

2. Where the warranty date on common elements has expired, a unit owner who has taken first occupancy after that period may file a notice of defect on a common element directly with the builder and when it is established that such defect could not have been determined prior to occupying the unit, the defect shall be made a part of the unit owner's claim.

(d) Any condominium or cooperative building containing three or more dwelling units for which more than 10 percent of the unit deeds or leases have been transferred or signed, as the case may be, or where more than 10 percent of the units have been given for occupancy prior to July 1, 1979, shall not be subject to this Act. In the case of a project consisting of more than one building, individual buildings within such project shall not be subject to this Act by the same criteria.

(e) The warranty specified in this section shall be applicable to new owner-occupied two-family homes in the same manner and to the same extent as to one-family homes.

(f) In any case of mixed residential and nonresidential use, the warranty specified in this section shall be applicable only to that portion of a new home that is used exclusively for residential purposes, unless it can be shown that a defect in the nonresidential portion is or will be the proximate cause of a defect in the residential portion of the new home.

(g) Where an owner has contracted with someone other than the builder for either the mechanical, electrical, foundation or framing, other than piling foundation, a warranty is not applicable.

As amended, R.1982 d.22, eff. February 1, 1982.  
See: 13 N.J.R. 863(b), 14 N.J.R. 145(a).

(f) added.

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

Provision in house construction contract attempting to eliminate remedies for homeowner was unenforceable as violation of public policy and remedies. *Marchak v. Claridge Commons, Inc.*, 261 N.J.Super. 126, 617 A.2d 1256 (A.D.1992), certification granted 133 N.J. 440, 627 A.2d 1145, affirmed 134 N.J. 275, 633 A.2d 531.

Mortgagee in possession who completed construction of condominium building after builder defaulted was entitled to indemnification. *Central Heights Condominium Ass'n, Inc. v. Little Falls Sav. and Loan Ass'n*, 251 N.J.Super. 335, 598 A.2d 233 (A.D.1991).

Petitioner's house not a 'new home' since the house had been rehabilitated from an existing house. *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).

#### 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).

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,

Administrative Correction.

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

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

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

Amended by R.1997 d.306, effective July 21, 1997 (operative January 1, 1998).

See: 29 N.J.R. 2206(a), 29 N.J.R. 3249(b).

In (a) and (b), decreased the warranty contribution amounts.

#### Case Notes

Election of nonadministrative remedy does not preclude indemnification. *Central Heights Condominium Ass'n, Inc. v. Little Falls Sav. and Loan Ass'n*, 251 N.J.Super. 335, 598 A.2d 233 (A.D.1991).

Premium due under New Home Warranty Act; use of another builder as his construction contractor. *N.J.S.A. 46:3B1 et seq., 46:3B2, 46:3B4, 46:3H4. Monihan v. Bureau of Homeowner's Protection*, 91 N.J.A.R.2d (CAF) 3.

#### 5:25-5.5 Claims procedure

##### (a) Builder responsibilities rules are:

1. The builder shall provide to the owner, on or before the warranty date for each new home, a full statement of warranty coverage and warranty claims procedure in such form as shall be prescribed by the Director.

2. Upon receipt of the four validated copies of the Certificate of Participation returned by the Department pursuant to N.J.A.C. 5:25-5.4(a)2, the builder shall distribute said validated copies in the following manner.

i. On the warranty date, one copy (the owner's settlement copy) shall be furnished to the owner.

ii. Within 10 days of the warranty date, one copy shall be furnished by the builder to the mortgagee, if any, of the new home.

iii. One copy shall be furnished to the local construction official as part of the application for a certificate of occupancy.

iv. One copy shall be retained by the builder as a file copy.

3. The Certificate of Participation shall be in such form and contain such information as shall be prescribed by the Director. A late payment fee shall be assessed and, having been assessed, shall be paid for each failure to remit payments due the Department on time, as provided in N.J.A.C. 5:25-5.4. Such late payment fee shall not exceed \$50 for the first 30 days, or for any part thereof, and \$500 for each 30-day period or part thereof thereafter.

4. The builder shall, on or before the warranty date, provide the owner with written notice concerning the business address to which notifications concerning alleged defects can be directed. The builder shall further provide written notice by regular mail of the new address to which notifications may be directed should the business address of the builder change at any time during the first two years following the warranty date.

5. Whenever an owner shall provide a builder with a notice of defect, then the builder shall arrange, with the owner, a mutually agreeable time for an inspection of the defect. Upon completion of the inspection, but in no case later than 30 days from receipt of notice of the defect, the builder shall provide the owner with a written statement setting forth the action the builder will take to correct the defect and the time by which the defect will be corrected.

##### (b) Owner responsibilities rules are as follows:

1. Except as specifically required in N.J.A.C. 5:25-3.4, any owner who believes he or she has a covered defect shall provide written notice of the nature of the defect(s) to the builder not later than seven calendar days after the date on which the warranty on that item expires. The notice shall be delivered to the builder's business address.

2. Upon providing written notice to the builder, the owner shall allow the builder 30 days in which to respond and shall arrange to be present and make the home available to the builder for purposes of inspection of defects, for a reasonable period of time between 9:00 A.M. and 6:00 P.M., Monday through Friday, or other mutually agreeable time.

3. If the matter cannot be resolved through the informal dispute settlement process established in (a)5, (b)1 and 2 above, then the owner may file Notice of Claim and demand, for dispute settlement with the Division. The Notice of Claim shall be filed not later than 14 days after the expiration of the 30 day period provided in (b)2 above. The claim shall state the name of the builder, the date on which the notice of defect was given to the builder, the Certificate of Participation number and a copy of the written notice of the defect, as prescribed in (b)1 above.

i. Except in the case of claims which relate to structural problems or emergencies, a notice of claim shall not be submitted until the expiration of 120 days from the warranty date.

ii. An owner may not file more than one claim for the same defect. However, a new claim may be filed by the owner if new facts arise which could not previously have been known with reasonable diligence.

iii. Where a claimed defect is filed that cannot be observed or determined under normal conditions it is the owner's responsibility to substantiate that the condition does exist. Any cost involved shall be paid by the owner and if properly substantiated, reimbursement shall be made by the builder or the State Plan, whichever is liable for the claim.

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

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

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

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

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

i. Arbitration:

(1) Where both parties agree, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. The arbitrator for both the State and private plans shall possess proof of satisfactorily passing the course and tests for the One and Two Family Dwelling Code and such proof shall be obtained within two years from the effective date of these regulations.

(2) The decision of the arbitrator shall be binding on both parties and reviewable only under such circumstances and to such extent as is available pursuant to the New Jersey Arbitration Act. The decision shall fix responsibility, the extent of the defect, and the date by which it must be corrected. In all cases where both parties elect to arbitrate the claims dispute and an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either party or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

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

(4) Whenever arbitration shall result in a finding for the owner, the arbitrator shall prescribe that the

builder correct the defect or make necessary replacements.

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

ii. Administrative hearing:

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

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

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

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

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

1. If any builder, after receiving the decision of the arbitrator, the Bureau of Homeowner Protection or the Director, as the case may be, refuses to correct any defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for

the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

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

3. In the event that an owner refuses to accept the amount certified by the Director as being in settlement of all claims against the fund for the defect at issue, the Director shall provide an opportunity for an Administrative Hearing pursuant to the Administrative Procedure Act.

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

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

(g) All claims filed with the State Plan after the expiration of the first two-year warranty period shall be filed with and processed by the Division. All payments made by the Division on such claims shall be from the New Home Warranty Security Fund.

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

2. The provisions of (e)2, 3 and 4 above shall apply in all cases in which claims are filed with the State Plan after the expiration of the first two-year warranty period.

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).

#### Case Notes

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).