

New Rule, R.1982 d.55, eff. March 1, 1982.
See: 14 N.J.R. 9(a), 14 N.J.R. 234(b).

Case Notes

Revocation should not be imposed automatically. *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program, Dept. of Community Affairs*, 248 N.J.Super. 166, 590 A.2d 697 (A.D.1991).

Failure to comply with arbitration award to correct defects in home under warranty required reimbursement of costs to correct defects to obtain restoration of registration as new home builder. *Williams v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 95.

SUBCHAPTER 3. WARRANTY COVERAGE AND STANDARDS

5:25-3.1 Warranty applicability

(a) The warranty specified in this section shall be provided by any and all new home builders for all new homes for which title is first transferred from builder to owner, or for which possession or occupancy is first given by builder to owner, on or after July 1, 1979.

(b) A new home built for an owner shall be considered given for occupancy if the builder shall obtain and give over to the owner a certificate of occupancy issued by a local enforcing agency pursuant to the New Jersey Uniform Construction Code. A new home sold to an owner shall be considered given for occupancy when the owner is authorized to occupy pursuant to any agreement between the builder and the owner.

(c) The following rules concern applicability to condominiums and cooperatives:

1. In addition to the individual dwelling units, the common elements serving condominiums or cooperatives are covered by this warranty, subject to the exclusions as defined under N.J.A.C. 5:25-3.4. The warranty date on common elements shall be the date on which that common element is first put to use. In the event one unit in a single condominium or cooperative structure is sold all remaining units in that structure shall be warranted whether sold or used for rental purposes.

2. Where the warranty date on common elements has expired, a unit owner who has taken first occupancy after that period may file a notice of defect on a common element directly with the builder and when it is established that such defect could not have been determined prior to occupying the unit, the defect shall be made a part of the unit owner's claim.

(d) Any condominium or cooperative building containing three or more dwelling units for which more than 10 percent of the unit deeds or leases have been transferred or signed, as the case may be, or where more than 10 percent of the

units have been given for occupancy prior to July 1, 1979, shall not be subject to this Act. In the case of a project consisting of more than one building, individual buildings within such project shall not be subject to this Act by the same criteria.

(e) The warranty specified in this section shall be applicable to new owner-occupied two-family homes in the same manner and to the same extent as to one-family homes.

(f) In any case of mixed residential and nonresidential use, the warranty specified in this section shall be applicable only to that portion of a new home that is used exclusively for residential purposes, unless it can be shown that a defect in the nonresidential portion is or will be the proximate cause of a defect in the residential portion of the new home.

(g) Where an owner has contracted with someone other than the builder for either the mechanical, electrical, foundation or framing, other than piling foundation, the builder shall not be required to provide a warranty. Except where an owner has contracted with some person other than the builder for construction of the foundation and/or framing a warranty may be issued, at the builder's option, that shall contain exclusions for work done by anyone other than the builder, the builder's employees, agents or subcontractors.

(h) The warranty administrator or State Plan administrator shall require, prior to the issuance of a warranty for any model home, for any new home that has been completed but vacant for a period of at least 12 months, or for any new home for which it has been made a condition of enrollment under either an approved private plan or the State Plan, the inspection of the new home by the warranty plan prior to occupancy and the repair, replacement or correction, by the builder, of any materials or workmanship exhibiting defects and replacement of any appliances, fixtures or equipment not covered by a manufacturer's warranty for at least one year from the warranty date.

1. In the event that a builder disputes a determination by the warranty administrator or State Plan administrator that a defect exists, the builder shall have the option of submitting the certification of a licensed professional engineer that structural and/or mechanical components of the home meet industry standards and are adequate for the term of the warranty coverage.

2. In the event that there is not sufficient time to correct all defects prior of the transfer of the new home to an owner, the builder shall, with the agreement of the owner, and in lieu of repair, replacement or correction of defects, or replacement of appliances, fixtures or equipment, as provided in (h) above, have the option of posting, with an attorney at law or banking institution licensed in the State of New Jersey, an escrow in an amount not to exceed five percent of the selling price or limit of liability, the escrow to be released only upon a determination by the warranty administrator or State Plan administrator that the required work or replacement has

been satisfactorily done, or to be forfeited to the approved private warranty plan or State Plan in the event that the work is not done in a satisfactory manner, or the required replacement is not made, within such time as the agreement establishing the escrow may allow.

(i) Builders may negotiate monetary settlements, as noted in N.J.A.C. 5:25-3.3(b), in the form of price concessions, which settlements shall survive closing and shall be incorporated into the terms of the warranty coverage available on the home.

1. Any defect or deficiency for which an owner accepts a monetary settlement shall be excluded from warranty coverage.

2. It shall be the responsibility of any builder entering into a monetary settlement in lieu of correcting a defect or deficiency to provide the approved private plan or the State Plan with a copy of an agreement, signed by both the builder and the owner, specifying the amount of the price concession or other monetary settlement and the defects or deficiencies for which the settlement is being made. This document shall be provided at or before the time that the new home is enrolled in the warranty plan.

As amended, R.1982 d.22, eff. February 1, 1982.
See: 13 N.J.R. 863(b), 14 N.J.R. 145(a).

(f) added.

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

Substantially amended.

Amended by R.1998 d.126, effective March 2, 1998.
See: 29 N.J.R. 3916(a), 30 N.J.R. 825(a).

Rewrote (g); and added (h) and (i).

Case Notes

Provision in house construction contract attempting to eliminate remedies for homeowner was unenforceable as violation of public policy and remedies. *Marchak v. Claridge Commons, Inc.*, 261 N.J.Super. 126, 617 A.2d 1256 (A.D.1992), certification granted 133 N.J. 440, 627 A.2d 1145, affirmed 134 N.J. 275, 633 A.2d 531.

Mortgagee in possession who completed construction of condominium building after builder defaulted was entitled to indemnification. *Central Heights Condominium Ass'n, Inc. v. Little Falls Sav. and Loan Ass'n*, 251 N.J.Super. 335, 598 A.2d 233 (A.D.1991).

Petitioner's house not a 'new home' since the house had been rehabilitated from an existing house. *Glaum v. Bureau of Const. Code Enforcement, New Home Warranty Program, Dep't of Community Affairs*, 221 N.J.Super. 79, 533 A.2d 986 (App.Div.1987).

Builder who failed to provide homeowner with home warranty plan for nine months following completion of construction was ordered to pay \$400 late fee. *Pellegrini v. Bureau of Homeowner Protection/NHWP*, 96 N.J.A.R.2d (CAF) 105.

New Home Builders' Registration would not be revoked on the grounds that builder failed to correct a defective septic system. *Ocean Heights Realty v. Bureau of Homeowner Protection/NHWP*, 92 N.J.A.R.2d (CAF) 58.

Registration of builder revoked upon revocation of related company registration. *Bureau of Homeowner Protection v. Image Builders*, 92 N.J.A.R.2d (CAF) 39.

Construction on preexisting foundation was not new home. *Beach Condominiums v. Bureau of Homeowner Protection, New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 37.

5:25-3.2 Warranty coverage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Substantially amended.

Case Notes

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

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

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

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