

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

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

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

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

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

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

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

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

1. Notice: The applicant or previously approved private plan shall be furnished with a written notice describing the reasons for denial or revocation and advising of the right to have a hearing on the matter.
2. Hearing: The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1) applicable to contested cases.
3. Decision: The Commissioner shall issue a final decision in accordance with the applicable provisions of

the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

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

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

Substituted "commissioner" for "Director".

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

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

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

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

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

#### 5:25-5.1 Fund administrator

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

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

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

Stylistic revisions.

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

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

#### 5:25-5.2 Claim eligibility

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

1. Owners, other than owners of new homes enrolled in a private plan, having a warranty claim which occurs during years three through 10 of the warranty.
2. Owners having a warranty claim against a builder participating in the State Plan, who has refused to honor or is unable to honor the claim;
3. An owner who has a warranty claim against a builder who, contrary to law, was not a participant in the State Plan;

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

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

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

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

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

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

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).

Failure to allege present existing defects affecting the structure of house. *Mulcahy v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 87.

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

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

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

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

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

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

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgagee in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services that may be required pursuant to the warranty or may, at such person's option, pay 0.8 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in such person's place with regard to any claims made pursuant to this subchapter, but shall not stand in such person's place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in the place of the seller. The Department shall inspect the new home for any defects. The list of defects shall be attached to the Certificate of Participation. Uncompleted portions shall be excluded from the warranty coverage until completed, in accordance with N.J.A.C. 5:25-3.4(a)1. The additional amount paid shall not be passed through to the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. For purposes of this subsection, "10 years" shall mean the 120 month period immediately prior to the date

of enrollment of a new home under the State Plan, "seven years" shall mean the 84 month period immediately prior to such date, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall mean the 24 month period immediately prior to such date; exclusive, in all cases, of any consecutive 12 month period in which no new homes were enrolled in the State Plan or in any approved private plan. Thus, for example, a builder who had no payments or adverse final determinations for 10 years but enrolled no homes during one of those years would not be eligible for the 10 year rate until another year had passed in which he both enrolled at least one new home and had no payments or adverse final determinations.

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

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

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

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

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

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

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

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

Substantially amended.

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

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

Use of State plan as remedy specified.

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

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

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

Administrative Correction.

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

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

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.