

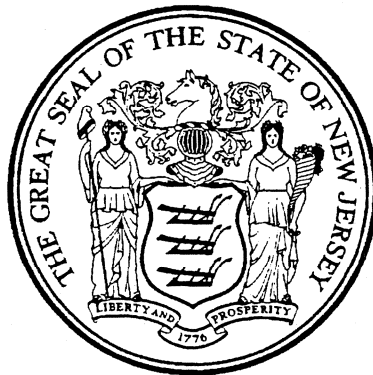
**CHAPTER 23  
UNIFORM CONSTRUCTION CODE REGULATIONS**

**CHAPTER 23A  
CONSTRUCTION BOARDS OF APPEALS**

**Current through May 18, 2009**

(See the New Jersey Register and the New Jersey Administrative Code  
for subsequent rule changes.)

Chapter 23 expires on June 13, 2013.  
Chapter 23A expires on October 26, 2011.



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New Jersey Administrative Code

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**CERTIFICATION OF OFFICIAL TEXT  
AND  
LIST OF VALID PAGES**

**N.J.A.C. 5:23  
UNIFORM CONSTRUCTION CODE REGULATIONS**

**N.J.A.C. 5:23A  
CONSTRUCTION BOARDS OF APPEALS**

**Supplement May 18, 2009**

I, Laura Sanders, Director and Chief Administrative Law Judge of the Office of Administrative Law, pursuant to the authority of N.J.S.A. 52:14B-7, do hereby supplement Title 5:23 (Uniform Construction Code) and 5:23A (Construction Boards of Appeals). The pages issued with this supplement contain the text of all Title 5:23 and 5:23A rule changes adopted and filed with the Office of Administrative Law and promulgated in the New Jersey Register through May 18, 2009.

A list of “Valid Title 5:23 and 5:23A Pages” begins on the following page and provides a means for determining whether this title contains the proper pages. Every page in Title 5:23 and 5:23A, along with the page’s current supplement date, is listed. A page is valid if the page number and supplement date on the list match the page number and “Supp.” date at the bottom of the appropriate page.

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be recorded with the prototype release so that prototype plan release may be confirmed for any subsequent use of the released prototype plans. Mirror-image designs shall not be a permitted option, and shall require separate prototype plan release, except for plans that are validated as identical to the original prototype, as provided in (f)2i(1) below. Prototype applications that include a foundation design shall specify the conditions and limitations of that design;

(1) Plans for a mirror-image design may be submitted with a letter signed and sealed by the design professional stating that the mirror-image design is identical to the original prototype, but reversed;

ii. Permit applications that rely on a released prototype shall consist of two copies of the following permit-specific documents to facilitate a thorough field inspection of the work. (As per N.J.A.C. 5:23-2.16(e), one set of the released plans shall be retained by the construction official and the second set shall be kept at the building site.)

(1) A plot plan that is signed and sealed by a registered architect, licensed professional engineer, or licensed land surveyor that includes the location of all utility services, including septic connections;

(2) A specific foundation design or certification that the prototype foundation design is suitable for the site;

(3) A reference set of plans that includes and clearly identifies each of the options to be used for the building that is the subject of the permit application. The reference set of plans is not required to be signed and sealed;

(4) Exterior elevations of the specific building;

(5) The prototype file identification number;

(6) The plan number and date of the released prototype plan; and

(7) When an automatic fire sprinkler system is installed, the fire sprinkler system demand, including either hose stream allowances or the required domestic demand, as applicable, at the available water supply shall be documented.

iii. Plans that contain deviations that were not released as part of the prototype shall not be considered a prototype and shall require the submission of a new permit application and application fees for that project to the appropriate plan review agency.

3. Examination of plans: All plans submitted and any amendments thereto accompanied by the required documentation and application, and upon payment of the fee established by the enforcing agency, shall be numbered,

docketed and examined promptly after their submission for compliance with the provisions of the regulations.

4. Plan review:

i. Department review: When a review and release of plans by the Department is required pursuant to N.J.A.C. 5:23-3.11 or requested for a prototype plan intended for use Statewide, the owner or agent of the owner shall file an application for construction plan release for each project, along with three sets of plans (two sets for prototypes), specifications and such other supporting information as the Department may require on forms obtained from the Department. The plans, specifications and other supporting information shall conform to the requirements of (e) above.

(1) Release of plans: Plans complying with the provisions of the regulations shall be released by the Department and written notice of approval shall be given the applicant promptly and no later than 20 business days after the submission thereof. Plans failing to comply with the provisions of the code shall be rejected and a written notice of rejection, stating the grounds for rejection, shall be given to the applicant not later than 20 business days after the submission thereof. Whenever plans have been rejected and are thereafter revised and resubmitted, the revised plans shall be released if the grounds for rejection have been corrected and code compliance has been demonstrated. In that case, a written notice of release shall be given to the applicant not later than seven business days after the resubmission of the revised plans. When the grounds for rejection have not been corrected or when code compliance has not been demonstrated, a written notice of rejection stating the grounds for rejection shall be given to the applicant not later than seven business days after the resubmission of the revised plans.

(2) Endorsement of released plans: All plans and amendments thereto, when approved by the department, shall be stamped or endorsed "released", followed by a notation of the date of plan release. One set of such released plans shall be retained by the department, two sets of such released plans shall be submitted to the local enforcing agency with the application for construction permit as herein provided.

(3) Partial filing: When circumstances require, a project may be filed in part (that is, footings, structural, electrical, plumbing, and so forth). Each partial submittal shall include sufficient detail to assure that the proposed portion of work complies with the regulations. A plan "release" for such a portion of work shall be issued without prejudice as to whether a "release" shall be issued for the entire project.

(4) Construction permits: Owners and their agents shall not apply to a local enforcing agency for a con-

struction permit for any building or structure for which a Department plan review and release is required by N.J.A.C. 5:23-3, unless such review and release has been applied for and received by the applicant as evidenced by presentation of released plans to the local enforcing agency.

(5) Time limitation of application: An application for a plan review shall be deemed to have been abandoned 12 months after date of filing, unless such application has been diligently prosecuted or a release has been issued; except that, for reasonable cause, the Department may grant one or more extensions of time for additional periods not exceeding 90 days each.

(A) When plans are submitted for local review that are required to be reviewed by the Department, the local enforcing agency shall so notify the owner or agent in writing no later than three business days after the submission of the plans.

ii. Local enforcing agency plan review: Where a Department plan review is not required by the regulations, an applicant for a construction permit shall be deemed to have applied for a local enforcing agency plan review by filing an application for a construction permit.

(1) If required State, county or local prior approvals have not been granted, plan review shall proceed provided that the application for a permit is otherwise complete and the plan review fee has been paid. No permit shall be issued until all required State, county and local approvals are in place.

(A) Exception: Permit applicants applying for plan review of individual owner-occupied one- or two family home addition or alteration projects must have zoning approval in place before plan review shall proceed.

(2) When the plans submitted with an application for a construction permit or amendment thereto are accompanied by plans which have been released by the Department, then further municipal plan review and fee therefor shall not be required. Release of the plans by the Department shall not prevent enforcing agency officials from thereafter requiring correction of any errors in said plans or from issuing a stop work order when in violation of the regulations. In such case the enforcing agency shall notify the Department;

iii. Validity of plan or prototype release: The released plans or prototype (Department or local) shall be valid for the purposes of applying for a construction permit until six months after the operative date of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6.

iv. Time limitation of application: An application for a permit for any proposed work shall be deemed to have

been abandoned six months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the construction official may grant one or more extensions of time for additional periods not exceeding 90 days each.

v. Amended plans and specifications: Amendments may be filed at any time; such amendments shall be deemed part of the original application and, when released, shall be filed therewith. Amended plans and specifications shall be required where deviations affect matters controlled by the code and, in the judgment of the subcode official having jurisdiction, such amended plans are necessary to assist in the determination of code compliance. The official may require the affected portions of the work to be halted until amended plans and specifications are released. If the amendment involves a substantial deviation from the original application, a new affidavit of consent may be required by the construction official. If a Department plan review was required originally, the enforcing agency shall not permit an amendment to the plans or specifications unless the amendment has been released by the Department.

vi. Building systems: Structural, electrical and mechanical designs performed and certified by licensed architects or engineers need not be checked in detail by the staff of the enforcing agency, but shall remain as the responsibility of the professional certifying such design.

vii. A schematic or sketch plan, when required pursuant to this subsection, shall not be deemed to be a construction copy of a plan and shall therefore not be required to be signed or sealed by a registered architect or licensed professional engineer.

Amended by R.1985 d.352, effective July 15, 1985.

See: 17 N.J.R. 1031(a), 17 N.J.R. 1758(a).

(b)1i: deleted text "The registration number of the contractor", and added "A current validated . . . contractor and the".

Amended by R.1985 d.479, effective September 16, 1985.

See: 17 N.J.R. 1462(a), 17 N.J.R. 2248(b).

(b)2ii added. (d) text added "All issued permits . . .".

Administrative Correction: Cleaned up typographical errors.

See: 22 N.J.R. 2503(b).

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Text added at (a)6 on Class I structure.

Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.544, effective October 16, 1995.

See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

Amended by R.1997 d.304, effective July 21, 1997.

See: 29 N.J.R. 2204(a), 29 N.J.R. 3248(a).

In (e)1, substituted "no fewer" for "no less"; and in (e)1i, inserted reference to accessible routes.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Amended (a)6, (a)7v and (e)3v; inserted (a)8 and (e)1vii.

Amended by R.2003 d.187, effective May 5, 2003.

See: 34 N.J.R. 4248(a), 35 N.J.R. 1939(c).

Rewrote the section.

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

Rewrote the section.

Amended by R.2004 d.144, effective April 5, 2004.

See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

Rewrote (e).

Amended by R.2006 d.32, effective January 17, 2006.

See: 37 N.J.R. 2918(a), 38 N.J.R. 484(a).

Added (b)5 through 7; recodified former (b)5 as (b)8 and rewrote the reference to (b)1, 2, 3, 4 as “(b)1 through 7.”

Amended by R.2006 d.127, effective April 3, 2006.

See: 37 N.J.R. 4599(a), 38 N.J.R. 1572(a).

Recodified former (b)8 as (b)10 and rewrote the reference “(b)1 through 7” as “(b)1 through 9”; added (b)8 and (b)9.

Administrative correction.

See: 38 N.J.R. 3776(b).

Amended by R.2007 d.124, effective May 7, 2007.

See: 38 N.J.R. 3708(a), 39 N.J.R. 1669(a).

Rewrote (e)1ix; in (e)4i(4), substituted “Department” for “depart-ment”; and added (e)4i(4)(A).

Amended by R.2007 d.125, effective May 7, 2007.

See: 38 N.J.R. 3707(a), 39 N.J.R. 1671(a).

Added new (e); and recodified former (e) as (f).

Amended by R.2007 d.231, effective August 6, 2007.

See: 39 N.J.R. 722(a), 39 N.J.R. 3295(a).

In (f)1vi(1), substituted “07-2” for “03-2” and “at [www.nj.gov/dca/codes](http://www.nj.gov/dca/codes)” for “, PO Box 802, Trenton, New Jersey 08625”; added (f)1vi(1)(A); in (f)1vi(2), deleted “EZ” following “Check” two times and “or from Pacific Northwest National Laboratory, PO Box 999, ATTN: K5-20, Richland, Washington 99352” following “[www.energycodes.gov](http://www.energycodes.gov)” and substituted “at [www.ashrae.org](http://www.ashrae.org)” for “, 1791 Tullie Circle, NE, Atlanta, GA 30329”; and added (f)1vi(2)(A).

Administrative correction.

See: 39 N.J.R. 3914(a).

Administrative correction.

See: 39 N.J.R. 4571(a).

Amended by R.2008 d.39, effective March 3, 2008.

See: 39 N.J.R. 2175(a), 40 N.J.R. 1084(a).

Added (f)1i(1).

Administrative correction.

See: 40 N.J.R. 1829(a).

Amended by R.2009 d.49, effective February 2, 2009.

See: 40 N.J.R. 5318(a), 41 N.J.R. 733(a).

In the introductory paragraph of (f)2i, inserted a comma following “option”, inserted the fourth occurrence of “shall”, and inserted “, except for plans that are validated as identical to the original prototype, as provided in (f)2i(1) below”; and added (f)2i(1) and (f)4i(5).

Amended by R.2009 d.162, effective May 18, 2009.

See: 40 N.J.R. 4268(a), 41 N.J.R. 2094(a).

Added new (f)4ii(1); and recodified former (f)4ii(1) as (f)4ii(2).

#### Case Notes

Zoning permit may be required pursuant to Municipal Land Use Law but not Uniform Construction Code Act. *Acqua Development Corp. v. Township of Holmdel*, 287 N.J.Super. 578, 671 A.2d 636 (L.1995).

Compliance with former N.J.A.C. 5:23-2.5 requirements for permit to non-contractor owner to perform repairs. *Winn v. Margate City*, 204 N.J.Super. 114, 497 A.2d 928 (Law Div.1985).

Requirement of architect’s or engineer’s seal on plans does not broaden scope of engineering practice into architecture; engineer’s plan limitations. *State Board of Architects v. North*, 197 N.J.Super. 349, 484 A.2d 1297 (Ch.Div.1984).

Prior-approval rule discussion; zoning matters involved in construction must be resolved before issuance of permits. *Bell v. Twp. of Bass River*, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).

Construction permit application and fee requirements under former N.J.A.C. 5:23-2.5; municipal requirement for payment of property taxes before issuance of permit invalid as preempted by legislation. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Construction permit applicant must provide assurances that prior approvals obtained. *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

#### 5:23-2.16 Construction permits—procedure

(a) Action on application: The construction official or the appropriate subcode official in the case of construction involving only one trade or subcode, shall examine or cause to be examined all applications for permits and amendments thereto, and approve or deny in whole or in part the application, within 20 business days. If the application is denied in whole or in part, the enforcing agency shall set forth the reasons therefore in writing. If an enforcing agency fails to grant, in whole or in part, or deny an application within 20 business days, such failure shall be deemed a denial of the



1. Execution of work in accordance with the regulations;
2. Execution and control of all methods of construction in a safe and satisfactory manner;
3. Execution of all work in accordance with the code and those portions of the plans and specifications controlled by the code;
4. In general, render all such construction services as required to effect a safe and satisfactory installation of the project;
5. Upon completion of the construction, the contractor shall certify to the best of the contractor's knowledge and belief that such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviation specifically noted.

(f) The provisions of this section do not relieve the enforcing agency of any of the responsibilities required by the regulations.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

Rewrote the section.

Administrative correction.

See: 39 N.J.R. 4571(a).

#### Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 428) adopted, which found that while the photographs and testimony indicated that 105 Mary Street had some structural supports, the lack of evidence that each and every element that required structural support had been adequately braced or shored forced a conclusion that the N.J.A.C. 5:23-2.21(e)(4) requirement to effect a wholly safe installation had not been met. Office of Local Code Enforcement, Dep't of Community Affairs v. Brassel, OAL Dkt. No. CAF 02684-06, 2006 N.J. AGEN LEXIS 512, Final Decision (June 16, 2006).

#### 5:23-2.22 Premanufactured construction

(a) Premanufactured construction certified in accordance with N.J.A.C. 5:23-4A through 4D, as applicable, and carrying an appropriate label, shall be accepted as conforming to the requirements of the regulations to the extent provided for by the particular label for purposes of local construction inspection approval.

1. Prior to accepting the unit, the appropriate subcode official may require the performance of nondestructive tests.
2. In the case of visible signs of damage and/or any visible code violations, the construction official shall consider the seriousness of the nonconformance or damage and accordingly issue a Temporary Certificate of Occupancy or Certificate of Occupancy or deny such Certificate. If a Temporary Certificate is issued or a Certificate is denied, the construction official shall request that the label-issuing

agency reaffirm in writing that the assembly still conforms to the regulations and notify the Department in writing.

3. No inspection requiring disassembly, damage to, or destruction of certified premanufactured construction shall be conducted.

(b) The appropriate subcode officials shall inspect the installation of any premanufactured unit or assembly and all work installed or completed on site to determine compliance with the regulations and the approved plans.

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Amended by R.2008 d.213, effective August 4, 2008.

See: 39 N.J.R. 2411(a), 40 N.J.R. 4523(b).

In the introductory paragraph of (a), substituted "through 4D, as applicable" for "or 4B".

#### 5:23-2.23 Certificate requirements

(a) New buildings: A building or structure hereafter erected shall not be used or occupied in whole or part until a form of certificate of occupancy shall have been issued by the construction official.

1. The enforcing agency shall upon application by the owner issue a certificate of occupancy when all requirements of the regulations have been met.

(b) Buildings hereafter renovated or altered: A building or structure hereafter renovated or altered shall not be occupied or used until the certificate of approval shall have been issued by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as is otherwise provided in the regulations. Any use or occupancy which was not discontinued during the work of renovation or alteration shall be discontinued within 30 calendar days after the completion of the alteration, unless the certificate of approval is secured from the enforcing agency.

(c) Building hereafter reconstructed: A building or structure, or portion thereof, hereafter reconstructed shall not be used until a certificate of occupancy shall have been issued for the entire building or structure or the portion being reconstructed, as the case may be, by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(d) Building hereafter extended: No addition which increases the height or area of an existing building or structure shall be used until a certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(e) Existing buildings: Upon request of the owner of an existing building or structure, the construction official, with the approval of the subcode officials, shall issue a certificate of continued occupancy provided that there are not violations of law or orders of the construction official pending and it is

established after inspection and investigation of available municipal records that the alleged use of the building or structure has lawfully existed. The certificate of continued occupancy shall evidence only that a general inspection of the visible parts of the building has been made, and that no violations of N.J.A.C. 5:23-2.14 have been determined to have occurred and no unsafe conditions violative of N.J.A.C. 5:23-2.32(a) have been found. Nothing in this subsection shall prevent the continued lawful use and occupancy of any such lawfully existing building or structure.

(f) Change of use: After a change of use has been made in a building or structure, the reestablishment of a prior use is prohibited unless the building complies with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode, for the prior use.

(g) Temporary certificate of occupancy: Upon the written request for a temporary certificate of occupancy by the holder of a permit, the construction official shall issue, and may renew, a temporary certificate of occupancy for a building or structure or part thereof when the work covered by the permit shall have been substantially completed, provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

1. The temporary certificate of occupancy and each subsequent renewal shall list the work to be completed and shall be valid for a reasonable period of time to complete the specified work. The municipal tax assessor shall be notified when the temporary certificate of occupancy is issued.

2. The request for a temporary certificate of occupancy may be denied when there are outstanding fees or penalties, when the required warranties, licenses or registrations are not in place, or the conditions of prior approvals affecting health and safety of the building occupants have not been met.

i. In the case of soil conservation, a temporary certificate of occupancy shall be denied if a Report of Compliance or Report of Compliance with Conditions is not issued by the soil conservation district pursuant to N.J.A.C. 2:90.

(h) Certificates for individual tenant spaces in multi-tenant buildings shall be issued pursuant to N.J.A.C. 5:23-2.23A.

(i) Application: A written application for a certificate of occupancy shall be filed with the enforcing agency by the owner or his agent. The application shall include the following:

1. The name and address of the owner or his agent;
2. The location of the building or structure;
3. If a change of use is contemplated, the current and proposed use groups;

4. The statement by the responsible person in charge of work, that to the best of his or her knowledge all work has been completed in accordance with the permit and the regulations;

5. A statement of the final cost of construction work, including the basic structure, all on-site improvements, built-in furnishings and fixtures and all integral equipment exclusive of process or manufacturing equipment;

6. A set of amended drawings, if required by the construction official and the appropriate subcode official(s), when the dimensions, lay out or appearance of the building or structure deviates substantially from the released plans and specifications filed with the construction permit application; and

7. A test and balance report for mechanically ventilated Class I and II buildings of Use Groups B and E submitted by a licensed professional engineer or by a test and balance professional certified by the Associated Air Balance Council or the National Environmental Balancing Bureau. The signed report shall include:

- i. Minimum quantity of outdoor air required by code;
- ii. Minimum quantity of outdoor air specified in the design;
- iii. Actual measured outdoor cubic feet/minute (CFM) or a derived quantity, if actual measurement is not possible; and
- iv. Actual measured total CFM.

(j) Contents of certificate: When a building or structure is entitled thereto, the construction official shall issue a certificate of occupancy within 10 business days after written application therefor.

1. The certificate shall certify the purpose for which the building or structure may be used in its several parts.

2. The certificate of occupancy shall specify: the use group(s), in accordance with the provisions of the building subcode; the maximum live load on all floors as prescribed in the building subcode; the occupancy load in the building and all parts thereof as defined in the building subcode; and any special stipulations and conditions of the construction permit.

3. The construction official shall affix his signature to the certificate and, by so doing, shall certify that the building or structure has been approved for occupancy by all applicable subcode officials in accordance with the provisions of N.J.A.C. 5:23-3.

(k) No temporary or final certificate of occupancy shall be granted until all required utilities, including but not limited to water, sewer, electric and gas are installed and in service.

4. Backflow preventers used to isolate high hazard sources of contamination as defined in the plumbing sub-code: 12 months.

5. Swimming pools, spas and hot tubs: 12 months.

(m) Certificate of Approval: A certificate of approval shall be issued for all work that requires a construction permit but does not require a certificate of occupancy. No application shall be required for a certificate of approval.

(n) Revocation: The enforcing agency may revoke a certificate of occupancy whenever a condition of a certificate has been violated.

(o) Time limit: The provisions of the regulations do not preclude periodic certification pursuant to other applicable laws and ordinances.

(p) Lead Abatement Clearance Certificate: Following a lead hazard abatement job performed by a business firm or by an employee or employees of the owner of a property, a written application for a lead abatement clearance certificate shall be filed with the enforcing agency by the owner or the owner's agent. The application shall include a certification by the firm or person performing the work that all applicable provisions of N.J.A.C. 5:17 have been met, including the clearance requirements, and that the components or areas in the scope of work submitted in the permit application are lead safe.

1. When the lead hazard abatement work includes encapsulation or enclosure, the certification by the firm or person performing the work shall include any recommendations for on-going maintenance or precautions to be taken to maintain the integrity of the encapsulation or enclosure.

2. When all lead hazards identified in an evaluation report prepared by a firm licensed by the Department pursuant to N.J.A.C. 5:17 have been totally and permanently abated, the certification shall so state.

3. When an owner-occupant of a single-family house is performing the work, a lead abatement clearance certificate may be requested by the owner. The application for a lead abatement clearance certificate shall include a statement signed by a lead evaluation contractor certified by the Department pursuant to N.J.A.C. 5:17, or signed by an individual inspector/risk assessor certified by the New Jersey Department of Health pursuant to N.J.A.C. 8:62 indicating that the clearance standards contained in N.J.A.C. 5:17 have been met and that all components or areas in the scope of work submitted in the permit application have been rendered lead-safe.

i. When lead abatement work has been performed by an owner-occupant pursuant to an order issued by a local health department, a lead abatement clearance certificate shall be required.

4. When lead abatement work has been performed pursuant to an order issued by a local health department, no

lead abatement clearance certificate shall be issued without the approval of the local health department.

5. When lead abatement work has been performed on a steel structure or other superstructure or in a commercial building, no lead abatement clearance certificate shall be required.

(q) The continued validity of a certificate of occupancy shall be contingent upon maintenance of the level of code compliance existing at the time of issuance of the certificate of occupancy and upon compliance with any orders issued by the construction official pursuant to N.J.A.C. 5:23-2.35.

Amended by R.1984 d.120, effective April 16, 1984.  
See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

(c): "N.J.A.C. 5:23-2.14 have been determined . . . have been found,"; "lawful" added.

Amended by R.1987 d.91, effective February 2, 1987.  
See: 18 N.J.R. 2348(a), 19 N.J.R. 289(c).

Added new (i)2; renumbered (i)2.-9. as (i)3.-10.  
Amended by R.1988 d.167, effective April 18, 1988.  
See: 20 N.J.R. 223(b), 20 N.J.R. 893(b).

Added text to (b) "after the completion of the alteration".

Amended by R.1991 d.180, effective April 1, 1991.  
See: 23 N.J.R. 257(a), 23 N.J.R. 1028(b).

In (i), deleted inspections of sprinkler systems, hazardous uses and places of assembly.

Amended by R.1991 d.325, effective July 1, 1991.  
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Potentially hazardous equipment approvals time-limited at (i); elevator requirements added at (j).

Amended by R.1992 d.147, effective April 6, 1992.  
See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.

Amended by R.1993 d.421, effective September 7, 1993.  
See: 25 N.J.R. 2161(a), 25 N.J.R. 4073(a).

Amended by R.1993 d.662, effective December 20, 1993.  
See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1994 d.434, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).

Amended by R.1995 d.381, effective July 17, 1995.  
See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Rewrote (j).

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added (m)5.

Amended by R.1998 d.28, effective January 5, 1998.  
See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Amended (b); added new (c) and (d); recodified existing (c) as (e); recodified existing (d) as (f) and amended it to include reference to N.J.A.C. 5:23-6; recodified existing (e) through (m) as (g) through (o).

Amended by R.2000 d.47, effective February 7, 2000.  
See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

In (k), inserted references to installations throughout, inserted "and no installation shall be opened for use or occupancy" following "operation" and substituted "issued" for "reissued" at the end of the last sentence of the introductory paragraph, and added 5.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

Rewrote k(4).

Amended by R.2001 d.347, effective October 1, 2001.

See: 32 N.J.R. 3218(a), 33 N.J.R. 3430(a).

Rewrote (g).

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (h), neutralized the gender reference and deleted “, the approved plans” following “the permit” in 4 and rewrote 6; substituted “code” for “approved permit” throughout.

Amended by R.2003 d.385, effective October 6, 2003.

See: 35 N.J.R. 2423(a), 35 N.J.R. 4713(a).

Added (p).

Amended by R.2005 d.199, effective July 5, 2005.

See: 37 N.J.R. 565(a), 37 N.J.R. 2474(a).

In (g), inserted “list the work to be completed and shall” following “each subsequent renewal shall” and “specified” preceding “work” in the first sentence of 1, and added 2i.

Amended by R.2007 d.125, effective May 7, 2007.

See: 38 N.J.R. 3707(a), 39 N.J.R. 1671(a).

Added new (h); and recodified former (h) through (p) as (i) through (q).

Administrative correction.

See: 40 N.J.R. 3991(a).

Amended by R.2008 d.192, effective July 21, 2008.

See: 39 N.J.R. 4985(a), 40 N.J.R. 4314(b).

In (q), updated the N.J.A.C. reference.

Amended by R.2009 d.164, effective May 18, 2009.

See: 40 N.J.R. 6683(a), 41 N.J.R. 2094(b).

In (g)1, deleted “, but not less than 60 days” following “specified work”.

#### Law Review and Journal Commentaries

Arbitration—Condominiums—Consumer Fraud Act. Steven P. Bann, 137 N.J.L.J. No. 2, 65 (1994).

Attorneys fees—Condominiums—Damages—DCA—PREDFDA. 132 N.J.L.J. No. 9, 45 (1992).

#### Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

Condominium vendor committed unconscionable practice within scope of Consumer Fraud Act. *Cybul v. Atrium Palace Syndicate*, 272 N.J.Super. 330, 639 A.2d 1146 (A.D.1994), certification denied 137 N.J. 311, 645 A.2d 140.

Penalties could not be imposed on condominium vendor for failure to obtain temporary certificates of occupancy. *Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate*, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).

Purchasers were entitled to return of deposit for failure of vendors to timely perform. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Not substantially complete condominium unit could not be occupied. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Certificates of occupancy cannot bar occupancy. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Developer’s failure to timely issue temporary certificate of occupancy (TCO) required refund of purchasers’ deposits. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 244 N.J.Super. 329, 582 A.2d 821 (A.D.1990), certification denied 126 N.J. 317, 598 A.2d 878.

Building does not qualify for property tax exemption if certificate of occupancy issued after assessment date; use of building for exempt purposes prior to issuance of certificate irrelevant to exemption issue

(citing former N.J.A.C. 5:23-2.7). *Grace & Peace Fellowship Church, Inc. v. Cranford Twp.*, 4 N.J.Tax 391 (Tax Ct.1982).

#### 5:23-2.23A Permits and certificates for multi-tenant buildings

(a) Construction permits for multi-tenant buildings shall be issued as follows:

1. A single construction permit shall be issued for the entire structure including all tenant spaces if:

- i. The permit applicant is undertaking all the work;
- ii. All the work is, or will be shown as, a single set of plans;

iii. All work is intended to be undertaken by the same team of contractors; and

iv. The certificate of occupancy or certificate of approval, as applicable, for all tenant spaces will be sought before or at the same time as that for the entire building. Plans for individual tenant spaces may be submitted as permit updates if all of the above conditions are met.

2. A separate permit shall be required for any tenant space if any of the following conditions apply:

i. The tenant is undertaking the fit-up work within the tenant space;

ii. The plans for the tenant space work will be prepared by a design professional different from the one that prepared the plans for the base building;

iii. The work will be undertaken by one or more contractors who are different from the contractors for the base building; or

iv. The permit is being applied for after a temporary certificate of occupancy or certificate of occupancy has been issued for the base building.

3. Fees for construction permits for multi-tenant buildings shall be applied pursuant to N.J.A.C. 5:23-4.18(c)6.

(b) Temporary certificates of occupancy for individual tenant spaces in multi-tenant buildings shall be issued as follows:

1. A temporary certificate of occupancy shall be issued for each tenant space provided that portion of the building may be occupied safely prior to full completion of the building, the common area(s) serving that tenant space has a temporary certificate of occupancy or a certificate of occupancy, and the unfinished portions of the building for which temporary certificates of occupancy or certificates of occupancy are not being sought do not present life safety hazards.

i. Temporary certificates of occupancy may be issued floor by floor or tenant space by tenant space.