

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).

Initial Decision (2008 N.J. AGEN LEXIS 738) adopted, which found that the Bureau of Homeowner Protection properly denied petitioner's claims because her contention that there was a sensitivity problem with the spotlights was a contractual issue; the record also revealed that petitioner was not operating the lights properly. *Parker v. Noelle Construction Corp.*, OAL Dkt. No. CAF 4722-08, 2008 N.J. AGEN LEXIS 1279, Final Decision (August 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 48) adopted, which concluded that homeowner proved defects with respect to two windows, which would not stay open due to broken balance lines, and the builder was liable for the expeditious repair and elimination of the defects; the homeowner testified that she did not do anything to cause the windows to malfunction, and, while the Bureau claimed it was unable to determine when and under what circumstances the lines broke, the Bureau's representative admitted that while some windows were inspected, he could not testify with certainty whether he checked the two windows in question, and also admitted that he did not see any evidence of tampering with the windows. *DePierri v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 2937-07 and CAF 4671-07, 2008 N.J. AGEN LEXIS 567, Final Decision (February 25, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 646) adopted as modified, which concluded that N.J.A.C. 5:25-3.4(a)12 excluded a condominium association's New Home Warranty claim that exterior showers were defective because they did not have a water supply or water heater controlled by the condominium association, but instead were connected to the water supply for two privately owned units. 229 East Pine Ave. Condo. Ass'n v. Bureau of Homeowner Protection, New Home Warranty Program, OAL Dkt. No. CAF 6112-07, 2007 N.J. AGEN LEXIS 951, Final Decision (October 30, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 646) adopted as modified, which concluded that condominium association's New Home Warranty claim concerning sprinkler system was excluded pursuant to N.J.A.C. 5:25-3.4(a)2, which excludes "improvements not a part of the home itself"; there is nothing in the New Home Warranty Act that provides any coverage for sprinkler systems. 229 East Pine Ave. Condo. Ass'n v. Bureau of Homeowner Protection, New Home Warranty Program, OAL Dkt. No. CAF 6112-07, 2007 N.J. AGEN LEXIS 951, Final Decision (October 30, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 646) adopted as modified, which concluded that improperly graded exterior shower floors were not covered under the New Home Warranty Program, as they did not fall within the category of an immediate grade or swale surrounding the home pursuant to N.J.A.C. 5:25-3.5(b)2i(1), and N.J.A.C. 5:25-3.4(a)2 excludes from coverage improvements that are not part of the home itself. 229 East Pine Ave. Condo. Ass'n v. Bureau of Homeowner Protection, New Home Warranty Program, OAL Dkt. No. CAF 6112-07, 2007 N.J. AGEN LEXIS 951, Final Decision (October 30, 2007).

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).

Initial Decision (2006 N.J. AGEN LEXIS 355) adopted, which concluded that, since all of the items submitted in homeowners' New Home Warranty claim were repaired by a third party without authorization from the Bureau of Homeowner Protection, the claims were barred pursuant to N.J.A.C. 5:25-3.4(a)5 and 10. *Magier v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 6811-05, 2006 N.J. AGEN LEXIS 520, Final Decision (July 17, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 286) adopted as modified, which concluded that where homeowners claimed that blue masking or painter's tape was left on the thresholds of three exterior doors, the decision to deny the claim on the grounds that it was an "incompletion," pursuant to N.J.A.C. 5:25-3.4(a), was puzzling since there was no evidence that the doors were in any way incomplete; rather, the correct regulations to apply were N.J.A.C. 5:25-3.5(a)1, (e)2, and (h)7, which required that the builder use good industry practice and assure the quality of material and workmanship, the quality of carpentry and trim, and painting deficiencies, respectively. As with the spray paint, writings, and concrete splashes on the basement walls, the blue tape and globs of spackle had to be removed as well. *Sosdorf v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 273-06, 2006 N.J. AGEN LEXIS 517, Final Decision (May 22, 2006).

Where the Bureau of Homeowner Protection (BHP) denied homeowners' claims regarding deficiencies in their hall and master bathrooms based on N.J.A.C. 5:25-3.4(a)12, BHP correctly directed that the defects, which consisted of gaps around the top edge of the shower stalls and bathroom walls, were to be corrected by repairing the open joints, touching up the finish coating, if required, and caulking open joints between dissimilar materials; homeowners were not entitled to have the units removed and the space framed correctly, or to have the units replaced with ones that fit correctly. *Sosdorf v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 273-06, 2006 N.J. AGEN LEXIS 517, Final Decision (May 22, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 477) adopted, which concluded that 27 punch list items discovered after closing were properly denied coverage under the New Home Warranty Program, pursuant to N.J.A.C. 5:25-3.4(a)1, because they were covered by an escrow account, established by verbal agreement of the homeowner and builder in order to cover construction defects and incomplete items. There was no limitation placed on the items covered by escrow, and neither the homeowners nor their attorney ever disputed the inclusion of the additional items. *Davlouros v. Erbe Builders, Inc.*, OAL Dkt. No. CAF 6358-04, 2005 N.J. AGEN LEXIS 1122, Final Decision (October 26, 2005).

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.

(d) 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).

Defect in flooring was not covered after the first year because it was not an appliance, fixture, or equipment defect covered by a manufacturer's warranty, a mechanical or electrical system defect, or a major structural defect and, while it was certainly understandable that property owners would have reason to feel aggrieved in a situation in which a defect that may have been present all along only became evident after

the applicable warranty period had expired, the one-year, two-year, and ten-year limitations, being statutory, could only have been changed by legislation and could not be waived by the New Home Warranty Program; the claimants did not timely file their claim, nor did they submit timely written notice of any defect to the builder at the builder's business address. *South Beach Condominium v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 04650-09, 2009 N.J. AGEN LEXIS 610, Final Decision (September 2, 2009).

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 646) adopted as modified, which concluded that improperly graded exterior shower floors were not covered under the New Home Warranty Program, as they did not fall within the category of an immediate grade or swale surrounding the home pursuant to N.J.A.C. 5:25-3.5(b)2i(1), and N.J.A.C. 5:25-3.4(a)2 excludes from coverage improvements that are not part of the home itself. *229 East Pine Ave. Condo. Ass'n v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 6112-07, 2007 N.J. AGEN LEXIS 951, Final Decision (October 30, 2007).

Condominium association claimed that water accumulated on the stair landing, resulting in puddles so large that homeowners could not gain access to their unit without stepping in the puddle, and that the puddles froze in winter, creating a serious safety hazard; the Bureau of Homeowner Protection denied the claim, citing N.J.A.C. 5:25-3.5(d)1vi(1) and contending that the association had not demonstrated a hazard to individuals or to the home. Parties were directed to go to the location(s) where the water accumulation was alleged to occur and have water poured there. If the water drained and there was no accumulation, no correction would be required; but if there was an accumulation, it was to be corrected. *229 East Pine Ave. Condo. Ass'n v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 6112-07, 2007 N.J. AGEN LEXIS 951, Final Decision (October 30, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 286) adopted as modified, which concluded that where homeowners claimed that blue masking or painter's tape was left on the thresholds of three exterior doors, the decision to deny the claim on the grounds that it was an "incompletion," pursuant to N.J.A.C. 5:25-3.4(a), was puzzling since there was no evidence that the doors were in any way incomplete; rather, the correct regulations to apply were N.J.A.C. 5:25-3.5(a)1, (e)2, and (h)7, which required that the builder use good industry practice and assure the quality of material and workmanship, the quality of carpentry and trim, and painting deficiencies, respectively. As with the spray paint, writings, and concrete splashes on the basement walls, the blue tape and globs of spackle had to be removed as well. *Sosdorf v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 273-06, 2006 N.J. AGEN LEXIS 517, Final Decision (May 22, 2006).

Where homeowners asserted that the concrete serving as the foundation for the upper deck of the home was deteriorating, with spalling and exposed aggregate, the surface unevenness of the concrete pad was excluded from coverage under the New Home Warranty Program because the deterioration did not rise to the level of a major structural defect; neither the photograph, nor any other evidence, revealed any indication of any progressive deterioration or of any impact on load-bearing capacity. However, a different determination was not precluded if the load-bearing capacity of the concrete became compromised at any time during the remaining term of the warranty. *Sosdorf v. Bureau of Homeowner Protection*, New Home Warranty Program, OAL Dkt. No. CAF 273-06, 2006 N.J. AGEN LEXIS 517, Final Decision (May 22, 2006).

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.

**CHAPTER 42****STATE RENTAL ASSISTANCE PROGRAM****Authority**

N.J.S.A. 52:27D-287.2.

**Source and Effective Date**

R.2010 d.258, effective October 14, 2010.  
See: 41 N.J.R. 4149(a), 42 N.J.R. 2753(c).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 42, State Rental Assistance Program, expires on October 14, 2017. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 42, Federal Aid Project Notification and Review System, was adopted as R.1970 d.83, effective July 9, 1970. See: 2 N.J.R. 46(d), 2 N.J.R. 61(e).

Chapter 42, Federal Aid Project Notification and Review System, was repealed by R.1983 d.488, effective November 7, 1983. See: 15 N.J.R. 1494(a), 15 N.J.R. 1858(a).

Chapter 42, Work First New Jersey Housing Assistance Program, was adopted as new rules by R.1999 d.124, effective April 19, 1999 (operative January 18, 2000). See: 30 N.J.R. 1463(a), 31 N.J.R. 1061(c). Chapter 42, Work First New Jersey Housing Assistance Program, expired on April 19, 2004.

Chapter 42, State Rental Assistance Program, was readopted as R.2005 d.152, effective May 16, 2005. See: 37 N.J.R. 165(a), 37 N.J.R. 1775(a).

Subchapter 6, State Rental Assistance Program Employment and Training Requirements, and Subchapter 7, Other Requirements, were adopted as new rules by R.2007 d.123, effective May 7, 2007. See: 38 N.J.R. 4279(a), 39 N.J.R. 1688(a).

Chapter 42, State Rental Assistance Program, was readopted as R.2010 d.258, effective October 14, 2010. See: Source and Effective Date.

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**APPENDIX. (RESERVED)****SUBCHAPTER 1. GENERAL PROVISION****5:42-1.1 Overview**

(a) The purpose of these rules is to implement a rental assistance program for low-income individuals or households, who are not currently holders of Federal housing choice vouchers under the Housing Choice Voucher Program (formerly known as the “Section 8 Housing Assistance program”). The program shall provide rental assistance grants, comparable to the Federal Housing Choice Voucher Program and shall be terminated upon the award of a Federal subsidy to the same individual or household.

1. Rental assistance grants will be “tenant-based” and “project-based.”

2. Not less than \$7.5 million of the rental assistance grants will be reserved for senior citizens aged 65 or older who are currently receiving a rental subsidy under the Housing Choice Voucher Program.

3. Not less than 22 percent of the rental assistance grants will be provided to homeless families with children, graduates of transitional housing programs, and households that are currently participating in a DCA-administered temporary housing assistance program and facing homelessness due to termination of funding.

4. Not less than 17 percent of the allocation under P.L. 2004, c. 140 will be reserved for project-based assistance for special initiatives under the State Rental Assistance Program that may include collaborations with the Division of Youth and Family Services and may include other special populations. Project-based assistance will be administered under N.J.A.C. 5:42-5.

5. Not less than 35 percent of the rental assistance grants will be reserved for households on the S-RAP waiting list.

6. Seven and a half percent of the allocation will be utilized by DCA for administrative expenses.

7. Not less than 10 percent of the vouchers will be set-aside for disabled head of households or spouse.

8. The remaining balance will be allocated to the set-asides listed in (a)1 through 7 above, based on the rate of disbursement in each allocation.

Amended by R.2007 d.123, effective May 7, 2007.

See: 38 N.J.R. 4279(a), 39 N.J.R. 1688(a).

In (a)2, substituted "Not less than \$7.5 million" for "Thirty percent"; rewrote (a)3; in (a)4, substituted "Not less than 17" for "Seventeen" and "may" for the second occurrence of "will"; in (a)5, substituted "Not less than 35" for "Thirty-one" and "on the S-RAP" for "currently on DCA's existing Housing Choice Voucher Program's"; in (a)6, substituted "Seven and a half" for "Five"; and added (a)7 and (a)8.

### 5:42-1.2 Definitions

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

"Annual income" means the gross amount of income anticipated to be received by the family during the 12 months following the effective date of the examination or re-examination.

"Applicant (applicant family)" means a family that has applied for admission to a program but is not yet a participant in the program.

"Calculation of family share rent" means the family share of rent is 30 percent based upon the household's adjusted annual income, or 25 percent of household's adjusted annual income for elderly and disabled head of household. Rents above the payment standard may increase the family share above 30 percent and 25 percent, respectively.

"Calculation of S-RAP Subsidy" means the difference between the tenant rent and the applicable DCA payment standard or the gross rent, whichever is lower. DCA's payment standard ranges from the current HUD approved fair market rent to 110 percent of the fair market rent based upon bedroom size and housing market. The family is responsible for all rent payments in excess of the payment standard.

"Department" or "DCA" means the Department of Community Affairs.

"Disability" means a person who has one or more of the following disabilities:

1. A disability, as defined in Section 223 of the Social Security Act, 42 U.S.C. §423;

2. A physical, mental, or emotional impairment, which is expected to be of long-continued and indefinite duration,

substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions; and/or

3. A developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act, P.L. 106-402. Proof of disability is receipt of Social Security Insurance, Social Security Disability or certification from a licensed physician.

"Domicile" means the legal residence of the household head or spouse as determined in accordance with State and local law.

"Eligible Deductions" means:

1. The deduction for elderly (age 65 or above) or disabled head of household as set forth in 24 CFR 5.611(a)2, incorporated herein by reference, as amended and supplemented;

2. The deduction for each household member who is under 18 as set forth in 24 CFR 5.611(a)1, incorporated herein by reference, as amended and supplemented; and

3. The deduction for the estimated cost of tenant paid utilities exclusive of cable and telephone. (The amount of deduction is based upon established DCA utility schedule chart.)

"Fair market rent (FMR)" means the cost of gross rent for an area (shelter plus utilities) of privately owned, decent and safe rental housing of a modest nature (non-luxury) with suitable amenities.

"Family" means a person or group of persons, as determined by the DCA, approved to reside in a unit with assistance under the program.

"Family rent to owner" means the portion of rent to owner paid by the family.

"Family unit size" means the appropriate number of bedrooms for a family, as determined by DCA.

"Household" means two or more persons sharing a domicile, as defined in 24 CFR 982.4, incorporated herein by reference, as amended and supplemented, whose income and resources are available to meet the household's needs and who are related by blood, marriage or operation of law.

"Housing assistance payment (HAP)" means the monthly assistance payment by DCA, which is payment to the owner for rent to the owner under the family's lease.

"Housing quality standards (HQS)" means the HUD minimum quality standards for housing assisted under the tenant-based programs. See 24 CFR 982.401.

"Initial rent to owner" means the rent to owner at the beginning of the HAP contract term.