

"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 proce-

dure, 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.

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"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 date of the first occupation by the owner or settlement date, whichever is sooner.

"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).

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

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

Inserted "Owner"; and rewrote "Warranty date".

Case Notes

Purchaser of new home was entitled to new home warranty beginning at time he first occupied house; builder had previously obtained certificate of occupancy and had used house as model home. *Ingraham v. Trowbridge Builders*, 297 N.J.Super. 72, 687 A.2d 785 (A.D.1997).

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 to 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, who acts as State Plan administrator.

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).

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

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

In (b), added ", who acts as State Plan administrator" at the end.

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.

1. 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 transferor.

2. The term shall also include a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to an owner.

(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."

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

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

In (c), inserted 1 and 2 designations, and substituted a reference to owner for a reference to purchasers at the end of 2.

Case Notes

Contractor not registered with the Department of Community Affairs as a new home builder was engaged in the business of construction of new homes . CRP Enterprises v. Bureau of Homeowner Protection, 93 N.J.A.R.2d (CAF) 11.

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;

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 an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.319;

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 0.425;

7. If, at any time while the builder's contribution percentage is in an amount determined in accordance with (b)6 above, 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 0.595;

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).
 Amended by R.1997 d.306, effective July 21, 1997 (operative January 1, 1998).
 See: 29 N.J.R. 2206(a), 29 N.J.R. 3249(b).
 In (a) and (b), decreased the warranty contribution amounts.

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.

4. Where an owner of a new home has not received a valid Certificate of Participation from the builder, pursuant to (a)1 above, then the owner may file both the notice of defect and the notice of claim and demand for conciliation with the Division directly and need not provide notice to the builder. In the event the builder subsequently pays the warranty premium, the Department shall give the builder notice of any pending claims and the status thereof.

(c) Rules concerning Departmental responsibilities and formal claims resolution processes are:

1. The Division shall, upon receipt of Notice of Claim, designate a conciliator and schedule a conciliation hearing. Whenever possible, such hearing shall take place at the warranted premises. Any resulting agreement shall be in writing, listing the specific actions to be taken by the builder to repair or replace defects in the home and a date by which corrections shall take place.

2. When the defect is corrected or a monetary settlement is made in lieu thereof, the builder shall present the owner with a release for execution. One copy of the signed release shall be retained by the builder, one by the owner, and one copy shall be forwarded to the Division.

3. If all or any part of the dispute remains unresolved after conciliation, the Department shall provide one of the following options:

i. Arbitration:

(1) Where both parties agree, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. Any person serving as an arbitrator for either the State Plan or an approved private plan shall possess proof of satisfactorily passing the course of study for building inspector R.C.S., as set forth in N.J.A.C. 5:23-5.20(d)1, and examination module 1A—Building One and Two Family Dwelling or be licensed as a professional engineer or registered or licensed as an architect in any state or hold a license as a subcode official in the State of New Jersey; provided, however, that no person shall serve as an arbitrator in any matter involving a major structural defect claim who is not either a licensed professional engineer or a registered or licensed architect.

(2) The decision of the arbitrator shall be binding on both parties and reviewable only under such circumstances and to such extent as is available pursuant to the New Jersey Arbitration Act. The decision shall fix responsibility, the extent of the defect, and the date by which it must be corrected. In all cases where both parties elect to arbitrate the claims dispute and an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitra-

tor requires clarification, either party or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

(3) Each party and the Division shall receive one copy of the arbitrator decision.

(4) Whenever arbitration shall result in a finding for the owner, the arbitrator shall prescribe that the builder correct the defect or make necessary replacements.

(5) In lieu of separate conciliation and arbitration, the Division may provide, at its sole option and discretion, for an expedited dispute settlement process wherein conciliation and arbitration are performed simultaneously and any agreement arrived at or decision rendered shall be binding as provided in (c)3i(2) above. Such arbitration shall be subject to the same rules and regulations as defined in (c)3i(3) above.

ii. Administrative hearing:

(1) Where both parties do not agree to arbitration, the Bureau of Homeowner Protection shall thoroughly review the matter and shall make a decision as to the merits of the claim. This decision shall be binding on both parties, provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice of such decision the Division shall then provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(2) Such hearing shall be held within 30 days of demand by either party, as in (c)3ii(1) above, and a recommended report and decision shall be issued within 45 days of the hearing. Each party shall be permitted 15 days from the date of their receipt of the recommended report and decision to file written exceptions, objections, or argument before the Commissioner, who shall, within 45 days thereafter, issue a final decision which adopts, modifies or rejects the recommended decision. Failure of the Commissioner to issue a decision within 45 days shall constitute affirmation of the recommended decision.

(d) Claim on common elements rules are as follows:

1. Claims including common elements in a condominium or cooperative may only be made by an authorized representative of the association. Where, however, the builder retains control of more than 50 percent voting interest in the association, claim may be made by the owners of unit interest directly to the Bureau or the applicable private plan administrator. The claimed common element defect will then be part of the unit claim and processed according to (c) above.

(e) Final payment in the event of builder default rules are as follows:

1. If any builder, after receiving the decision of the arbitrator, the Bureau of Homeowner Protection or the Director, as the case may be, refuses to correct any defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2. The amount of the award shall, in all cases, be based upon the lower or lowest of two or more bona fide estimates acceptable to the Division for the work intended to be covered. Payment shall be made jointly to the owner and to the contractor performing the work upon certification by both of them that the work is complete and the defect has been removed; provided, however, that payment may be made to the owner only, upon presentation of proof that the contractor has been paid. An owner electing to perform the work himself or herself shall receive payment in an amount not to exceed the cost of the materials upon certification by him or her of the completion of the work and the removal of the defect. Payment shall be made only for work authorized in writing by the Department and upon completion to the Department's satisfaction.

3. In the event that an owner refuses to accept the amount certified by the Director as being in settlement of all claims against the fund for the defect at issue, the Director shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. In the event that the owner does not agree that the decision of the arbitrator shall be binding, the Director shall provide an opportunity for the owner to appeal the decision of the arbitrator at an administrative hearing pursuant to the Administrative Procedure Act.

i. Any request for an administrative hearing shall be submitted within 15 days of the date of service of the arbitrator's decision.

ii. The record of the hearing shall be limited to the record of the arbitration proceeding, except to the extent it is determined that the arbitrator incorrectly excluded any evidence that should have been admitted.

iii. The arbitrator shall not be called as a witness by either party.

iv. The standard of review shall be the reasonableness of the arbitrator's decision.

4. When a payment is made under these regulations the owner shall assign to the State all rights, title and interest in any claim or cause of action the owner may have against the builder arising out of the claim for which payment is made. The owner shall execute and deliver any instruments and do whatever else is necessary to secure such rights and shall do nothing to prejudice such right.

(f) Nothing herein shall limit the right of an owner to seek a remedy directly in court pursuant to Section 9 of the Act, without regard to the dispute settlement procedures made available in accordance with this subchapter; provided, however, that the New Home Warranty Security Fund shall have no liability if a remedy other than dispute settlement in accordance with this subchapter is elected by the owner of a new home.

(g) Rules concerning claims which are filed with the State Plan after the expiration of the first two-year warranty period are as follows:

1. All such claims shall be filed with and processed by the Division in accordance with the procedures established under (e)2, 3 and 4 above. All payments made by the Division on such claims shall be from the New Home Warranty Security Fund.

2. Upon receipt of a claim, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 above, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

3. In the event of any dispute regarding a claim filed after the expiration of the first two-year warranty period, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association, except as otherwise provided in these rules; provided, however, that any request for arbitration shall be filed with the Division within 30 days following the date that the disputed decision was received by the party making the request.

i. Except as otherwise permitted by the Division for good cause, the arbitration proceedings shall be either tape recorded or transcribed, with the arbitrator describing for the record any of his or her observations of any alleged defects.

ii. Any person serving as an arbitrator shall be either a licensed professional engineer or a registered or licensed architect.

iii. The claimant may agree in advance that the decision of the arbitrator is to be binding on both parties.

iv. The decision of the arbitrator shall fix responsibility and describe the nature and extent of the defect. The decision shall include a summary of testimony and evidence, a statement of factual findings, such technical analysis as may be necessary to support the decision and a statement of the rationale for the decision.

v. In all cases where an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either the claimant or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

vi. A claimant who does not agree to binding arbitration may subsequently request an administrative hearing to review the decision of the arbitrator on the grounds that evidence was improperly excluded by the arbitrator or that the decision was unreasonable. Any such hearing request shall include the specific factual and/or legal basis for any claim of improper exclusion of evidence or unreasonableness of the decision, as the case may be.

vii. The Division shall, upon a finding by the Director that there exists a contested case, provide an administrative 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 a party who applied for arbitration but did not agree that it would be binding submits a hearing request including all required information within 15 days of the date of service of the arbitrator's decision. The record of the hearing shall be limited to the record of the arbitration proceeding, except to the extent it is determined that the arbitrator incorrectly excluded any evidence that should have been admitted. The arbitrator may not be called as a witness by either party. The standard of review shall be the reasonableness of the arbitrator's decision.

4. Notwithstanding the provisions of (g)1 above, if the builder was notified of a major structural defect during the first two years of warranty coverage and is currently registered, the Division shall process a claim for remediation of such defect in accordance with subsection (c) above.

Amended by R.1980 d.158, effective April 15, 1980.
See: 12 N.J.R. 249(d).

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.1981 d.181, effective June 4, 1981.
See: 13 N.J.R. 187(c), 13 N.J.R. 333(d).

(c)3ii(1): "The Bureau . . . notice of such decision" added.

(e)1: "the Bureau of Construction Code Enforcement" added.

Amended by R.1982 d.386, effective November 1, 1982.
See: 14 N.J.R. 944(a), 14 N.J.R. 1210(a).

Added seven day limit to (b). Notice of Claim within 14 days after 30 day expiration period added to (b)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.

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).

New Home Security Fund liability limited.

Amended by R.1994 d.50, effective February 7, 1994.

See: 25 N.J.R. 4986(a), 26 N.J.R. 796(b).

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

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

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

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

In (c)3i, rewrote (1).

Amended by R.1998 d.585, effective December 21, 1998 (operative March 1, 1999).

See: 30 N.J.R. 3632(a), 30 N.J.R. 4349(a).

Case Notes

Closure of claim due to builder's compliance with arbitration requirements appropriate. *Rafferty v. Department of Community Affairs, Bureau of Homeowner Protection, New Home Warranty Program, and Everlast Homes/Michael Rifkin*, 97 N.J.A.R.2d (CAF) 58.

Home owner who refused to supply name of contractor doing repairs was not entitled to payment of claim by New Home Warranty Program. *Hack v. Bureau of Homeowner Protection*, 96 N.J.A.R.2d (CAF) 64.

Third-year new home warranty claim denied because complaints did not constitute major structural defects. *Kershaw v. Homeowner Protection Bureau*, 96 N.J.A.R.2d (CAF) 27.

Home warranty claim denied when no evidence of structural damage presented. *Stephens v. BHP/NHWP*, 96 N.J.A.R.2d (CAF) 19.

Hiring another contractor to remedy alleged defects without obtaining agency authorization operated to preclude remuneration under new home warranty program. *Krochmal v. Department of Community Affairs*, 95 N.J.A.R.2d (CAF) 89.

Unilateral repairs without resorting to required claims procedures precluded coverage under new home warranty program. *Elliott v. Department of Community Affairs*, 95 N.J.A.R.2d (CAF) 81.

Purchasers' warranty claims timely when filed within 14 days of builder's response through verbal acknowledgment. *Lloyd v. Bureau of Homeowners Protection*, 95 N.J.A.R.2d (CAF) 71.

Owners were justified in hiring another contractor to complete work upon initial contractor's unsuccessful attempt to waterproof basement. *Lincoln Chester v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 59.

Homeowner relinquished any right to reimbursement for warranty work to correct defects by failing to obtain prior authorization. *Lizzi v. Bureau of Homeowners Protection*, 95 N.J.A.R.2d (CAF) 45.

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.

Repair of water streaming could only be accomplished by waterproofing as recommended by warranty analyst under arbitration award. *Halaby v. Bureau of Homeowner Protection*, 95 N.J.A.R.2d (CAF) 26.

Claim under common element warranty was dismissed when filed more than two years after warranty expired. *Aleem v. Community Affairs*, 95 N.J.A.R.2d (CAF) 24.

Denial of recovery; delay in filing claim and replacement of heating system before Bureau of Homeowner Protection had opportunity to inspect it. *Cessaro v. Bureau of Homeowner Protection*, 94 N.J.A.R.2d (CAF) 98.

Refusal to accept last settlement offer was proper reason for dismissal of claim. *Kushner v. Barry Freedman, Inc.*, 94 N.J.A.R.2d (CAF) 85.

Claim for additional work due to unforeseen damage was denied where the owner did not allow the Bureau of Homeowner Protection to inspect. *Promenade Condo Association v. Bureau of Homeowner Protection*, 93 N.J.A.R.2d (CAF) 63.

Failure to give written notice and failure to perfect notice caused the claims to be rejected. *Yelinko v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 54.

Warranty claim was treated as second year claim even though the builder admitted within the allowed time defects existed but failed to take action. *Schwanda v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 39.

Failure to obtain two estimates and written authorization prior to repair precluded recovery on warranty. *Lavin v. Bureau of Homeowner Protection, Dept. of Community Affairs*, 92 N.J.A.R.2d (CAF) 68.

Warranty fund is to pay for correction of defects in the least costly manner. *Bogaev v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 49.

Repair prior to inspection barred payment for cost. *Lipton v. Department of Community Affairs*, 92 N.J.A.R.2d (CAF) 30.

Failure to file claim within one-year period for defects caused by faulty workmanship and defective materials barred recovery. N.J.S.A. 46:3B-2, 46:3B-3. *Bridgewaters Townhouse Condominium Ass'n v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 25.

Claim under New Home Warranty and Builders' Registration Act was untimely. *Bridgewaters Townhouse Condominium Association v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 24.

Procedural requirements under former regulation; reimbursement amount to owner from builder to be determined by Bureau of Construction Code Enforcement. *Kratchman v. Gabriel S. DiMedio, Inc.*, 5 N.J.A.R. 202 (1981).