

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.

(b) At least 30 days prior to the expiration date of a builder's registration, the Division shall mail a renewal application form to the builder at the builder's then current registered address by ordinary mail.

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).

Added (b).

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

Substantially amended.

5:25-2.4 Registration renewal

A certificate of registration may be renewed for additional two year periods. Applications for renewal shall be made upon the forms provided by the Commissioner and shall be accompanied by a fee of \$200.00 and shall be subject to the same conditions as an original application.

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.

5:25-2.5 Denial, suspension or revocation of registration

(a) A certificate of registration may be denied or revoked if the registrant or applicant or an officer, partner, director or stockholder of the registrant or applicant has at any time:

1. Willfully made a misstatement of material fact in his application for registration or renewal;
2. Willfully committed fraud in the practice of his occupation;
3. Practiced his occupation in a grossly negligent manner;

4. Willfully violated the New Jersey State Uniform Construction Code to any substantial degree; or

5. Habitually or egregiously engaged in any act or omission set forth in (b)1 through 7 below.

(b) A certificate of registration may be denied or suspended, pending compliance with the Act, with this chapter and with the orders of the Commissioner, if the registrant or applicant, or an officer, partner, director, or stockholder of the registrant or applicant, has at any time:

1. Failed to continue his participation in either the State Plan or a private plan;

2. Failed or enroll or warrant any new home with either the State Plan or an approved private plan;

3. Failed to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan or of a private plan, as the case may be, unless such determination is appealed and a stay of the order to correct the defect is issued by the Commissioner or by a court having jurisdiction;

4. Failed to file an amended application for or to a certificate of registration within 30 days of any material change in the information provided in the most recent application or amendment thereto;

5. Had as an officer, partner, director or stockholder any person who was serving as an officer, partner, director or stockholder of a builder that is not registered or the certificate of registration of which has been revoked or is currently suspended; provided that this paragraph shall not apply to any person who was not affiliated with such builder at the time that the incident or practice that led to revocation or suspension occurred;

6. Incurred, or been responsible for incurring, an award against the New Home Warranty Security Fund for which the fund has not been fully compensated; or

7. Failed to participate in the dispute settlement process, in which case any suspension shall continue in effect pending resolution of the dispute and full compensation for any payments made, or expenses incurred, by the Fund.

(c) A certificate of registration may be denied or revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director or stockholder of the applicant or registrant, has at any time, violated any provision of the Act or of this chapter, or any order of the Commissioner, with regard to any matter not referred to in either (a) or (b) above.

(d) Whenever the Department shall find cause to deny an application for a certificate of registration, or to suspend or revoke same, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a

hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 when an appeal is filed within 15 days from the date of receipt of the notice. The Commissioner shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

(e) Any new home purchaser under contract with a builder whose registration has been suspended or revoked may at the purchasers option, and under the supervision of the Bureau of Homeowner Protection, require the builder to complete the work. The warranty plan under which the home is covered or was required to be covered at the time of closing shall cover said home for the length of the warranty.

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.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).

Text deleted at (a)5-13; new (a), (b) and (c) added to clarify suspension and revocation circumstances.

Administrative Correction.

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

Amended by R.1994 d.610, effective December 19, 1994.

See: 26 N.J.R. 1913(a), 26 N.J.R. 5010(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

Regulation presumes proportional penalties. *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).

License revocation should not be automatically imposed. *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).

Repayment to Fund could not be compelled without hearing. *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).

Penalty supported by substantial evidence. *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).

Department's determination and sanction requires findings and explanation. N.J.S.A. 46:3B-1 to 46:3B-12. *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).

Suspension of corporate homebuilder's registration was appropriate. *Department of Community Affairs v. Cathan, Inc.*, 94 N.J.A.R.2d (CAF) 21.

Failure to participate in the dispute settlement process and to reimburse the New Home Warranty Program State Fund was sufficient grounds to suspend New Home Warranty Program registration and New Home Builders license. *Bureau of Homeowner Protection New Home Warranty Program v. Stoltz*, 93 N.J.A.R.2d (CAF) 5.

5:25-2.6 Failure to register; penalty

(a) Any builder who fails to register as herein required, who fails to file an amended application as specified in N.J.A.C. 5:25-2.5(b)4, or who fails to maintain a current builder registration as required by N.J.A.C. 5:25-2.1(a), shall be subject to a penalty not to exceed \$2,000 for each offense, to be levied by the Division and collected in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(b) Each instance in which a builder sells a new home without having been registered, or without then having a registration currently in effect, shall be considered a separate offense.

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

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

Rewrote the section.

5:25-2.7 Enrollment in a warranty plan

Each builder or building business entity shall, at the time of registration, indicate on the registration form the warranty plan in which that entity is enrolled or chooses to be enrolled. No builder or building business entity shall be issued a certificate of registration unless they have enrolled or have applied for enrollment in either the State Warranty Plan or a private warranty plan.

5:25-2.8 Restoration of registration

(a) No certificate of registration which has been suspended or revoked shall be restored to any person previously registered as a builder unless the Director finds that the reason for the suspension or revocation no longer applies and is unlikely to recur and that such builder has fully compensated or, as a condition of such restoration, will fully compensate, the State Plan or any private plan or any other person for any loss incurred as a result of such builder's failure to comply with the Act.

(b) No certificate of registration which has been suspended, revoked or allowed to lapse shall be restored unless and until all fees, premiums, surcharges and penalties have been paid in full.

(c) In any case in which payment has been made by the State Plan or any private plan as a result of failure by a builder to comply with the Act, full compensation, within the meaning of (a) above, shall include, without limitation, interest in the maximum amount allowed by law on any payments made by the State Plan or private plan. For purposes of determining the legal interest rate, such payments shall be deemed to be unsecured loans made by the plan pursuant to a written agreement.

(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

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.

Roof sheathing constituted such a load-bearing portion of new home that sufficient damage thereto amounted to a major construction defect under warranty. Homeowners Warranty Corporation v. Bureau of Homeowners Protection, 95 N.J.A.R.2d (CAF) 32.

Water leaking into basement was defect under warranty rendering builder liable to purchase orders for repairs. *Testa, Edgewood Properties*, 95 N.J.A.R.2d (CAF) 19.

Claim properly denied; no major structural defect was proven. *Casole v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 5.

Claim made after one-year warranty had expired; hair-line crack in column was not major structural defect. *Sharma v. Homeowner Protection Bureau, New Home Warranty Program*, 94 N.J.A.R.2d (CAF) 83.

No "major structural defect" existed; attempts to "improve" the property. *Hunter v. Bureau of Homeowner Protection*, 94 N.J.A.R.2d (CAF) 46.

Defects were "major structural defects", and were claims to be accepted for resolution payable under the New Home Warranty Act, with emergency repairs by the owner reimbursable. *Yelinko v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 54.

Entranceway and deck declared an unsafe structure by a construction official is a major structural defect to be corrected by the builder in compliance with the New Home Warranty Program. *Thomsen v. Bureau of Homeowner Protection*, 93 N.J.A.R.2d (CAF) 21.

Defects in the load bearing elements constituted a "major structural defect" subject to the ten year warranty in the New Home Warranty Program. *Chu v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 1.

Cracks in basement walls did not constitute a "major construction defect". *Middleton v. Bureau of Homeowner Protection*, 92 N.J.A.R.2d (CAF) 131.

Inadequate structural support did not constitute a major structural defect. N.J.S.A. 46:3B1 et seq., 46:3B3. *Carchia v. Bureau of Homeowner's Protection, N.H.W.P.*, 91 N.J.A.R.2d (CAF) 1.

5:25-3.8 Limit on liability

The liability of a builder under the new home warranty shall be limited to the purchase price of the home in the first good faith sale thereof or the fair market value of the home on its completion date if there is no good faith sale. In the event a Certificate of Participation misstates the purchase price or the commencement date and the homeowner fails to notify the New Home Warranty Program within 45 days from the actual warranty commencement date, the limit of liability shall be as stated on the Certificate of Participation at the time of validation.

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 3.7 and added text "In the event ... time of validation."

5:25-3.9 Warranty minimum

It is the intent of this subchapter to specify the scope, applicability and standards pertaining to the minimum warranty required to be given by every builder to every owner. Nothing herein is intended to limit the right of any builder to offer a warranty which exceeds this specified minimum whether by reason of scope, applicability or standards.

Recodified from 3.8 by R.1986 d.141, effective May 5, 1986.
See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

5:25-3.10 Remedy exclusive

Pursuant to New Home Warranty and Builders' Registration Act (P.L. 1977, c.467) the filing of a claim against the warranty specified by this subchapter shall constitute the election of a remedy and shall bar the owner from all other remedies. Nothing herein shall be deemed to limit the owner's right to elect other remedies except that such election shall bar the owner from pursuing the same claim under the warranty specified in this subchapter and in accordance with the procedures related hereto. For the purpose of this section, election of other remedies shall mean the filing of a complaint, counter-claim, cross-claim or third party complaint in any court that alleges matters covered by the warranty in particular or unworkmanlike construction in general.

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 3.9. Added text "For the purpose ... construction in general."

Case Notes

Homeowners' initiation of binding arbitration procedure under New Home Warranty And Builders' Registration Act was election of remedy barring them from seeking additional relief against builder in courts; however, election of remedies procedures did not preclude homeowners' claims against inspector for damages arising from his allegedly negligent failure to inspect. *Konieczny v. Micciche*, 305 N.J.Super. 375, 702 A.2d 831 (A.D. 1997).

Homeowners were barred, by their election to arbitrate claims against construction company pursuant to Home Warranty and Builders' Registration Act, from litigating claims arising from defects initially submitted to arbitration or from defects known to homeowners at that time but not submitted by them to arbitration. *Spoltback v. Cyr Corp.*, 295 N.J.Super. 264, 684 A.2d 1021 (A.D.1996).

Administration was not a proper party to common law action. *Oak Trail Road Homeowners Ass'n v. Royal Mile Corp.*, 246 N.J.Super. 590, 588 A.2d 430 (A.D.1991).

Terms of warranty insurance plan governed party's conflict. *Oak Trail Road Homeowners Ass'n v. Royal Mile Corp.*, 246 N.J.Super. 590, 588 A.2d 430 (A.D.1991).

Where warranty did not reference election of remedies, civil action was not barred. *Postizzi v. Leisure & Technology, Inc.*, 235 N.J.Super. 285, 562 A.2d 232 (A.D.1989).

Private homeowner warranty insurance provided for conciliation, rather than arbitration. *Nolan v. Homes By Brinkerhoff, Inc.*, 230 N.J.Super. 306, 553 A.2d 392 (L.1988).

Ambiguity in private homeowner warranty insurance resolved in favor of buyer. *Nolan v. Homes By Brinkerhoff, Inc.*, 230 N.J.Super. 306, 553 A.2d 392 (L.1988).

Duplication of remedies and/or the possibility of recovering twice would not be allowed under the New Home Warranty Program. *Kushner v. Barry Freedman, Inc.*, 93 N.J.A.R.2d (CAF) 24.

Counterclaim for damages in builder's suit constituted election of remedies and precluded administrative proceedings. *Grippa v. Bureau of Homeowner Protection*, 92 N.J.A.R.2d (CAF) 53.

SUBCHAPTER 4. PRIVATE ALTERNATE NEW HOME WARRANTY SECURITY PLANS

5:25-4.1 Private plans permitted

Any person wishing to constitute and establish a private plan to provide for insurance coverage, the payment of claims, dispute settlement, and the like, may apply to the Department for approval as provided for in this subchapter. Participation by a builder in such private plans shall fulfill the builder's obligation to participate in a warranty program pursuant to this chapter.

5:25-4.2 Requirements

(a) In order to receive or maintain an approval a private plan shall conform to all the requirements specified in this section.

(b) The private plan shall provide financial security adequate to cover the total amount of claims that may be reasonably assessed against participating builders and adequate to cover the costs of operation of the plan.

(c) No private plan shall require any payment by an owner at any time subsequent to the warranty date as a condition of maintaining in effect the warranty prescribed by subchapter 3 of this chapter.

(d) A private plan may provide that either the builder or the warranty guarantor are primarily responsible for satisfying claims against the warranty at any given point during the life of the warranty, but such responsibility shall be clearly disclosed to the owner on or before the warranty date and shall not be modified or changed after the warranty term begins to run.

(e) A private plan shall provide a complaint, claims and payment procedure which:

1. Provides for an attempt at informal settlement of any claim arising out of the warranty between the builder and the owner and requires that any owner desiring to make a claim provide written notice of the complaint to the builder.

2. Provides for conciliation and/or arbitration of any warranty claim dispute by an independent third party selected and appointed in a manner approved by the Department and disclosed to the owner on or before the warranty date.

3. Provides the owner with an opportunity to accept or reject a conciliation decision in satisfaction of the claim and notice of the opportunity to appeal that decision to a court of competent jurisdiction.

4. Provides fixed periods of time for action by either party pursuant to the arbitration or conciliation decision.

(f) Private plans shall provide for written notice to the owner concerning warranty coverage and the claims and dispute settlement procedures utilized, expressing in plain language the scope, applicability and standards for the warranty and the forms, procedures and processes involved in making a claim under the warranty. The form and content of the written notice shall be approved by the Department.

(g) Private plans shall maintain such loss and payment records as the Department may require and shall provide such reports as the Department may require including, but not limited to the following:

1. Once every 12 months a report showing the number of builders participating, the number of homes covered in each of these categories (first year, second year, third through tenth years), the total number and total amount of claims paid during the reporting period and the total amount of funds available to pay such claims.

2. Once every three months a report showing the names, addresses and builder registration numbers of any new builders admitted to coverage.

3. Within ten days, all private plans shall notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination as it relates to N.J.A.C. 5:25-2.5 "Denial, Suspension and Revocation of Registration."

(h) A private plan shall disclose to the Department in writing each occurrence and the circumstances surrounding the decision of the program to refuse to honor a claim awarded by an arbitrator not later than the date upon which an appeal to a court of competent jurisdiction is filed.

(i) Rules concerning notification of non-payment of warranty premium by enrolled builders are:

1. The private plan shall document for the Department in writing all procedures taken to collect warranty premiums from enrolled builders negligent in such payment. Such documentation shall include the following steps:

- i. The private plan must notify the enrolled builder immediately upon the discovery of any failure to pay such premium and shall give such builder not more than ten days in which to pay. The private plan shall notify the Department of the failure of any builder to remit such a premium within the ten-day period.

- ii. The private plan shall also investigate all homes constructed by the enrolled builder to determine all instances of non-payment of warranty premiums. The private plan shall report its findings to the Department within ten days of the completion of its investigation.

(j) The private plan shall have a warranty guarantor which shall conform to all of the following requirements:

1. The warranty guarantor shall either possess a Certificate of Authority issued by the New Jersey Department of Insurance to write the kind of insurance specified in N.J.S.A. 17:17-1.1(g) or be designated by the Department of Insurance as an eligible surplus lines carrier under N.J.S.A. 17:22-6.45.

2. The warranty guarantor shall furnish to the Department satisfactory evidence that the form of any insurance policy to be used to provide coverage for the private plan has been approved by the New Jersey Department of Insurance with respect to its compliance with the provisions of State insurance law.

3. The warranty guarantor shall have and shall maintain an A.M. Best and Company, Inc. rating of "A" or "A+" and shall otherwise be and remain in a financial condition adequate, considering all circumstances including reinsurance arrangements, to cover the risk assumed under the private plan.

4. The terms and conditions of any insurance agreement insuring the private plan shall be subject to approval by the Department as providing the coverage with respect to the warranties required to be provided under said plan. Such terms and conditions shall not be modified or altered without the prior consent of the Department.

5. The warranty guarantor shall agree to provide to the Department such information concerning the settlement of claims and its financial condition as may reasonably be required to demonstrate its initial qualifications to act as a warranty guarantor, the performance of its obligations under the terms of its insurance agreement and its continued satisfaction of the requirements as to financial condition expressed herein.

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.