



BULLETIN: 2010-2

SUBJECT: Fire Code Enforcement Jurisdiction in One- and Two-Family, Owner-Occupied Dwelling

REFERENCE: N.J.A.C. 5:70-1.5
N.J.A.C. 5:70-3, 101.3
N.J.A.C. 5:70-3, 101.3.1

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The intent of this bulletin is to provide guidance to enforcing agencies when encountering violations of the fire code in one- and two-family dwellings.

N.J.A.C. 5:70-1.5 defines owner-occupied as “Owner-occupied when used in conjunction with Use Group R-3 means a building serving as the residence of at least one holder of record of title to the property.”

N.J.A.C. 5:70-3, 101.3 Applicability states “This section shall be applicable to:” and N.J.A.C. 5:70-3, 101.3.1 states “All buildings, structures and premises within this state, with the **exception of owner-occupied one- and two-family dwellings used exclusively for dwelling purposes...**” The code clearly exempts these dwellings from the provisions of the fire code as long as a person holding title to the property lives at that dwelling **and said premises is used exclusively for one- or two-family dwelling purposes**. If none of the occupants hold title to the dwelling, then the provisions of the fire code should be enforced.

The fact that an illegal or prohibited act is taking place at a one- or two-family owner occupied dwelling does not necessarily change the use group for the structure and does not automatically give the fire official or any inspector code enforcement authority. If the Fire Official has sufficient reason (complaint from another government agency, public advertisements of regulated activities, personal observation, citizen complaint, etc.) to believe that the building is not being used exclusively as an owner-occupied one- or two-family dwelling, the Fire Official should, in conjunction with other appropriate agencies, investigate the situation. The agencies may include but not be limited to the local Construction Official, Police Department or Board of Health.

If during this investigation there is the need to enter the property and voluntary access is denied, the use of an Administrative Warrant will be necessary. Illegal activities subject to fire code enforcement may be cited and any illegal activities that fall outside the scope of the fire code should be reported to the appropriate agency for action such as the construction official, police department or board of health.

If you have any questions concerning this bulletin, please contact the Division of Fire Safety at 609-633-6132 or through our website – www.nj.gov/dca/dfs.