

SUBCHAPTER 27. CHILD-PROTECTION WINDOW GUARDS

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SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT

5:10-1.1 Title

This chapter promulgated pursuant to N.J.S.A. 55:13A-1 et seq. of the Laws of New Jersey shall be known and may be cited as the "Regulations for Maintenance of Hotels and Multiple Dwellings", and are hereinafter referred to as "regulations".

Case Notes

Inspection reports prepared by the Bureau in accordance with N.J.S.A. 55:13A-13(d) of the Hotel and Multiple Dwellings Law are official government records admissible under N.J. Rule of Evidence 1005 that constitute *prima facie* proof of conditions existing at the building on the dates indicated therein, absent any persuasive evidence to the contrary. Apartment owner's failure to challenge the initial report of inspection effectively conceded the initial violations. *Nostrame v. Dep't of Community Affairs, Bureau of Housing Inspection*, OAL Dkt. No. CAF 05703-02 and CAF 11012-03 (On Remand), 2007 N.J. AGEN LEXIS 846, Final Decision (August 4, 2007).

3. The total amount of the annual fees required to be paid for a hotel or multiple dwelling shall in no case exceed the amount of the inspection fee that would be required if the annual fee option had not been chosen. In the event that the amount of the inspection fee chargeable for the hotel or multiple dwelling is increased by rule during the period between inspections, the increase shall not be retroactive to annual fees already paid.

(h) Inspection fees shall be as follows:

1. For each hotel, there shall be a fee as follows: \$24.00 per unit for the first 20 units in any building or project, \$19.00 per unit for the 21st through 100th unit in any building or project, \$12.00 per unit for the 101st through 250th unit in any building or project, and \$8.00 per unit for all units over 250 in any building or project. Additionally, there shall be a reinspection fee for hotels in the amount of \$16.00 for each dwelling unit reinspected.

2. For each multiple dwelling, there shall be a fee as follows: \$52.00 per unit for the first seven units in any building or project, \$32.00 per unit for the eighth through 24th unit in any building or project, \$27.00 per unit for the 25th through 48th unit in any building or project, and \$19.00 per unit for all units over 48 in any building or project; provided that the maximum total fee for inspection of three- and four-unit multiple dwellings owned and occupied by persons having a household income that is less than 80 percent of the median income for households of similar size in the county shall be limited to \$101.00 for a three-unit multiple dwelling and \$124.00 for a four-unit multiple dwelling. Additionally, there shall be a reinspection fee for multiple dwellings in the amount of \$62.00 for each unit reinspected, but only after the first reinspection.

3. The fee for the issuance of a certificate of acceptance for self-inspection by a condominium association of a building that is not more than three stories, was constructed after 1976, is certified as being in compliance with the Uniform Fire Code and in which at least 80 percent of the units are owner-occupied shall be \$38.00.

4. In addition to the fee determined pursuant to (h)2 or 3 above, there shall be an additional inspection fee for multiple dwellings in the amount of \$20.00 per unit; provided, however, that this additional fee shall not be charged for units registered with the Bureau as being in any of the following categories:

- i. Constructed after 1977;
- ii. Certified by a certified inspector as being either free of lead-based paint or having a lead-free interior;
- iii. Seasonal rental units rented for less than six months' duration during each year;
- iv. Occupied by the owner of the dwelling unit as his or her residence; or
- v. Housing for the elderly, or a residential property designated exclusively for persons with disabilities; ex-

cept this exemption shall not apply if a child less than age six resides or is expected to reside in the dwelling unit.

5. In the case of a condominium or horizontal property regime, the additional inspection fee assessed pursuant to (h)4 above shall be paid by the owner of the unit; provided, however, that the association or council of co-owners, as the case may be, shall be deemed to be the agent of the owner for purposes of receiving notices and orders issued by the Bureau, shall have the duty to deliver any such notice or order to the unit owner and shall promptly notify the Bureau of the name and address of any unit owner who is liable for the additional inspection fee. If the association or council of co-owners fails or refuses to provide the name and address of the owner of a unit, it shall be presumed to be the owner of the unit and shall be liable for the additional inspection fee.

Recodified April 9, 1981 from N.J.A.C. 5:10-1.29.

Amended by R.1988 d.572, effective December 19, 1988.

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

Added (e).

Amended by R.1990 d.230, effective May 7, 1990.

See: 22 N.J.R. 275(b), 22 N.J.R. 1354(a).

Application of rule extended to cover retreat lodging facilities; exception to fee requirements granted such facilities.

Administrative Correction.

See: 23 N.J.R. 1410(b).

Amended by R.1993 d.464, effective September 20, 1993.

See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).

Administrative Correction.

See: 25 N.J.R. 4901(a).

Amended by R.1997 d.344, effective August 18, 1997.

See: 29 N.J.R. 1437(a), 29 N.J.R. 3720(a).

Added (a)1 and 2.

Administrative change.

See: 31 N.J.R. 35(a).

Amended by R.2001 d.468, effective December 17, 2001 (operative July 1, 2002).

See: 33 N.J.R. 1983(a), 33 N.J.R. 4311(a).

In (a), rewrote the introductory paragraph.

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (c), substituted "(h) below" for "N.J.S.A. 55:13A-13(b)"; added (h).

Amended by R.2005 d.144, effective May 16, 2005.

See: 36 N.J.R. 2106(a), 37 N.J.R. 1754(c).

In (h), added 4 and 5.

Amended by R.2006 d.177, effective May 15, 2006.

See: 37 N.J.R. 1698(a), 37 N.J.R. 1931(a), 38 N.J.R. 2115(b).

Deleted "or" from the end of (h)4iii; substituted "; or" for a period at the end of (h)4iv; and added (h)4v.

Amended by R.2009 d.78, effective March 2, 2009.

See: 40 N.J.R. 5894(a), 41 N.J.R. 1009(a).

In (h)1, (h)2 and (h)3, updated the fee amounts throughout.

Case Notes

Property owner must pay statutorily mandated fees for reinspection following settlement agreement concerning abatement of violations. Department of Community Affairs v. Scillieri Investment Corp., 96 N.J.A.R.2d (CAF) 16.

5:10-1.13 Unsafe building notice and order

(a) Upon a determination by the Bureau of Housing Inspection or its authorized representatives or a local enforcing agency that violations of the provisions of this chapter exist

and that such violations result in an imminent hazard to the safety and welfare of the occupants, an order shall be issued to the owner forbidding occupation of any dwelling units then vacated or to be vacated during the life of the order and/or ordering that the violation be corrected within the period specified in the order.

(b) The notice shall be given to the owner or lessee of the property involved, or to the agents of either of them, and may be contained in an order to declare building unsafe issued stating the reasons for the issuance of the order and the conditions under which occupancy may take place.

(c) When any owner to whom an order has been issued pursuant to (a) above denies that any violation justifying such order exists, such owner may apply for an administrative hearing. Any such hearing shall be held, and a decision rendered, within 48 hours of receipt by the Department of the hearing request.

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

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

Recodified April 9, 1981 from N.J.A.C. 5:10-1.33.

Amended by R.2001 d.468, effective December 17, 2001 (operative July 1, 2002).

See: 33 N.J.R. 1983(a), 33 N.J.R. 4311(a).

In (a), inserted "or a local enforcing agency" following "authorized representatives"; in (b), deleted "by the Bureau of Housing Inspection".

Amended by R.2006 d.161, effective May 1, 2006.

See: 38 N.J.R. 373(a), 38 N.J.R. 1823(b).

In (a), substituted "a determination by" for "notice from," "an imminent hazard" for "risk" and added "and/or ordering that the violation be corrected within the period specified in the order"; and added (c).

5:10-1.14 Delegation of powers

(a) The power to issue rules and regulations pursuant to N.J.S.A. 55:13A-7 and N.J.S.A. 55:13A-8 shall be exercised by the Commissioner, either directly or through the Deputy Commissioner or an Assistant Commissioner.

(b) The following powers of the Commissioner under the Act shall be exercised by the Director:

1. Issuance of subpoenas, pursuant to N.J.S.A. 55:13A-6(d);
2. Application ex parte for Superior Court orders, pursuant to N.J.S.A. 55:13A-6(d);
3. Adoption, rejection and modification of hearing decisions, pursuant to N.J.S.A. 55:13A-18; and
4. Granting of stays or rulings, actions, orders and notices, pursuant to N.J.S.A. 55:13A-18.

(c) All other powers of the Commissioner under the Act shall be exercised by the Chief of the Bureau either directly or through such employees and agents as he may designate.

5:10-1.15 Applications for exceptions

(a) Any application for an exception pursuant to N.J.S.A. 55:13A-11 must be filed with the Bureau or the local en-

forcing agency within 30 days of the receipt by the applicant of the ruling, action, order or notice requiring compliance with the regulation from which an exception is sought.

(b) An application for an exception shall be filed in triplicate upon forms provided.

(c) The time period set forth in (a) above may be extended by the Bureau upon a showing of good cause.

Amended by R.2001 d.468, effective December 17, 2001 (operative July 1, 2002).

See: 33 N.J.R. 1983(a), 33 N.J.R. 4311(a).

In (a), inserted "or the local enforcing agency" following "the Bureau"; in (b), deleted "by the Bureau".

5:10-1.16 Separability clause

If any provisions of this chapter shall be held invalid or ineffective in whole or in part, or inapplicable to any person or situation, it is the purpose and intent of this chapter that all other provisions thereof shall nevertheless be separately and fully effective, and that the application of any such provision to other persons or situations shall not be affected.

Recodified April 9, 1981 from N.J.A.C. 5:10-1.34.

5:10-1.17 Violation penalties

(a) For purposes of this section, a "life hazard violation" shall be any violation of this chapter, or of any violation of the Uniform Fire Code, N.J.A.C. 5:70, that is incorporated into this chapter by reference, that presents a hazard to the life safety of occupants of the building or of the public generally.

(b) Except as otherwise provided in (f) and (g) below, penalties shall be assessed for each area in which one or more violations are found. Violation areas shall be:

1. Each dwelling unit;
2. Interior common areas; and
3. Building exterior.

(c) Absent any mitigating or aggravating circumstances, the initial penalty for each violation area shall be as follows:

1. In a dwelling unit for which a life hazard violation is cited: \$325.00;
2. In an interior common area or building exterior for which a life hazard violation is cited: \$500.00; and
3. In any area for which none of the violations cited is a life hazard violation: \$175.00.

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

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

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

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

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

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

Amended by R.1982 d.334, effective September 20, 1982.

See: 14 N.J.R. 909(b), 14 N.J.R. 1089(c).

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

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

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

Section concerned Inspection fees.

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

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

Section was "Reserved".

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

5:10-1.30 (Reserved)

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

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

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

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

5:10-1.31 (Reserved)

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

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

5:10-1.32 (Reserved)

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

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

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

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

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

SUBCHAPTER 1A. LOCAL ENFORCING AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

(a) The local enforcing agency shall:

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

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

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

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

5:10-1A.5 Departmental monitoring

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

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

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

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

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

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

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

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

5:10-1A.6 Appointment

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

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

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

SUBCHAPTER 1B. INSPECTOR LICENSING

5:10-1B.1 Authority; hearings

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

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

(d) In the event that no special meeting is called, each member of the Board shall individually submit to the Director such comments and recommendations as he may have within 30 days of his receipt of a copy of the proposed regulations. Upon receipt of any member's comments and recommendations, the Director shall promptly provide copies thereof to all other members.

Case Notes

Former regulation regarding use group classifications for hotels applied to school dormitories. *Blair Academy v. Sheehan*, 149 N.J. Super. 113, 373 A.2d 418 (App. Div. 1977).

SUBCHAPTER 4. DUTIES OF OWNERS AND OCCUPANTS

5:10-4.1 Concurrent responsibilities

(a) Owners, including agents of owners, managing agents and superintendents shall have the general duties outlined herein for the maintenance of the premises, and no such person shall be relieved from any such responsibility hereunder by reason of the fact that an occupant or other person shall have similar responsibilities or shall have failed to report any violation, nor shall any such person be relieved of any responsibility by the terms or provisions of any lease, contract or agreement.

(b) Occupants, and to the extent provided herein, members of their families, or other persons living on the premises shall have the general duties outlined herein for occupants for the maintenance of the premises, and no such person shall be relieved from any such responsibility by reason of the fact that any owner or operator shall have similar responsibilities, nor shall any person be relieved of any responsibility by the terms or provisions of any contract, lease or agreement.

(c) In any premises subject to either the Horizontal Property Act (N.J.S.A. 46:8A-1 et seq.) or the Condominium Act (N.J.S.A. 46:8B-1 et seq.), the council of co-owners or condominium association, as the case may be, shall have the duties of an owner as set forth in these regulations. However, any such council or association shall only be required to abate those violations which pertain either to the common areas or common elements or which it has the right, pursuant to contract or otherwise, to require the owner of the individual dwelling unit to abate. Owners of individual dwelling units shall be responsible for the abatement of violations and for the maintenance of records pertaining only to each such unit; provided, however, that the responsibilities of the dwelling unit owner and of the council or association may be concurrent.

1. It shall be the duty of the council of co-owners or association, as the case may be, to forward a notice for payment of the \$20.00 inspection fee set forth at N.J.A.C. 5:10-1.12(h)4 to the unit owner and to identify those tenant-occupied units known to the association prior to the five-year cyclical inspection.

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

In (c), inserted "and for the maintenance of records" following "abatement of violations" in the introductory paragraph, added 1.

Case Notes

Under the Hotel and Multiple Dwellings Law and implementing regulations, it is the obligation of the building owner to make sure a tenant's installation of a double-keyed lock is corrected; the building owner must advise the tenant that the lock is a violation of the regulations and that failure to correct it will constitute grounds for eviction, and the same advice must be given to tenants who remove or tamper with smoke detectors or carbon monoxide alarms. *Nostrame v. Dep't of Community Affairs, Bureau of Housing Inspection*, OAL Dkt. No. CAF 05703-02 and CAF 11012-03, 2007 N.J. AGEN LEXIS 846, Final Decision (August 4, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1019) adopted, which concluded that provision of carbon monoxide detectors is a concurrent responsibility of both a condominium association and the individual unit owners, and may be properly assessed to the association; administrative decisions considering this issue have consistently required condominium associations to ensure that each dwelling unit is equipped with adequate safety devices, such as carbon monoxide alarms and smoke detectors. *Dep't of Community Affairs, Bureau of Housing Inspection v. 275 Prospect Tower Ass'n, Inc.*, OAL Dkt. No. CAF 7872-05, Final Decision (January 8, 2007), aff'd per curiam, No. A-3097-06T2, 2008 N.J. Super. Unpub. LEXIS 924 (App. Div. May 6, 2008).

Owner of leased premises responsible for fines due to building code violations affirmed. *Department of Community Affairs, Division of Code and Standards, Bureau of Housing Inspection v. One Hundred One Asbury Avenue, Asbury Park, Moriarty (D & Z Realty)*, 97 N.J.A.R.2d (CAF) 85.

Owner of multiple dwelling required to maintain in accordance with regulations; penalty policy unenforceable as not promulgated as a rule. *Bureau of Housing Inspection v. Roger Gardens, Inc.*, 5 N.J.A.R. 120 (1983).

Under former N.J.A.C. 5:10-19.2, common elements to be repaired by condominium association following code violations include wiring and plumbing in dwelling units and smoke detector installation; repair assessment to owners permitted. *Florence Condominium Assn. v. Bureau of Housing Inspection*, 5 N.J.A.R. 5 (1983).

5:10-4.2 Discontinuation of services

(a) No person shall intentionally cause any service, facility, equipment or utility which is required to be supplied under this chapter to be removed, shut off or discontinued, or knowingly allow such condition to continue, when the condition affects any occupied unit of dwelling space.

1. This section shall not be applicable to such temporary interruption as may be necessary when actual repairs or alterations are in process or during temporary emergencies when discontinuance of services is caused by any public utility or public agency or is approved by the bureau.

(b) In the event of any discontinuation of services, repairs shall be performed expeditiously to minimize inconvenience to occupants and, to the greatest extent possible, temporary or alternate service shall be provided until permanent service can be restored.

New Rule, R.1981 d.95, effective April 9, 1981.

See: 12 N.J.R. 383(d), 13 N.J.R. 189(d).

Amended by R.1993 d.464, effective September 20, 1993.

See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).

SUBCHAPTER 5. DUTIES OF OCCUPANTS

5:10-5.1 Responsibility of occupants

(a) An occupant shall in addition to complying with all provisions of this chapter applicable to him, be responsible for violations of this chapter to the extent that he has the power to prevent the occurrence of a violation or assist in abating the violation. An occupant has the power to prevent the occurrence of a violation if:

1. It is caused by his own willful act or the willful act of a member of his family or household, or of his guest; or

2. It is the result of his gross negligence, neglect or abuse, or the gross negligence, neglect or abuse of a member of his family or household, or his guest.

(b) The occupant, any member of his family or household, or his guest shall, with respect to the public parts of the premises, be liable if a violation is caused by his own willful act, gross negligence, neglect or abuse.

(c) Every occupant of each unit of dwelling space shall give the owner thereof or his agent or employees access to any part of the unit of dwelling space upon reasonable notification, which under ordinary circumstances shall be one day for multiple dwellings, except immediately for hotels, for the purpose of making such inspection and such repairs or alterations as are necessary to effect compliance with the law and this chapter. In case of safety or structural emergencies immediate access shall be given.

(d) All items stored by occupants in any area provided for common storage by occupants of more than one unit of dwelling space shall bear the name and dwelling unit number of the occupant storing the said item or items. It shall be the responsibility of the occupant to label each item and maintain it labeled. Materials stored in such areas shall be secured against becoming sources of infestation and shall not be placed so as to create a hazard.

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

5:10-5.2 Reporting of violations

Upon discovery by an occupant of any conditions on the premises, failure of service, or defect in any equipment, which constitutes a violation hereof, the occupant shall report same promptly to the owner or to the superintendent having charge of the premises.

5:10-5.3 Prohibited acts

(a) No occupant or other person shall:

1. Create or maintain any condition constituting a violation of the Uniform Fire Code, N.J.A.C. 5:70;

2. Take down, obscure, alter, destroy, or in any way deface any notice, certificate or sign required by this chapter to be displayed; or

3. Destroy or damage protective equipment.

Amended by R.1993 d.464, effective September 20, 1993.
See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).
Administrative change.
See: 31 N.J.R. 35(a).

5:10-5.4 Unsafe and unsanitary conditions

(a) Occupants shall place all garbage within the receptacles provided for garbage disposal. Where janitorial service is not required, they shall place all containers with sufficient frequency to avoid an insanitary accumulation in the exterior area or areas set aside for the same. Garbage, rubbish and other refuse shall not be thrown out of windows or down dumbwaiters, nor shall garbage and refuse be set out on stairways or fire escapes or in common hallways.

(b) Occupants of each unit of dwelling space shall be responsible to the extent of their own use and activities for keeping the interior thereof safe and sanitary. Occupants shall prevent any accumulation of garbage or waste matter which may become a source of infestation.

(c) Every occupant shall maintain all plumbing fixtures used by him in a clean and sanitary condition, shall not deposit any material in any fixture or sewer system which would cause stoppage of or damage to properly maintained fixture or sewer systems and shall be responsible for the exercise of reasonable care in the proper use and operation of such fixtures.

(d) Occupants shall not damage, remove or destroy screens needed for the building.

(e) Every occupant of any unit of dwelling space shall be responsible for removing conditions resulting from the occupants own activities or which may result in infestation conditions which are subject to and under his exclusive control.

(f) No occupant shall cause excessive grease, soot or other foreign matter to accumulate on side walls, ceilings or other exposed room surfaces by improper use of heating or cooking equipment. Cooking equipment shall be kept clean, free of garbage, food particles and grease.

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

5:10-5.5 Willful damage

Every occupant shall be liable for willfully or maliciously causing damage to any part of the premises which results in a violation of this chapter. Any adult occupants shall be responsible and liable for any violation of this section caused by minors under their care or custody occupying the same unit of dwelling space if the violations were created or permitted to

5:10-7.2 Foundations

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

5:10-7.3 Exterior surfaces

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

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

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

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

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

Amended by R.2005 d.144, effective May 16, 2005.

See: 36 N.J.R. 2106(a), 37 N.J.R. 1754(c).

Added (e).

Case Notes

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

5:10-7.4 Leakage, drafts and infestation

All exterior walls, roofs, windows, window frames, doors, door frames, skylights, foundations and other parts of the structure shall be maintained as to keep water from entering the structure, to prevent excessive drafts or heat loss during cold or inclement weather and to provide a barrier against infestation. Damaged or badly worn material shall be repaired or replaced, and places showing signs of rot, leakage, deterioration or corrosion shall be treated or restored to prevent weathering or seepage.

5:10-7.5 Leaders and drainpipes

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

5:10-7.6 (Reserved)

Repealed by R.1993 d.464, effective September 20, 1993.

See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).

Section was "Chimneys, flues and vent attachments".

5:10-7.7 Railings

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

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

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

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

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

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

2. Guards shall be constructed so that the area in the plane of the guard, from the top of the tread to the top of the guard, is subdivided or filled in one of the following methods:

i. A sufficient number of intermediate longitudinal rails constructed so that the clear distance between rails (measured at right angles to the rail) does not exceed 16 inches (measured vertically) from the tread nosing; or

ii. Balusters spaced not more than eight inches apart; or

iii. Panels of wire mesh, or expanded metal, or ornamental grills which provide protection equivalent to that provided by the intermediate rails or balusters specified in the two preceding paragraphs; or

iv. Walls; or

v. Any combination of the foregoing.

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

Case Notes

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

SUBCHAPTER 8. MAINTENANCE OF INTERIOR

5:10-8.1 Basements, cellars and crawl spaces

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

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

Case Notes

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

5:10-8.2 Interior surfaces

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

(b) Floors, walls, ceilings and other exposed surfaces shall be kept clean, free from visible foreign matter, sanitary and well-maintained at all times. If necessary to accomplish the foregoing, these surfaces shall be kept painted, whitewashed, papered, covered or treated with sealing materials or other protective coatings as needed.

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

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

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

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

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

5:10-8.3 Stairways and common areas

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

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

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

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

maintenance obligations under the lease. Nostrame v. Dep't of Community Affairs, Bureau of Housing Inspection, OAL Dkt. No. CAF 05703-02 and CAF 11012-03 (On Remand), 2007 N.J. AGEN LEXIS 846, Final Decision (August 4, 2007).

Apartment owner was entitled to use a range hood in lieu of mechanical venting. Matter of 1100 Edgewood Ave., Trenton, New Jersey, 92 N.J.A.R.2d (CAF) 57.

SUBCHAPTER 20. COOKING FACILITIES

5:10-20.1 Required facilities

(a) No cooking shall be permitted in any unit of dwelling space unless there is provision for the following minimum cooking and sanitary facilities:

1. A kitchen sink of nonabsorbent impervious material and drainboard of appropriate materials, connected to and having available at all times a supply of hot and cold water under sufficient pressure as required under N.J.A.C. 5:10-15. The kitchen sink shall be connected to a sanitary disposal or sewer system;
2. Cooking and preparation of food shall be undertaken only in areas designated therefor;
3. Means of natural ventilation or mechanical ventilation sufficient to remove promptly cooking odors to the exterior of the premises without first circulating them within the interior habitable space of the unit;
4. Place for storage of food free from infestation;
5. Facilities for refrigeration in good operating condition for protection of food from spoilage permitting maintenance of temperatures for storage above 32 degrees and below 50 degrees without regard to outside temperature;
6. A cooking facility which, if electrical, is connected with safety to an electrical system of sufficient capacity, or if gas, connected by permanent fixtures and tubing to avoid leakage of gas. The use of gasoline stoves or other similar fuel-burning appliances using highly flammable liquids and the use of portable kerosene stoves or other similar fuel-burning portable appliances for cooking is prohibited;
7. Cabinets or drawers or other storage areas for utensils, dishes and other cooking and eating equipment;
8. Two floor or wall electrical outlets for electrical appliances.

(b) Notwithstanding (a) above, microwave ovens may be used in rooming units.

Amended by R.2002 d.341, effective November 4, 2002.

See: 34 N.J.R. 2371(a), 34 N.J.R. 3771(a).

Added (b).

Case Notes

Under the Hotel and Multiple Dwellings Law and implementing regulations, it is the building owner's responsibility to make sure that a gas stove violation is corrected, both because every unit in which cooking is permitted must have a properly operating stove and because any leakage of gas endangers the safety of everyone in the building; it is up to the owner whether to repair or replace the stove, or to take such measures as may be appropriate to ensure that the tenant carries out the tenant's

SUBCHAPTER 21. SANITARY FACILITIES

5:10-21.1 Required facilities

(a) Every unit of dwelling space shall contain the following minimum sanitary facilities:

1. A toilet equipped with a flushing mechanism;
2. A bathtub or shower or other complete bathing facility;
3. A wash basin in the toilet room or within close proximity thereto;
4. In dwelling units having more than one room available or used for sleeping purposes, each such room shall have accessible to it, sanitary facilities directly from the room itself or through any common portion of the dwelling unit without requiring passage through the bedroom.

(b) A complete second set of sanitary facilities shall be required for any unit of dwelling space with permissible occupancy of eight or more persons.

(c) Each toilet and bathing facility shall be located in a separate room or rooms completely enclosed sides and top and shall provide privacy to the occupant thereof. Any such room shall be provided with:

1. One or more doors, each of which can be locked from the interior;
2. Floor, walls and ceiling surfaces made of or protected by durable materials capable of being exposed regularly to moisture without damage or deterioration.

(d) Every bathroom and toilet room shall be of sufficient dimension to provide 1 1/2 foot clearance in front of each fixture including (but not limited to) toilet, lavatory, bathtub or shower;

(e) Every toilet including the toilet seat, wash basin, shower, bath and other plumbing or sanitary facility forming part of any toilet room or bathroom shall be maintained in good operating condition at all times and shall be kept clean and free of material that might clog the same or impair its operation and shall drain into a sanitary sewer or other approved sanitary disposal system.

Case Notes

Under the Hotel and Multiple Dwellings Law and regulations, tubs and showers must be properly caulked or grouted; whether or not the

inspector observed an actual leak is not the issue. *Nostrame v. Dep't of Community Affairs, Bureau of Housing Inspection*, OAL Dkt. No. CAF 05703-02 and CAF 11012-03 (On Remand), 2007 N.J. AGEN LEXIS 846, Final Decision (August 4, 2007).

5:10-21.2 Rooming units

(a) Occupants of rooming units shall either have the sanitary facilities required hereunder within the rooming unit or accessible to the rooming unit dwelling directly or by passage through a common hallway or passageway into which such rooming unit opens. Any such facility shall be located either on the same level or no more than one level below or above the rooming unit accessible through a stairway.

(b) There shall be available at least one of each kind of sanitary facility located as provided herein for each group of rooming units with a permissible capacity of six persons and an additional set of each kind of sanitary facility for each

additional multiple group of rooming units with a permissible capacity of eight persons or fraction thereof. For dwellings or structures utilized exclusively by male occupants, urinals flushed by running water may be substituted for no more than one-half of the required number of toilet facilities.

(c) Any additional toilets over and above the initial toilet shall be located or partitioned separately from any other toilet required hereunder and any additional bathing facility required hereunder shall be located separate from any other required bathing facility. There shall be no more than one of the required toilet facilities in the same room as any required bathing facility.

5:10-21.3 Dormitories

Rules on dormitories are outlined in the following table:

Water closets			Urinals		Lavatories			Bathtubs or showers	
Persons	Closets		Male	Urinals	Persons	Lavatories		Persons	Bathtubs or showers
	Male	Female				Male	Female		
1-15	1	1	1-30	1	1-15	1	2	1-7	1
16-30	2	2	31-60	2	16-30	2	3	8-15	2
31-50	3	4	61-100	3	31-50	4	3	16-25	3
51-75	4	6	101-150	4	51-75	4	5	26-35	4
76-100	6	8			76-100	6	7	36-45	5
100-150	8	10			101-125	7	9	45-55	6
Over 150, add 1 additional closet for each 25 males and each 20 additional females			Over 150, add 1 for each additional 50 males		Over 125, add 1 lavatory for each 20 additional males and each 15 additional females			Over 55 and not over 200, add 1 tub or shower for each 10 persons. Over 200 add 1 tub or shower for each 20 persons	

1 Drinking fountain for each 75 persons

SUBCHAPTER 22. OCCUPANCY STANDARDS

5:10-22.1 Basements and cellars

(a) Basements and cellars may be used for dwelling space provided that:

1. The entire area constituting the dwelling unit must comply with all requirements set forth in this chapter applicable to habitable rooms or areas and to all requirements set forth in N.J.A.C. 5:70 applicable to dwelling units in basements or stories below grade; and
2. The floors, ceiling and walls of each unit of dwelling space must be free of moisture.

Amended by R.1993 d.464, effective September 20, 1993.
See: 25 N.J.R. 2627(a), 25 N.J.R. 4482(a).
Administrative change.
See: 31 N.J.R. 35(a).

5:10-22.2 Unemancipated minors

No unemancipated minor shall occupy any unit of dwelling space not having as part thereof for the exclusive use of its occupants the sanitary facilities required under N.J.A.C. 5:10-21.

5:10-22.3 Floor area

(a) In all dwelling units other than rooming units, there shall be a minimum usable floor area for the initial occupant of 150 square feet and 100 square feet additional space for each additional occupant provided, however, that children under the age of two shall not be considered additional occupants.

(b) In rooming units used or intended to be used solely for transient occupancy, there shall be a minimum usable floor area of 50 square feet for each occupant provided, however, that children under the age of six shall not be considered additional occupants.