

CHAPTER 25
REGULATIONS GOVERNING NEW HOME
WARRANTIES AND BUILDERS'
REGISTRATION

Authority

N.J.S.A. 46:3B-10.

Source and Effective Date

R.1996 d.93, effective January 24, 1996.
See: 27 N.J.R. 4058(a), 28 N.J.R. 1225(a).

Executive Order No. 66(1978) Expiration Date

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, expires on January 24, 2001.

Chapter Historical Note

Chapter 25, Regulations Governing New Home Warranties and Builders' Registration, was adopted as new rules effective April 19, 1979 as R.1979 d.147. See: 10 N.J.R. 377(b), 11 N.J.R. 223(c). Pursuant to Executive Order No. 66(1978), Chapter 25 was readopted as R.1980 d.522, effective January 1, 1980. See: 12 N.J.R. 631(a), 13 N.J.R. 7(e). The "sunset" provision of Executive Order No. 66(1978) was waived, and the expiration date for Chapter 25 was extended by gubernatorial waiver from January 1, 1986 to February 3, 1986. See: 18 N.J.R. 218(a). The expiration date was further extended by gubernatorial waiver from February 3, 1986 to March 31, 1986. See: 18 N.J.R. 490(a). Pursuant to Executive Order No. 66(1978), Chapter 25 was readopted as R.1986 d.141, effective March 31, 1986. See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a). Pursuant to Executive Order No. 66(1978), Chapter 25 was readopted as R.1991 d.140, effective February 19, 1991. See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c). Pursuant to Executive Order No. 66(1978), Chapter 25 was readopted as R.1996 d.93, effective January 24, 1996. See: Source and Effective Date. See also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:25-1.1 Title

This chapter shall be known as and may be cited as "Regulations Governing New Home Warranties and Builders' Registration".

5:25-1.2 Scope

This chapter shall: prescribe the form and coverage of the minimum warranty established by the Act; govern procedures for the implementation and processing of claims pursuant to the warranty; establish requirements for registration as a builder, and procedures governing the denial, revocation and suspension of builders registration; and, establish the requirements of private alternate New Home Warranty Security Plans and of the State New Home Warranty Security Plan.

5:25-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Home Warranty and Builders' Registration Act (P.L. 1977, c.467), and regulations promulgated hereunder.

"Appliances, fixtures, and equipment" shall mean and include, but not be limited to: furnaces, boilers, heat pumps, humidifiers, air purifiers, air handling equipment, ventilating fans, air conditioning equipment, water heater, pumps, stoves, ranges, ovens, refrigerators, garbage dispos-

als, food waste disposers, compactors, dishwashers, automatic garage door openers, washers, and dryers, plumbing fixtures and trim, faucets, fittings, motors, water treating equipment, ejectors, thermostats and controls, including any fitting attachments; electric receptacles, switches, lighting fixtures, and circuit breakers;

“Builder designee” means the partner, officer, or director designated as such in the builder’s application for registration and is the individual responsible for on-site building activity.

“Certificate of occupancy” means the certificate required to be issued pursuant to the State Uniform Construction Code Act, (N.J.S.A. 52:27D-119 et seq.).

“Certificate of Participation” means that certificate which is issued by the Commissioner to the owner of each new home constructed by a builder who participates in the State Plan and which signifies that the home was constructed by a participating builder, and that premiums due have been paid.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Common elements” shall mean those elements listed in the master deed on file for each such development or unit as required under law for common ownership.

“Consequential damages” means damage to the home itself resulting directly or proximately from a defect covered by the warranty.

“Construction permit” means that permit required pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) before the construction of any new home is permitted to begin.

“Department” means the Department of Community Affairs.

“Director” means the Director of the Division of Codes and Standards.

“Division” means the Division of Codes and Standards in the Department of Community Affairs.

“General contractor” means a builder who is responsible for general construction, plumbing, heating, and air-conditioning, and electrical work for a single new home constructed for an owner on the owner’s land.

“Major structural defect” means any actual damage to the load-bearing portion of the home, including consequential damages, damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) that affects its load-bearing function and that vitally affects or is imminently likely to vitally affect use of the home for residential purposes. “Major structural defect” shall have the same meaning as “major construction defect,” as used in the Act.

“Mechanical and electrical systems” shall mean and include the following:

1. Plumbing system: Gas supply lines and fittings, and water supply, waste and vent pipes and their fittings; septic tanks and their drains; water, gas, and sewer service piping, and their extensions to the property line which tie-in to a public utility connection or on-site well and/or sewage disposal system.

2. Electrical system: All wiring, electrical boxes, and connections up to the public utility meter connection, excluding appliances, fixtures and equipment.

3. Heating, Ventilating, Cooling and Mechanical systems: All ductwork, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

“New home” means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease, and units governed by the Federal Mobile Home Construction and Safety Standards Act, 42 USC 5401 et seq.

“New home builder” means any individual, corporation, partnership or other business organization engaged in the construction of new homes. Whenever used herein the term “builder” shall mean “new home builder.”

“Person” means any individual, corporation, association, or other entity, as defined in N.J.S.A. 1:1-2.

“Release” means an executed acknowledgement of satisfaction of the claim of defect required to be given to a builder by an owner after a claim of defect is satisfied. A release shall not prejudice the right of the owner to further relief from the builder pursuant to N.J.A.C. 5:25-5.5, Claims procedure.

“State New Home Warranty Security Plan” or “State Plan” means the combination of dispute settlement procedure, New Home Warranty Security Fund, and any other elements of the program operated by the Division of Housing and Development intended to give effect to the Act and these regulations.

“Stockholder” means any person who owns any share or share in a builder except that as used herein the term stockholder shall not include persons holding publicly-traded shares on any national or regional stock exchange.

“Subsidiary” means any corporation, partnership or other business organization which is controlled in any manner by any other corporation, partnership or business organization. Control is presumed whenever such organizations share any common officers, directors, principals, or stockholders.

“Warrantor” means the builder who constructed or transferred title to the owner.

“Warranty” means the warranty prescribed by the Act and these regulations.

“Warranty administrator” means that person responsible for administering any portion or all of the claims resolution and defect correction process of a private plan where that person is a legal entity different from the warranty guarantor.

“Warranty date” means the first occupation or settlement date whichever is sooner; in cases of model homes, the warranty date will be the date on which a temporary certificate of occupancy is issued pursuant to N.J.S.A. 52:27D-119 et seq.

“Warranty guarantor” means that person responsible for securing the warranty, required to be offered pursuant to these regulations, on behalf of a private plan. The term shall mean and include warranty administrator where a separate administrator is not established.

Amended by R.1980 d.158, eff. April 15, 1980.
See: 12 N.J.R. 249(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.1991 d.140, effective March 18, 1991.
See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c).

In “Director” and “Division”, changed “urban renewal” to “development.”

Amended by R.1992 d.188, effective April 20, 1992.
See: 23 N.J.R. 3603(a), 24 N.J.R. 1476(a).

Major structural defect equated with major construction defect, as defined by statute.

Administrative change.

See: 25 N.J.R. 1755(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

Rehabilitated home previously damaged by fire not ‘new home’. *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).

Statute of limitations period of the New Home Warranty and Builders’ Registration Act could not be enforced by falsifying builder. *Michael and Barbara Teichmann v. JMT Associates, Inc.*, 92 N.J.A.R.2d (CAF) 116.

Date title was transferred from builder to owner was “warranty date”. *Hallmark Country Homes, Inc. v. Covert*, 92 N.J.A.R.2d (CAF) 43.

5:25-1.4 Administration and enforcement

(a) The Division of Codes and Standards in the Department of Community Affairs shall administer and enforce this chapter. All the powers, duties and responsibilities vested in the Commissioner by the New Home Warranty and Builders’ Registration Act are hereby delegated to and vested in the Director of the Division of Codes and Standards except the power to adopt, amend or repeal rules and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Within the Division of Codes and Standards, responsibility for the administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities delegated by the Director, Division of Codes and Standards by this chapter shall be executed, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, by the Chief, Bureau of Homeowner Protection.

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.1991 d.140, effective March 18, 1991.
See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c).

In (a), added reference to final determinations resulting from hearings. In (b), added supervision by Director and Assistant Director.
Amended by R.1996 d.93, effective February 20, 1996.
See: 27 N.J.R. 4058(a), 28 N.J.R. 1225(a).

5:25-1.5 Effective date

(a) The provisions of these regulations prescribing the new home warranty and the procedures for the implementation and processing of claims against a warranty shall take effect on July 1, 1979. No builder shall on or after that date, transfer title of possession for occupancy of any new home to an owner, unless the builder shall have registered in accordance with this chapter.

(b) No builder who has been issued a certificate of registration pursuant to these regulations shall, after August 1, 1979 be required to be licensed or registered by any municipality of this State; nor shall any builder be required to offer any warranty by any municipality; nor shall any builder be required to post any bond or any other form of security relating to the construction of a new home, exclusive of those required by water, sewer, utility, or land use requirements.

5:25-1.6 Validity

If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

SUBCHAPTER 2. BUILDER REGISTRATION

5:25-2.1 Registration required

(a) No individual, partnership, corporation or other business entity shall engage in the business of constructing new homes unless registered with the Department in accordance with this subchapter.

(b) No corporation, partnership, or other business entity shall be issued a registration in accordance with this subchapter nor shall they engage in the business of construction

of new homes unless a stockholder, director, officer, partner or employee thereof, as the case may be, shall be listed as a builder designee in accordance with this subchapter.

(c) For the purpose of these regulations the term "engaging in the business of construction of new homes" shall mean and include constructing any new home for sale, acting as prime contractor to construct any new home on behalf of oneself or another person or advertising or holding oneself out as constructing or being available to construct a new home or homes. The term shall also mean and include the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferer. The term shall also include a person who contracts with a general contractor or with sub-contractors for the construction of a new home for the purpose of sale to a purchaser.

(d) Nothing herein shall be interpreted as requiring that a person who constructs a new home for his own personal use and occupancy or who contracts with a licensed architect, professional engineer or attorney to provide customary professional services in connection with said new home, be registered as a builder; nor shall a person acting as a licensed architect, professional engineer or attorney for said owner to provide customary professional services in connection with said new home, be registered as a builder. If such new homes are subsequently sold to purchaser who is not the original builder/owner, notification that the home carries no warranty shall be made at the time of title transfer and/or closing. No person shall be permitted to construct a new home for his own use and occupancy more often than once each five years without being registered as a builder, and complying with these regulations.

(e) A corporation, partnership or other business organization may be denied a certificate of registration as a builder if any stockholder, director, officer, partner, or any other person having an economic interest in the organization shall have violated any of the provisions of N.J.A.C. 5:25-2.5. The provisions of this subsection shall extend to any business organization having a parent or subsidiary relationship to any such business organization.

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

Added text in (c) "The term shall . . . sale to a purchaser."

5:25-2.2 Registration; new home builder

(a) Rules concerning application are as follows:

1. Every application for registration as a new home builder shall be made on the form prescribed by the Commissioner and shall be accompanied by a non-returnable registration fee of \$200.00;

2. Each application for registration as a new home builder shall include full name and address of the business. In the case of a corporation the name entered on the application shall be that registered with the Secretary of State. In all cases the address entered on the application shall be the street number, street name, and municipality at which the primary office of the applicant's business organization is located. In no case shall the address be a post office box or the address of an agent. It shall, in all cases, be the address at which the proprietor, or a listed builder designee who is a partner, officer, director or stockholder of the organization can usually be found. The address shall be that of a business office unless there is none in which case it may be a residence address. The application shall appoint an agent for the service of process and shall provide his address. The agent may be any person who is a resident of this State. The application shall also include the builder's business and home telephone number his Federal Employer Identification number and the names, and addresses and home phone numbers of all persons having a minimum of ten percent interest in the new home builder. In addition, the application shall include historical information concerning the experience of the builder in the State of New Jersey including the number of years in the new home construction business, and the municipalities in which the business has been practiced during the three years immediately previous to the date of application. The application shall also include any criminal convictions against any person having an interest in the new home builder and the disposition thereof;

3. Each applicant for a certificate of registration as a builder shall disclose in the application any subsidiary or parent relationship with any other new home building organization and shall further disclose all interests of any officer, partner, director, or stockholder of the builder in any other new home building organization.

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.

5:25-2.3 Certificate of registration

Upon receipt of a completed application, a certificate of registration will be issued as a registered builder unless denied in accordance with N.J.A.C. 5:25-2.5. The certificate of registration shall remain valid, unless suspended or revoked in accordance with N.J.A.C. 5:25-2.5, until the expiration date indicated thereon except in the case of a builder whose relationship with the partner, director, officer, or stockholder who shall have been the registered designee is ended. In such a case the certificate of registration shall expire and become invalid unless another designee is substituted. The certificate of registration shall also become invalid if a builder shall fail to continue or let lapse his participation in either the State Plan or a private plan.

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