

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

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

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).

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.
3. Provides the owner with an opportunity to accept or reject a conciliation decision in satisfaction of the claim and notice of the opportunity to appeal that decision to a court of competent jurisdiction.
4. Provides fixed periods of time for action by either party pursuant to the arbitration or conciliation decision.

(f) Private plans shall provide for written notice to the owner concerning warranty coverage and the claims and dispute settlement procedures utilized, expressing in plain language the scope, applicability and standards for the warranty and the forms, procedures and processes involved in making a claim under the warranty. The form and content of the written notice shall be approved by the Department.

(g) Private plans shall maintain such loss and payment records as the Department may require and shall provide such reports as the Department may require including, but not limited to the following:

1. Once every 12 months a report showing the number of builders participating, the number of homes covered in each of these categories (first year, second year, third through tenth years), the total number and total amount of claims paid during the reporting period and the total amount of funds available to pay such claims.

2. Once every three months a report showing the names, addresses and builder registration numbers of any new builders admitted to coverage.

3. Within ten days, all private plans shall notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination as it relates to N.J.A.C. 5:25-2.5 "Denial, Suspension and Revocation of Registration."

(h) A private plan shall disclose to the Department in writing each occurrence and the circumstances surrounding the decision of the program to refuse to honor a claim awarded by an arbitrator not later than the date upon which an appeal to a court of competent jurisdiction is filed.

(i) Rules concerning notification of non-payment of warranty premium by enrolled builders are:

1. The private plan shall document for the Department in writing all procedures taken to collect warranty premiums from enrolled builders negligent in such payment. Such documentation shall include the following steps:

i. The private plan must notify the enrolled builder immediately upon the discovery of any failure to pay such premium and shall give such builder not more than ten days in which to pay. The private plan shall notify the Department of the failure of any builder to remit such a premium within the ten-day period.

ii. The private plan shall also investigate all homes constructed by the enrolled builder to determine all instances of non-payment of warranty premiums. The private plan shall report its findings to the Department within ten days of the completion of its investigation.

(j) The private plan shall have a warranty guarantor which shall conform to all of the following requirements:

1. The warranty guarantor shall either possess a Certificate of Authority issued by the New Jersey Department of Insurance to write the kind of insurance specified in N.J.S.A. 17:17-1.1(g) or be designated by the Department of Insurance as an eligible surplus lines carrier under N.J.S.A. 17:22-6.45.

2. The warranty guarantor shall furnish to the Department satisfactory evidence that the form of any insurance policy to be used to provide coverage for the private plan has been approved by the New Jersey Department of Insurance with respect to its compliance with the provisions of State insurance law.

3. The warranty guarantor shall have and shall maintain an A.M. Best and Company, Inc. rating of "A" or "A+" and shall otherwise be and remain in a financial condition adequate, considering all circumstances including reinsurance arrangements, to cover the risk assumed under the private plan.

4. The terms and conditions of any insurance agreement insuring the private plan shall be subject to approval by the Department as providing the coverage with respect to the warranties required to be provided under said plan. Such terms and conditions shall not be modified or altered without the prior consent of the Department.

5. The warranty guarantor shall agree to provide to the Department such information concerning the settlement of claims and its financial condition as may reasonably be required to demonstrate its initial qualifications to act as a warranty guarantor, the performance of its obligations under the terms of its insurance agreement and its continued satisfaction of the requirements as to financial condition expressed herein.

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.