

(d) Absent any mitigating or aggravating circumstances, the first continuing violation penalty shall be as follows:

1. For each violation area in which a life hazard violation is cited: \$1,500; and
2. For each violation area in which no life hazard violation is cited: \$1,000.

(e) Absent any mitigating or aggravating circumstances, the second continuing violation penalty shall be as follows:

1. For each violation area in which a life hazard violation is cited: \$2,500; and
2. For each violation area in which no life hazard violation is cited: \$1,000.

(f) Absent any mitigating circumstances, the third, and any subsequent, continuing violation penalty shall be in the amount of \$5,000 per violation.

(g) The owner of any building subject to an unsafe building notice and order issued pursuant to N.J.A.C. 5:10-1.13 who shall fail to comply with such notice and order after issuance of the first continuing violation penalty shall be subject to a continuing violation penalty of \$5,000 per day per violation until all life hazard violations are abated.

Amended by R.1982 d.334, effective September 20, 1982.
See: 14 N.J.R. 909(b), 14 N.J.R. 1089(c).

Originally filed as an emergency adoption (R.1982 d.259) on July 22, 1982. Readopted as R.1982 d.334.

Repealed by R.1988 d.572, effective December 19, 1988 (operative June 16, 1989).

See: 20 N.J.R. 2126(a), 20 N.J.R. 3122(a).

Section concerned inspection fees.

New Rule, R.2007 d.185, effective June 4, 2007.

See: 39 N.J.R. 721(a), 39 N.J.R. 2229(a).

Section was "Reserved".

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 609) adopted, which found that an owner was responsible for \$14,000 in penalties and a \$832 re-inspection fee due to violations of the housing and fire code; the penalties were assessed per area and not per violation and were differentiated as to areas with a "life safety violation" and those without. Bureau of Housing Inspection v. 120 N. Oraton Associates, OAL Dkt. No. CAF 05151-08, 2008 N.J. AGEN LEXIS 1281, Final Decision (August 15, 2008).

5:10-1.18 through 5:10-1.29 (Reserved)

5:10-1.30 (Reserved)

Amended by R.1971 d.60, effective April 23, 1971.

See: 3 N.J.R. 77(a).

Amended by R.1978 d.289, effective August 17, 1978.

See: 10 N.J.R. 222(a), 10 N.J.R. 378(b).

5:10-1.31 (Reserved)

Amended by R.1978 d.289, effective August 17, 1978.

See: 10 N.J.R. 222(a), 10 N.J.R. 378(b).

5:10-1.32 (Reserved)

Amended by R.1971 d.60, effective April 23, 1971.

See: 3 N.J.R. 77(a).

Amended by R.1978 d.289, effective August 17, 1978.

See: 10 N.J.R. 222(a), 10 N.J.R. 378(b).

5:10-1.33 through 5:10-1.34 (Reserved)

SUBCHAPTER 1A. LOCAL ENFORCING AGENCIES

5:10-1A.1 Local enforcing agencies; establishment and organization

(a) A municipality which elects to establish a local enforcing agency shall do so by ordinance in conformity with the following requirements:

1. A housing code official shall serve as the chief administrator of the local enforcing agency and shall establish the day to day operating procedures of the agency and shall be responsible for the activities of the inspectors and trainees. He or she shall be qualified and licensed as a housing code official in accordance with these rules.

2. Inspectors, sufficient in number to perform the inspections required, shall be appointed. All inspectors shall be qualified and licensed as inspectors in accordance with these rules.

3. The appointing authority may appoint persons to the position of trainee. All persons so appointed shall be qualified and licensed as trainees in accordance with these rules.

4. In the event the local enforcing agency shall consist of only one position, that position shall be filled by someone qualified and licensed as a housing code official.

5:10-1A.2 County enforcement; establishment and organization

A county local enforcing agency shall only be created by an ordinance or resolution of the Board of Chosen Freeholders and shall be organized in the same manner as a municipal agency.

5:10-1A.3 Joint local enforcing agencies; establishment and organization

(a) Two or more municipalities, or at least one municipality and a county, may by ordinance of all, or by resolution in the case of a county not authorized by law to adopt ordinances, join to administer and enforce the Act and the rules. The joint local enforcing agency shall be organized in the same manner as municipal local enforcing agencies are organized.

(b) The procedures for the execution of any agreement to create a joint local enforcing agency shall be so set forth in the Interlocal Services Act, N.J.S.A. 40:8A-1 et seq.

5:10-1A.4 Local enforcing agencies; administration

(a) The local enforcing agency shall:

1. Identify all hotels and multiple dwellings within its jurisdiction;
2. Maintain a registry thereof;
3. Provide a copy of the registry to the Bureau; and
4. Promptly notify the Bureau of all changes.

(b) The local enforcing agency shall ensure that a comprehensive inspection is made of each multiple dwelling within its jurisdiction at least once in every five years and that a comprehensive inspection is made of each hotel within its jurisdiction at least once in every five years.

(c) The local enforcing agency shall cause an inspection report to be made that shows the results of the inspection. The report shall be prepared on forms prescribed by the Bureau, a copy of which shall be maintained by the local enforcing agency at least until the next inspection cycle.

(d) The local enforcing agency shall be responsible for the issuance of the written notice of violations as required by N.J.S.A. 55:13A-13, 55:13A-16 and 55:13A-17. Copies of all such notices issued shall be maintained by the enforcing agency for at least until the next inspection cycle.

5:10-1A.5 Departmental monitoring

(a) The Bureau of Housing Inspection shall institute a regular program of monitoring enforcing agencies to ensure that the Act and rules are being properly enforced. This monitoring program shall provide for random field visits as well as monitoring visits in response to complaints.

(b) When making a monitoring visit, the Bureau shall determine:

1. Whether the Housing Code Official and any inspectors or trainees are licensed in accordance with these rules;
2. Whether all required inspections and re-inspections are being made when required by the Act;
3. Whether inspection reports, notices of violations and penalty notices are being properly issued and maintained;
4. Whether the enforcing agency has sufficient staff; and
5. Whether the local enforcing agency or any of its employees are in violation of any requirement of the Act or these rules.

(c) If the Bureau determines that an enforcing agency has failed to properly enforce the Act or these rules, or is in violation of the rules, it shall notify the enforcing agency of the deficiencies and of the necessary corrective action.

(d) The enforcing agency shall have 15 days from the receipt of a notice to file written comments or objections with the Bureau who shall review the comments and objections and issue a final notice.

(e) When the enforcing agency fails to take corrective action or where a failure to enforce the Act and the rules is pervasive and substantial, the Bureau shall notify the enforcing agency of this finding and shall thereafter be responsible for enforcing the Act and rules.

(f) Where the Bureau has assumed responsibility pursuant to (e) above, the enforcing agency may petition the Commissioner for the return of jurisdiction. The petition shall indicate the corrective action taken or to be undertaken to ensure proper enforcement of the Act and rules. The Commissioner may return jurisdiction if he or she finds that the Act and rules will be properly enforced.

(g) In any case in which it may find it necessary to do so, the Bureau of Housing Inspection may supplant or replace a local enforcing agency for a specific project, without appeal.

5:10-1A.6 Appointment

(a) A housing code official or inspector in a non-civil service municipality shall not be subject to removal from the position for reasons having to do with technical, administrative or enforcement issues related to enforcement of the Hotel and Multiple Dwelling Law so long as he or she continues to hold licensure as a housing code official or inspector, as the case may be.

(b) The Department shall have the right to suspend or revoke the license of a housing code official or inspector or trainee who violates any provision of the Hotel and Multiple Dwelling Act or of these rules, or is grossly negligent in the performance of his or her duties, or fails to maintain a minimally acceptable level of competence.

(c) Municipal officials may determine salary, assign office space, require reports of activities and generally fix terms and conditions of employment. They may impose discipline for failure to maintain office hours, failure to maintain records, failure to serve the public courteously, or for dishonesty, intoxication or other forms of misbehavior not related to housing code enforcement.

SUBCHAPTER 1B. INSPECTOR LICENSING

5:10-1B.1 Authority; hearings

(a) A candidate for a license issued pursuant to this subchapter shall submit an application to the Licensing Unit, Bureau of Code Services, Division of Codes and Standards, which shall review and process the application in accordance with applicable provisions of N.J.A.C. 5:23-5.5(b).

(b) Licensing responsibility within the Division of Codes and Standards shall be as follows:

5:10-7.2 Foundations

Foundations of all structures shall be kept, maintained and repaired to eliminate all exposed holes, cracks and other defects so that the foundation shall be at all times capable of resisting the penetration of liquids into the building and be weathertight and serve to protect the building against infestation. They shall also be maintained to prevent or correct erosion around footings.

5:10-7.3 Exterior surfaces

(a) The exterior of every structure or accessory structure, fence or other improvement on the premises shall be kept in good repair and all exposed surfaces thereof subject to deterioration shall be protected against weathering or deterioration by a protective coating appropriate for the particular material involved as needed.

(b) All exterior windows and window frames shall be painted with at least one coat of suitable exterior paint or other preservative as needed except where constructed of an approved atmospheric corrosion-resistant metal or other equivalent material.

(c) The exterior surfaces shall be maintained to eliminate conditions reflective of deterioration or inadequate maintenance, such as broken glass, loose shingles, crumbling stone or brick or excessive peeling of paint.

(d) The exterior of the building shall be free of loose material that may create a hazard by falling on persons utilizing the premises.

(e) Exterior surfaces of multiple dwellings that have not been certified as lead-free in accordance with N.J.A.C. 5:17 shall be maintained in accordance with the applicable provisions of N.J.A.C. 5:10-6.6.

Amended by R.2005 d.144, effective May 16, 2005.
See: 36 N.J.R. 2106(a), 37 N.J.R. 1754(c).
Added (e).

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 609) adopted, which found that although the Bureau of Housing Inspections failed to present evidence that the exterior windows and window frames were not painted with at least one coat of suitable exterior paint or other preservative, as required by N.J.A.C. 5:10-7.3(b), the Bureau did present evidence that the "window would fall back down" and that it was "difficult to keep the window open"; thus, while not addressing painting, it did address the need to keep the premises in "good repair" which was referenced in N.J.A.C. 5:10-7.3(a). Bureau of Housing Inspection v. 120 N. Oraton Associates, OAL Dkt. No. CAF 05151-08, 2008 N.J. AGEN LEXIS 1281, Final Decision (August 15, 2008).

Unabated fire-safety and other violations warranted imposition of \$6,750 in penalties against landlord. 804 Ocean v. Community Affairs, 95 N.J.A.R.2d (CAF) 17.

5:10-7.4 Leakage, drafts and infestation

All exterior walls, roofs, windows, window frames, doors, door frames, skylights, foundations and other parts of the

structure shall be maintained as to keep water from entering the structure, to prevent excessive drafts or heat loss during cold or inclement weather and to provide a barrier against infestation. Damaged or badly worn material shall be repaired or replaced, and places showing signs of rot, leakage, deterioration or corrosion shall be treated or restored to prevent weathering or seepage.

5:10-7.5 Leaders and drainpipes

Leaders and drainpipes shall be securely fastened to the building and maintained in good condition, free of leaks, kept clean and free of obstructions and shall direct storm waters into draining systems and away from the foundation walls of the structure.

5:10-7.6 (Reserved)

Repealed by R.1993 d.464, effective September 20, 1993.
See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).

Section was "Chimneys, flues and vent attachments".

5:10-7.7 Railings

(a) Handrails: All interior stairways having three or more risers, and all exterior steps having a drop of at least 24 inches to ground level or having at least four risers, shall have handrails which are to be securely fastened to walls or guard rails, and, unless continuous, shall be returned to the enclosure walls or posts at the end of the stairs.

1. All stairways 44 inches or more in width shall have continuous handrails on both sides; stairs less than 44 inches wide may have a handrail on one side only. In assembly occupancies, when the stairway width exceeds 88 inches, the stairways shall be provided with intermediate handrails dividing the stairway in approximately equal widths with a maximum lateral spacing of 66 inches.

2. The height of the handrail shall not be less than 30 inches and shall not project more than 34 inches above the nosing of treads.

3. Handrails shall provide a finger clearance of 1 1/2 inches and shall not project more than 3 1/2 inches into the required stair width.

(b) Guard rails shall be provided on exterior corridors, balconies, landings or porches having more than a three-foot drop to the adjoining level and on the exposed side of any interior or exterior stairway. The height of the guard rail shall not be less than 30 inches.

1. Exception: In an instance of a rail protecting a level 35 feet or less above exterior grade where a special case can be made that the existing rail is sufficient to protect the safety of persons, the department may permit a rail less than 30 inches in height.

2. Guards shall be constructed so that the area in the plane of the guard, from the top of the tread to the top of

the guard, is subdivided or filled in one of the following methods:

- i. A sufficient number of intermediate longitudinal rails constructed so that the clear distance between rails (measured at right angles to the rail) does not exceed 16 inches (measured vertically) from the tread nosing; or
- ii. Balusters spaced not more than eight inches apart; or
- iii. Panels of wire mesh, or expanded metal, or ornamental grills which provide protection equivalent to that provided by the intermediate rails or balusters specified in the two preceding paragraphs; or
- iv. Walls; or
- v. Any combination of the foregoing.

Amended by R.1993 d.464, effective September 20, 1993.
See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).

Case Notes

Violation of former N.J.A.C. 5:10-9.4 is jury question in negligence action; regulation valid. *Terrey v. Sheridan Gardens, Inc.*, 163 N.J.Super. 404, 394 A.2d 1247 (App.Div.1978).

SUBCHAPTER 8. MAINTENANCE OF INTERIOR

5:10-8.1 Basements, cellars and crawl spaces

(a) Basements, cellars and crawl spaces are to be free of moisture resulting from liquid penetration from the exterior and shall be provided with ventilation as required herein to prevent accumulations of moisture and dampness.

(b) Floors of basements and cellars shall have a permanent surface that is water resistant and capable of being kept broom-clean so as not to create a safety hazard. Subcellars and crawl spaces which are neither usable nor occupiable need not be permanently surfaced.

Case Notes

Violations; exemptions denied under former N.J.A.C. 5:10-19.4 regarding permanent basement floors. *Lobsenz & Lobsenz v. Dept. of Community Affairs*, 3 N.J.A.R. 92 (1981).

5:10-8.2 Interior surfaces

(a) All floors, walls, ceilings and other surfaces shall be kept in good repair, that is, free from cracks, breaks, split or splintering boards or woodwork, loose plaster, flaking or peeling paint or other materials. Loose or defective sections shall be removed and replaced so that the joint between the repair and the sound material is made flush and smooth.

(b) Floors, walls, ceilings and other exposed surfaces shall be kept clean, free from visible foreign matter, sanitary and well-maintained at all times. If necessary to accomplish the foregoing, these surfaces shall be kept painted, whitewashed,

papered, covered or treated with sealing materials or other protective coatings as needed.

(c) Interior walls, ceilings and other exposed surfaces in units of dwelling space shall be kept smooth, clean, free of flaking, loose or peeling paint, plaster or paper and capable of being maintained free of visible foreign matter and of vermin, and in a sanitary condition. If and when necessary to accomplish the foregoing or any part thereof, such interior surfaces shall be spackled, painted, papered or otherwise provided with a protective coating appropriate for the surface material and this shall be done at least once every three years unless it is clearly unnecessary. Painting or other provision of a protective coating shall be the responsibility of the occupant and not of the owner when required more frequently than once every three years as a result of the acts or omissions of the occupant, a member of his family or household or his guest.

(d) Owners shall maintain records indicating the date on which any dwelling unit or part thereof was painted or otherwise provided with a protective coating for six years. Said records shall also indicate the name and address of the person who did the work, the nature of the work done and the cost. Said records shall be made available upon request to the Bureau or to any inspector performing an inspection of the premises on behalf of the Bureau.

(e) Except where housekeeping services are provided, normal housekeeping as required for the maintenance of cleanliness and sanitation within individual units of dwelling space of multiple dwellings shall be the responsibility of the occupants and shall not, unless a hazard to the health, safety or welfare of persons other than the occupants of the dwelling unit is thereby created, be the responsibility of the owner.

(f) Interior surfaces of multiple dwellings that have not been certified as lead-free in accordance with N.J.A.C. 5:17 shall be maintained in accordance with the applicable provisions of N.J.A.C. 5:10-6.6.

Amended by R.2005 d.144, effective May 16, 2005.
See: 36 N.J.R. 2106(a), 37 N.J.R. 1754(c).
Added (f).

5:10-8.3 Stairways and common areas

(a) Stairways shall be maintained to support a live load of 100 pounds per square foot and walking surfaces shall be maintained free of hazards, such as loose steps, loose or uneven treads, torn carpeting, raised strips and nonuniform risers.

(b) Hallways, fire escapes, stairs, landings and passages and other common areas shall be kept open for unrestricted passage.

(c) There shall be a railing to provide support and protect persons from falling off the stairways or landings. Such railings shall meet the requirement of N.J.A.C. 5:10-7.7.