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Subject: Leased Structures

Reference: N.J.A.C. 5:23-3.11 and 3.11A

There has been some confusion about the appropriate authority to issue permits and conduct inspections of leased structures involving federal/state/municipal governmental entities and private parties. N.J.S.A. 52:27D-129a designates the Department of Community Affairs as the exclusive authority to administer the New Jersey Uniform Construction Code in regard to structures owned by State entities.

The following chart outlines situations not controlled by N.J.A.C. 5:23-3.11 and 3.11A:

Owner of Structure: STATE	Inspected by:
• No rental	• State
• State rental	• State
• Municipal rental	• State
• Federal government rental	• State
• Private rental	• State
Owner of Structure: MUNICIPAL	Inspected by:
• No rental	• Municipality
• State rental	• Municipality
• Municipal rental	• Municipality where located
• Federal government rental	• Municipality
• Private rental	• Municipality
Owner of Structure: FEDERAL	Inspected by:
• No rental	• Federal
• State rental	• Federal
• Municipal rental	• Federal
• Federal government rental	• Federal
• Private rental	• Federal
Owner of Structure: PRIVATE	Inspected by:
• No rental	• Municipality
• State rental	• Municipality (<i>unless State is exercising option to buy, then State inspects</i>)
• Municipal rental	• Municipality
• Federal government rental	• Municipality
• Private rental	• Municipality

Generally speaking, when determining jurisdiction, the owner of the building is the controlling factor. When a building is leased, however, the question of jurisdiction should be determined by who acts as the owner, with both the responsibility to maintain and the authority to undertake a construction project. Some examples may help.

1. In the case where a public entity leases a building, but has neither the responsibility to maintain nor the authority to undertake a construction project, the status of the building owner, whether public or private, should determine the plan review and inspection jurisdiction.

Example: The State government rents space in a privately owned building. The State government has no maintenance obligation and no authority to undertake a construction project, so the jurisdiction remains with the local construction code office.

2. In instances where a public entity holds a long-term lease on a private building and exerts substantial control over the premises, it is appropriate to treat this building as if it were owned by that entity.

Example: The Federal government has a long-term lease on an office building. The lease provides that the Federal government has the responsibility to ensure that the building is maintained and also has the authority to undertake alteration projects. The Federal government decides to alter the entrance. This project should be viewed as a Federal project.

3. In the case where the public entity retains ownership, but leases the building -- including the responsibility for maintenance and the authority to undertake a construction project -- to a private entity, jurisdiction should be decided by who has the authority to undertake a construction project.

Example: The State owns a train station, but leases a portion of it to a private party. The private party has the responsibility to maintain the station and also has the authority to undertake building alterations. In this case, the private lessee is acting as the owner and jurisdiction should reside with the local construction code office.

4. In the unusual instance where a structure owned and constructed by one entity is sited on land owned by another entity (for example, State building on municipal land or Federal building on State land), the responsibility for construction enforcement shall follow the hierarchy of Federal, State, municipality based upon the ownership of the building, not the land.

Example: A privately owned building is sited on land owned by the State. The ownership of the building is private. The private owner will maintain the building after it is constructed. In this case, the local construction code office would have jurisdiction.

Where the local construction code enforcement office has jurisdiction to review plans, issue permits, and conduct inspections, the permit fee may be charged. In questionable situations, contact your municipal attorney and/or the Department.