

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

New Home Warranties and Builders' Registration

Proposed Readoption: N.J.A.C. 5:25

Authorized By: Lori Grifa, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 46:3B-10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-321.

Submit written comments by February 18, 2011 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
PO Box 802
Trenton, NJ 08625
Fax No. (609) 633-6729

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, the Regulations Governing New Home Warranties and Builders' Registration, N.J.A.C. 5:25, are scheduled to expire on December 19, 2011. The Department has reviewed this chapter and finds that that it

continues to be necessary and appropriate for the purpose for which it was adopted and is therefore proposing that it be readopted without amendment.

The purpose of this chapter is to implement the New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 et seq., by establishing standards for the warranty required by statute to be given to new home buyers and for the registration of new home builders.

N.J.A.C. 5:25 consists of five subchapters, which deal, respectively, with general provisions, builder registration, warranty coverage and standards, private alternative new home warranty security plans, and the State new home warranty security plan.

Subchapter 1 deals with title, scope, effective date and the validity in the event that any particular provision is held to be invalid. It also contains definitions and the designation of the division and bureau responsible for enforcement.

Subchapter 2 contains rules implementing the statutory requirement that all new home builders be registered with the Department. Procedures and requirements for registration are established, as are grounds for denial, suspension or revocation of registration. Builders are required to enroll in a warranty plan. Any builder who fails to register is subject to a penalty of up to \$2,000 for each new home sold while the builder is not registered

Subchapter 3 establishes requirements for warranty coverage and standards that must be met or exceeded by any approved warranty plan, whether private or State. The rules specify which defects are required to be warranted for one year, which for two years, and which for 10 years. Builders' responsibilities are set forth, as are warranty

exclusions. Performance standards are established that are to be followed in determining whether or not a deficiency exists and what the obligation of the builder or warrantor is.

Subchapter 4 includes rules establishing requirements that must be met by any person seeking to establish a private warranty plan. These rules are intended to provide assurance that a homeowner whose home is warranted under a private plan has the same degree of protection as one whose home is warranted under the State plan. The subchapter includes the procedures that must be followed by an applicant for private plan approval, as well as the grounds and procedures for denial, revocation and suspension of approval.

Subchapter 5 designates the Director of the Division of Codes and Standards as the administrator of the State plan and sets forth rules of claim eligibility and rules establishing warranty contributions and claims procedures.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption have a beneficial social impact in that they implement a statute designed to protect purchasers of new homes by providing an efficient mechanism for getting construction defects corrected without the need for litigation. By establishing standards of responsibility for builders, these rules protect the conscientious builder who stands behind his or her work. The ability to get defects corrected in an expeditious manner protects the health and safety of new home buyers and their families.

Economic Impact

By reducing the need for litigation, the New Home Warranty and Builders' Registration Act and the implementing rules at N.J.A.C. 5:25 may have a positive economic impact for both builders and homeowners in that they may reduce legal costs. Builders who build homes with deficiencies suffer an adverse economic impact when they are required to correct those deficiencies or lose the right to build new homes in New Jersey. Builders who fail to register suffer an adverse economic impact when they are required to pay penalties of up to \$2,000 per new home built. Private plans that meet the rule requirements receive a positive economic impact, in that they can do business in New Jersey, while those who cannot meet the requirements suffer a corresponding negative economic impact. The percentage of the price of a new home required to be paid by a builder to enroll the home in the State plan ranges from 0.17 percent for those with at least 10 years without claims to 0.595 percent for those with the least favorable claim records.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being proposed for re adoption in compliance with, or in order to implement, any Federal law or rules or any State law referencing any Federal law or rules.

Jobs Impact

The Department does not anticipate that the rules proposed for re adoption would result in the loss or creation of any jobs. By facilitating correction of deficiencies in new homes, the rules have a positive impact upon job creation for persons in the building trades and related fields of employment.

Agriculture Industry Impact

The Department does not anticipate any impact upon the agriculture industry as a result of the rules proposed for readoption.

Regulatory Flexibility Analysis

The rules proposed for readoption would continue registration and construction requirements for builders of new homes that assure warranty protection to the owners, pursuant to the requirements of the New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 et seq. Many builders who are required to register may be “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Department has determined that no differentiation in the rules should be provided for small businesses, since to do so would result in unequal treatment of home buyers and would not conform to requirements of the statute.

Under Subchapter 3 of the rules, builders and warrantors of new homes must incur whatever costs are necessary in order to bring the homes into compliance with the standards. The amount of the costs that may be incurred would depend on the extent of the deficiencies in the particular case. A builder or warrantor lacking persons on staff with the necessary skills would have to incur the cost of hiring contractors or subcontractors to do various items of work.

Smart Growth Impact

The rules proposed for readoption would not have any impact upon either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption are intended to implement the New Home Warranty and Builders' Registration Act. Premiums based upon the builder's record are a cost of housing production that must be paid in order to provide the warranty protection required by statute to be provided by builders to buyers of new homes. The premiums are not so great as to have any substantial impact upon housing production costs or to affect affordability. The rules implement statutory requirements concerning the registration of builders, matters required to be covered by a warranty given by the builder, and the authorization of private companies to offer warranties. The statute and the implementing rules are intended to ensure that purchasers of new homes are not forced to bear the cost of the repairs that are required to be warranted, thus making their housing more affordable to them.

Smart Growth Development Impact

The rules proposed for readoption are intended to implement the New Home Warranty and Builders' Registration Act. The rules would be most unlikely to have any impact upon housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan. The rules implement statutory requirements concerning the registration of builders, matters required to be covered by a warranty given by the builder, and the authorization of private companies to offer warranties. The statute and the implementing rules are intended to ensure that purchasers of new homes are not forced to bear the cost of the repairs that are required to be warranted, thus making their housing more affordable to them.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:25.