

company of the builder or any person or organization to whom the home may be sold or otherwise conveyed by the builder for subsequent resale, letting or other purpose.

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

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

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

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

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

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

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

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

“Warranty date” means the 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).

Initial Decision (2006 N.J. AGEN LEXIS 595) adopted, which found that homeowners did not establish that the swale, or hump, in their living room floor constituted a “major structural defect” warranted for 10 years under the New Home Warranty regulations. *Laughlin v. Irish Builders, LLC*, OAL Dkt. No. CAF 04670-07, 2007 N.J. AGEN LEXIS 844, Final Decision (September 14, 2007).

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.

Case Notes

The Bureau of Homeowner Protection is required to perform its administrative responsibility for processing claims against the new home warranty security fund fairly, reasonable and in conformity with the rules and regulations adopted to implement the New Home Warranty and Builders' Registration Act; this means that the Bureau must proceed without unreasonable delay in processing a claim against the fund. *Lakhani v. Bureau of Homeowner's Protection*. N.J.Super.A.D., 2002.

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

Initial Decision (2006 N.J. AGEN LEXIS 287) adopted, which concluded that where a builder failed to register as a new home builder, a \$750 penalty, instead of the maximum \$2,000 penalty, was more appropriate under the factual circumstances; the reduced penalty would not be so harsh as to be unfair, but would serve to remind respondents of the necessity to comply with the registration requirements in the future for the protection of citizens. *Bureau of Homeowner Protection, New Home Warranty Program v. McClernan Contractors*, OAL Dkt. No. CAF 2693-05, 2006 N.J. AGEN LEXIS 516, Final Decision (May 18, 2006).

Petitioner did not make an inadvertent mistake when it listed the wrong building corporation in a sales contract; given that one entity controlled by the corporate president did not renew its registration, one was denied registration, and the third was suspended, there was no

evidence of any intention to have the house built by a registered builder. This pattern of facts was inconsistent with any honest intention to comply with the registration requirements of the New Home Warranty and Builders' Registration Act. *Pennington Hills, L.L.C. v. Dep't of Community Affairs, Bureau of Homeowner Protection, OAL Dkt. No. CAF 10155-04, 2005 N.J. AGEN LEXIS 1118, Final Decision (September 21, 2005).*

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;

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 ap-

plication 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 to 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).

Record indicated that letters between the builder and the Bureau crossed in the mail, with the result that the builder appeared to be refusing to participate in conciliation when that was not, in fact, the builder's actual intention; thus, fairness dictated that sanctions not be imposed. *Evergreen Home Builders, LLC v. Bureau of Homeowner Protection, OAL Dkt. No. CAF 01391-06, 2006 N.J. AGEN LEXIS 511, Final Decision (May 18, 2006)*.

Builder's failure to repair or reimburse for costs of repairing home defects justifies suspension of registration. *DeSimone v. Bureau of Home Protection*, 97 N.J.A.R.2d (CAF) 15.

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

Construction on preexisting foundation was not new home. *Beach Condominiums v. Bureau of Homeowner Protection, New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 37.

5:25-3.2 Warranty coverage

(a) The warranty made applicable by these regulations shall be as follows:

1. One Year Warranty: For a period of one year from the warranty date each new home shall be free from:

- i. Performance standard defects (see N.J.A.C. 5:25-3.5)
- ii. Appliance fixture and equipment defects (see N.J.A.C. 5:25-1.3).
- iii. Mechanical and electrical systems defects (see N.J.A.C. 5:25-1.3 and 5:25-3.5 (k) and (l)).
- iv. Major structural defects (see N.J.A.C. 5:25-1.3 and 5:25-3.7).

2. Two Year Warranty: For a period of two years from the warranty date each new home shall be free from:

- i. Appliance, fixture and equipment defects only if such defects are covered under a manufacturer's warranty (see N.J.A.C. 5:25-1.3).

(1) NOTE: No warranty for appliances, fixtures or equipment shall exceed the length and scope of the warranty offered by the manufacturer.

- ii. Mechanical and electrical system defects (see N.J.A.C. 5:25-3.6).
- iii. Major structural defects (see N.J.A.C. 5:25-1.3 and 5:25-3.7).

3. Ten Year Warranty: For a period of 10 years from the warranty date on each new home shall be free from:

- i. Major structural defects (see N.J.A.C. 5:25-1.3).

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.

Case Notes

One-year warranty on attached patios. *Aronsohn v. Mandara*, 98 N.J. 92, 484 A.2d 675 (1984).

Initial Decision (2006 N.J. AGEN LEXIS 595) adopted, which found that homeowners did not establish that the swale, or hump, in their living room floor constituted a "major structural defect" warranted for 10 years under the New Home Warranty regulations. *Laughlin v. Irish Builders, LLC*, OAL Dkt. No. CAF 04670-07, 2007 N.J. AGEN LEXIS 844, Final Decision (September 14, 2007).

Condominium association's failure to show major structural defects through actual damage to load-bearing system requires denial of new home warranty claim. *Pier House View Condominium Association v. Department of Community Affairs*, 96 N.J.A.R.2d (CAF) 1.

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.

Defect not a warranted defect. *Seltzer v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 52.

5:25-3.3 Builder responsibilities

(a) Each builder shall be responsible for the correction of any defect which appears during any of the warranty period specified in this section, unless such responsibility is otherwise assumed by the private plan of which he is a member. Participants in the State Plan shall be responsible for correction of defects for the first two years of the warranty.

(b) The builder's responsibility in the case of a defect covered by this warranty shall include removal of the defects by repair or replacement or payment of the reasonable cost of repair or replacement. The choice as between repair, replacement or payment is the builders. The builder's responsibility shall include actual reasonable shelter expenses during repairs.

(c) Steps taken by the builder to correct defects shall not be deemed to extend the term of the warranty beyond that specified in this section.

(d) Written notice of a defect in any item under the warranty must be received by the builder not later than seven calendar days after the date on which the warranty on that item expires.

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).

Old (d) deleted; (e) recodified to (d).

Case Notes

Builder was responsible for repair or replacement of defective cabinetry installed in new home. *William Iellimo Builder & Contractor v. Wirstiuk*, 96 N.J.A.R.2d (CAF) 52.

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.

Dismissal; homeowner prevented the builder from making repairs. *Gerling v. R. Cola Construction Co., Inc.* 94 N.J.A.R.2d (CAF) 54.

New Home Warranty Program; homeowner preventing builder from correcting defects. *Baker v. MVN Homes, Inc.*, 94 N.J.A.R.2d (CAF) 34.

Builder required to make repairs. *Rigas v. Bureau of Homeowner Protection, New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 19.

5:25-3.4 Warranty exclusions

(a) The following are not included in the warranty required by this subchapter:

1. Any portion of a covered home which is not completed by the warranty date; except that, after completion, such portions will be covered until the end of the warranty

period specified for that portion, pursuant to N.J.A.C. 5:25-3.2. Builder failure to complete construction of such portions may constitute the basis for denial, supervision, or revocation of registration pursuant to N.J.A.C. 5:25-2.5. Any item for the completion of which funds are being held in escrow shall be deemed to be an incompleteness rather than a defect. If such item exhibits a defect after the release of the escrowed funds, then it shall be included in the warranty. In all cases, the warranty period shall be deemed to have commenced on the warranty date.

2. Defects in outbuilding (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home are covered), swimming pools and other recreational facilities, driveways, walkways, unattached patios, boundary walls, retaining walls which are not necessary for the home's structural stability, fences, landscaping (including sodding, seeding, shrubs, trees and plantings), offsite improvements, or any other improvements not a part of the home itself.

3. Bodily injury, damage to personal property, or damage to real property which is not part of the home.

4. Any damage to the extent it is caused or made worse by:

i. Negligent or improper maintenance or improper operation by anyone other than the builder or his employees, agents or subcontractors, or;

ii. Failure of anyone other than the builder or his employees, agents or subcontractors to comply with the warranty requirement of manufacturers of appliances, equipment or fixtures, or;

iii. Failure to give notice to the builder of any defect within the time frame established under N.J.A.C. 5:25-3.3(e) and 5:25-5.5(b) or the applicable private warranty plan; or

iv. Changes of the grading of the ground by anyone other than the builder, or his employees, agents or subcontractors, or;

v. Failure to take timely action in emergent cases to minimize any loss or damage.

5. Any defect in, or caused by, materials or work supplied by anyone other than the builder, or his employees, agents or subcontractors. The builder shall, however, be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder which is not in accordance with accepted industry standards;

6. Normal wear and tear or normal deterioration in accordance with normal industry standards;

7. Accidental loss or damage from acts of nature such as, but not limited to; fire, explosion, smoke, water escape,

changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. However, soil movement (from causes other than flood and earthquake) is not excluded;

8. Insect damage;

9. Any loss or damage which arises while the home is being used primarily for non-residential purposes;

10. Changes, alterations, or additions made to the home by anyone after initial occupancy, except those performed by the builder as his obligation under this program;

11. Any defect caused to a finished surface material or any work supplied by anyone other than the Builder/Warrantor, or his employees, agents, or sub-contractors in that, it is determined the installer has accepted the Builder/Warrantor's surface to apply the finish material;

12. Any materials and/or workmanship furnished and installed by the Builder/Warrantor that does not comply with the specifications in a sales agreement or contract which is not defective;

13. Consequential damages to personal property are excluded, consequential damages to real property as a result of a defect or repair of a defect are covered.

(b) Other exclusions are included in the performance standards (5:25-3.5) to better define those standards and are identified by "Exclusion".

New Rule R.1986 d.141, effective May 5, 1986.

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

Old section 3.4 recodified to 3.5.

Case Notes

Unattached patios not warranted (citing former N.J.A.C. 5:25-3.3). *Aronsohn v. Mandara*, 98 N.J. 92, 484 A.2d 675 (1984).

Claim was justifiably denied where purchaser of a new home signed a document that excluded several items from New Home Warranty coverage, including water in the basement; affixing one's signature to a document creates a conclusive presumption, except as against fraud, that the signer read, understood, and agreed to its terms. *Rabban v. Bureau of Homeowner Protection/New Home Warranty Program*, OAL Dkt. No. CAF 10667-06, 2006 N.J. AGEN LEXIS 1025, Initial Decision (December 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 884) adopted, which concluded an absent piece of siding was a failure to complete, not a defect within the meaning of the New Home Warranty regulations. *Sayko v. Trade Masters, Inc.*, OAL Dkt. No. CAF 04174-06, 2006 N.J. AGEN LEXIS 947, Final Decision (November 13, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 429) adopted, which concluded that complaints discovered and raised prior to the commencement of the warranty period and because of which the homeowner attempted to withhold money from the builder were not subject to the New Home Warranty Program. *Moore-Pak v. Promar Builders*, OAL Dkt. No. CAF 05680-05, 2006 N.J. AGEN LEXIS 514, Final Decision (July 17, 2006).

Homeowners' demolition of defective deck prior to inspection precludes relief under New Home Warranty Protection Program. *Precourt v. Bureau of Homeowner Protection*, 96 N.J.A.R.2d (CAF) 68.

Structural damage due to neighbor's excavation blasting not covered under New Home Warranty Program. *Williamson v. Community Affairs Department, Homeowner Protection Bureau*, 96 N.J.A.R.2d (CAF) 33.

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.

Escrow agreement excluded defects; New Home Warranty Program. *Chaykowsky v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 37.

Bureau of Homeowner Protection found claims of defects were not warranted. *Hsueh v. BLS Building Group, Inc.*, 93 N.J.A.R.2d (CAF) 45.

Defects not covered by warranty. *Narol v. New Home Warranty Program, Bureau of Homeowner Protection*, 92 N.J.A.R.2d (CAF) 65.

Wet basement problems; New Home Warranty Program. N.J.S.A. 46:3B-10 et seq. *Sussman v. Ocean Heights Realty Co.*, 91 N.J.A.R.2d (CAF) 9.

5:25-3.5 Performance standards

(a) The following performance standards set minimum standards which prescribe the level for quality of materials and performances in workmanship for the construction of new homes.

1. To the extent that detailed minimum performance standards for construction have not been enumerated in these Performance Standards, builders shall construct homes in accordance with good industry practice which assures quality of materials and workmanship. Likewise, the validity of any home buyer's claims for defects for which a standard has not been enumerated here shall be determined on the basis of good industry practice which assures quality of materials and workmanship, and any conciliation or arbitration of such claims shall be conducted accordingly.

2. The Performance Standards list specific items with each separate area of coverage.

(b) Rules concerning site work are as follows:

1. Grading:

i. Possible Deficiency: Settling of ground around foundation, utility trenches or other areas on the property where excavation and back fill have taken place that affect drainage away from the house.

(1) Performance standard: Settling of ground around foundation walls, utility trenches or other filled areas: which exceeds a maximum of six inches from finished grade established by the Builder/Warrantor.

(2) Builder/Warrantor responsibility: If Builder/Warrantor has provided final grading, Builder shall fill settled areas affecting proper drainage, one time only, during the first year Warranty period. Builder/Warrantor is then responsible for removal and replacement of shrubs and other landscaping installed by the Builder/Warrantor affected by placement of the fill.

2. Drainage:

i. Possible Deficiency: Improper grades and swales which cause standing water and affects the drainage in the immediate area surrounding the home.

(1) Performance standard: Necessary grades and swales shall be established to provide proper drainage away from the house. Site drainage under this warranty is limited to those immediate grades and swales surrounding the home. Standing or ponding water within the immediate surrounding area of the home shall not remain for a period longer than 24 hours after a rain. Where swales are draining from adjoining properties or where a sump pump discharges, an extended period of 48 hours is to be allowed for the water to dissipate. The possibility of standing water after an unusually heavy rainfall should be anticipated and is not to be considered a deficiency. No grading determination is to be made while there is frost or snow or when the ground is saturated.

(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.

(f) 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).

Initial Decision (2008 N.J. AGEN LEXIS 184) adopted, which denied homeowner's New Home Warranty claim concerning standing water on fiberglass steps leading to the home's rooftop deck; although both sides agreed that some ponding of water occurred after the simulation of a rain event, the homeowner's proofs did not show that the accumulation of water constituted a hazard to individuals or that it had caused damage to the home as contemplated by N.J.A.C. 5:25-3.5(d)1(vi)1. *Kish v. Bureau of Homeowner Protection/New Home Warranty Program*, OAL Dkt. No. CAF 06528-07, 2008 N.J. AGEN LEXIS 278, Final Decision (April 14, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 137) adopted as modified, which concluded that homeowner's New Home Warranty claim concerning a warped windowsill required corrective action. Although the Bureau of Homeowner Protection relied on the "visible from 6 feet" standard set forth in the Residential Construction Performance Guidelines, practicality should not be trumped by appearance. Since the homeowner testified credibly that round or cylindrical objects rolled off the windowsill, and that it was his intention to place such objects on the windowsill as decoration, the degree of the warp defeated the intended use, and the material used for the windowsill was defective. *Verona v. Triple B Properties, L.L.C.*, OAL Dkt. No. CAF 8604-06, 2007 N.J. AGEN LEXIS 343, Final Decision (April 19, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 884) adopted, which concluded there was insufficient evidence that an air conditioning system was operating outside the performance standards of N.J.A.C. 5:25-3.5(k)4; also, the claim was untimely. *Sayko v. Trade Masters, Inc.*, OAL Dkt. No. CAF 04174-06, 2006 N.J. AGEN LEXIS 947, Final Decision (November 13, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 884) adopted, which concluded that cracks were not defects within the meaning of the New Home Warranty regulations because there was no evidence that they either were greater than 1/8 inch or affected the structural stability of the wall, pursuant to N.J.A.C. 5:25-3.5; also, the claim was untimely. *Sayko v. Trade Masters, Inc.*, OAL Dkt. No. CAF 04174-06, 2006 N.J. AGEN LEXIS 947, Final Decision (November 13, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 884) adopted, which concluded that water stains were not defects within the meaning of the New Home Warranty regulations where homeowners were unable to provide evidence of actual trickling of water through walls under N.J.A.C. 5:25-3.5; also, the claim was untimely. *Sayko v. Trade Masters, Inc.*, OAL Dkt. No. CAF 04174-06, 2006 N.J. AGEN LEXIS 947, Final Decision (November 13, 2006).

No recovery under new home warranty program for alleged defects if builder met minimum performance standards. *Ladley v. Union Valley Corporation and BHP/NHWP*, 97 N.J.A.R.2d (CAF) 54.

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.

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).

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

Initial Decision (2006 N.J. AGEN LEXIS 595) adopted, which found that homeowners did not establish that the swale, or hump, in their living room floor constituted a "major structural defect" warranted for 10 years under the New Home Warranty regulations. Laughlin v. Irish Builders, LLC, OAL Dkt. No. CAF 04670-07, 2007 N.J. AGEN LEXIS 844, Final Decision (September 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 603) adopted, which concluded homeowner's addition to the home did not cause the major structural defect to the foundation, where there was credible testimony from an engineer that there was no change in grade when the engineer compared photographs of the residence before and after the construction of the addition; the engineer further concluded that the addition could not have caused the foundation defect because the addition was small in dimension, was situated at the opposite end of the residence from the site of the defect, and had its own foundation, and weather was not a factor. Evergreen Home Builders, L.L.C. v. Quara, OAL Dkt. No. CAF 11876-06, 2007 N.J. AGEN LEXIS 848, Final Decision (September 10, 2007).

Builder's failure to properly seal or caulk seven years prior resulting in rotting decks constitutes major structural defect under new home warranty. Goldenberg v. Bureau of Housing Protection, New Home Warranty Program, 97 N.J.A.R.2d (CAF) 88.

No recovery under New Home Warranty Program for older home's defects if no major structural damage proven. Rimmer v. Bureau of Home Protection/New Home Warranty Program, 97 N.J.A.R.2d (CAF) 17.

Water damage to bathroom floor and walls fails to qualify as major structural defect under New Home Warranty Program. Klein and Groom v. Bureau of Home Protection, 97 N.J.A.R.2d (CAF) 13.

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

When homeowners filed two claims against their builder under the New Jersey New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 through 46:3B-20, they were unaware of many material facts related to damage to a foundation wall. Thus, their election to proceed under the Act was not knowing and voluntary, and the Act's election of remedies provisions, N.J.S.A. 46:3B-9 and N.J.A.C. 5:25-3.10, did not preclude their subsequent lawsuit against the builder. *Ivashenko v. Katelyn Court Co.*, 401 N.J. Super. 99, 949 A.2d 279, 2008 N.J. Super. LEXIS 119 (App.Div. 2008).

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. *Spolitback 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).

Initial Decision (2006 N.J. AGEN LEXIS 429) adopted, which concluded that homeowner's New Home Warranty claim failed because the owner had previously elected another remedy to address the owner's complaints, within the meaning of N.J.A.C. 5:25-3.10, by triggering the initiation of and participating in the arbitration proceeding; a further basis for denial of the claim was that the complaints were discovered and raised prior to the commencement of the warranty period. *Moore-Pak v. Promar Builders*, OAL Dkt. No. CAF 05680-05, 2006 N.J. AGEN LEXIS 514, Final Decision (July 17, 2006).

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.

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

Bureau of Homeowner Protection's regulations, requiring that a claimant under the Home Warranty Program submit to the Bureau two or more bona fide estimates acceptable to the Division of Codes and Standards of the Department of Community Affairs for the work intended to be covered, pursuant to N.J.A.C. 5:25-5.5(e)2, as a condition precedent to certification for payment from the Home Warranty Security Fund, are neither arbitrary, nor capricious, nor unreasonable. *Aqua Beach Condo. Ass'n v. Department of Community Affairs*, 186 N.J. 5, 890 A.2d 922, 2006 N.J. LEXIS 9 (2006).

Final decision of the Commissioner of the Department of Community Affairs barring a condominium association's claims for reimbursement from the Home Warranty Security Fund for repairs under N.J.S.A. 46:3B-1 to 46:3B-20 was upheld on appeal since the association never followed up with the two required estimates it had to submit pursuant to N.J.A.C. 5:25-5.5(e)1 despite the Bureau of Homeowner Protection's repeated requests. In addition, there was no legally competent evidence to support the association's equitable estoppel claim that a Bureau engineer orally authorized the emergency repairs made by the association. *Aqua Beach Condo. Ass'n v. Department of Community Affairs*, 186 N.J. 5, 890 A.2d 922, 2006 N.J. LEXIS 9 (2006).

Initial Decision (2006 N.J. AGEN LEXIS 595) adopted, which concluded that homeowners' delay in filing their New Home Warranty claim could not be excused by their reliance upon the anticipated "good faith" of a builder who was clearly not responsive to their efforts. *Laughlin v. Irish Builders, LLC*, OAL Dkt. No. CAF 04670-07, 2007 N.J. AGEN LEXIS 844, Final Decision (September 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 596) adopted, denying relief where homeowners' claims of basement leaks and flooding of the backyard due to an undersized water retention basin were not substantiated at the time of the inspection, citing N.J.A.C. 5:25-5.5(b)3iii. *Lederman v. Paisley Associates*, OAL Dkt. No. CAF 05442-07, 2007 N.J. AGEN LEXIS 845, Final Decision (September 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 603) adopted, which concluded that although a homeowner may not file more than one New Home Warranty claim for the same defect, the homeowner's foundation substantially deteriorated as time progressed, such that the owner's second claim was not barred by the first claim. *Evergreen Home Builders, L.L.C. v. Quara*, OAL Dkt. No. CAF 11876-06, 2007 N.J. AGEN LEXIS 848, Final Decision (September 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 50) adopted, which concluded that homeowners did not prove the existence of warrantable defects, other than those found by the Bureau; N.J.A.C. 5:25-5.5(b)3 places the onus on the homeowner to substantiate the existence of claimed warrantable defects, and the homeowner must prove the existence of warrantable defects by a preponderance of competent and credible evidence. *Flaherty v. Bureau of Homeowner Protection*, OAL Dkt. No. CAF 05213-06, 2007 N.J. AGEN LEXIS 88, Final Decision (February 7, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1023) adopted, which concluded that the homeowners' filing of their Notice of Claim with the State 11 days early was only a technical violation of 5:25-5.5(b) that did not bar a remedy under the New Home Warranty Act. The New Home Warranty Act is remedial legislation, its purpose being to provide the homeowner with an expeditious and secure remedy against defects occurring in a new home. Remedial legislation should be given a liberal interpretation, and the words used should be given the most extensive meaning to which they are reasonably susceptible. *Weiss Road Holdings, L.L.C. v. Lobmeyer*, OAL Dkt. No. CAF 10371-06, Final Decision (January 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 884) adopted, which concluded that New Home Warranty claims filed just short of five months after the end of the first year of the warranty period were untimely, and the builder's repairs did not extend the time period; the Commissioner of Community Affairs and the Bureau of Homeowner Protection have long interpreted the notice requirements and the warranty period strictly. *Sayko v. Trade Masters, Inc.*, OAL Dkt. No. CAF 04174-06, 2006 N.J. AGEN LEXIS 947, Final Decision (November 13, 2006).

Even if regulations required homeowners filing claim under New Home Warranty and Builders' Registration Act to submit two bid estimates by design professional for design work needed on structural repairs to their home, and homeowners were provided adequate notice of this requirement, homeowner's failure to provide those estimates did not justify the Bureau of Homeowner Protection's summary rejection of their claim; claims supervisor informed homeowners they would be allowed forty-five days to submit additional bids, but rejected homeowners' claim for unrelated reasons only nineteen days later. *Lakhani v. Bureau of Homeowner's Protection*. N.J.Super.A.D., 2002.

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).