by New Home Warranty Program. *Hack v. Bureau of Homeowner Protection*, 96 N.J.A.R.2d (CAF) 64.

Third-year new home warranty claim denied because complaints did not constitute major structural defects. *Kershaw v. Homeowner Protection Bureau*, 96 N.J.A.R.2d (CAF) 27.

Home warranty claim denied when no evidence of structural damage presented. *Stephens v. BHP/NHWP*, 96 N.J.A.R.2d (CAF) 19.

Hiring another contractor to remedy alleged defects without obtaining agency authorization operated to preclude remuneration under new home warranty program. *Krochmal v. Department of Community Affairs*, 95 N.J.A.R.2d (CAF) 89.

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.

Purchasers' warranty claims timely when filed within 14 days of builder's response through verbal acknowledgment. *Lloyd v. Bureau of Homeowners Protection*, 95 N.J.A.R.2d (CAF) 71.

Owners were justified in hiring another contractor to complete work upon initial contractor's unsuccessful attempt to waterproof basement. *Lincoln Chester v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 59.

Homeowner relinquished any right to reimbursement for warranty work to correct defects by failing to obtain prior authorization. *Lizzi v. Bureau of Homeowners Protection*, 95 N.J.A.R.2d (CAF) 45.

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.

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.

Claim under common element warranty was dismissed when filed more than two years after warranty expired. *Aleem v. Community Affairs*, 95 N.J.A.R.2d (CAF) 24.

Denial of recovery; delay in filing claim and replacement of heating system before Bureau of Homeowner Protection had opportunity to inspect it. *Cessaro v. Bureau of Homeowner Protection*, 94 N.J.A.R.2d (CAF) 98.

Refusal to accept last settlement offer was proper reason for dismissal of claim. *Kushner v. Barry Freedman, Inc.*, 94 N.J.A.R.2d (CAF) 85.

Claim for additional work due to unforeseen damage was denied where the owner did not allow the Bureau of Homeowner Protection to inspect. *Promenade Condo Association v. Bureau of Homeowner Protection*, 93 N.J.A.R.2d (CAF) 63.

Failure to give written notice and failure to perfect notice caused the claims to be rejected. *Yelinko v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 54.

Warranty claim was treated as second year claim even though the builder admitted within the allowed time defects existed but failed to take action. *Schwanda v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 39.

Failure to obtain two estimates and written authorization prior to repair precluded recovery on warranty. *Lavin v. Bureau of Homeowner Protection, Dept. of Community Affairs*, 92 N.J.A.R.2d (CAF) 68.

Warranty fund is to pay for correction of defects in the least costly manner. *Bogaev v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 49.

Repair prior to inspection barred payment for cost. *Lipton v. Department of Community Affairs*, 92 N.J.A.R.2d (CAF) 30.

Failure to file claim within one-year period for defects caused by faulty workmanship and defective materials barred recovery. N.J.S.A. 46:3B-2, 46:3B-3. *Bridgewaters Townhouse Condominium Ass'n v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 25.

Claim under New Home Warranty and Builders' Registration Act was untimely. *Bridgewaters Townhouse Condominium Association v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 24.

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