

CHAPTER 147

AN ACT concerning new home warranties, establishing a board of trustees to provide increased security, equity and accountability in the administration of the new home warranty security fund, and amending and supplementing P.L.1977, c.467 (C.46:3B-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.46:3B-7.1 Findings, declarations relative to new home warranties.

1. The Legislature finds and declares that:

a. New Jersey provides unique protection through "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1), which establishes a program requiring that newly constructed homes conform with certain construction and quality standards and provides buyers of new homes with insurance-backed warranty protection in the event such standards are not met;

b. In addition to authorizing warranty coverage through private insurance programs, the act requires that a new home warranty security fund be maintained by the State Treasurer and administered by the commissioner on behalf of the buyers of new homes;

c. Moneys payable to the fund are solely for the purpose of paying proven claims, providing reasonable reserves, including appropriate forms of reinsurance, and covering the costs of program administration. Accordingly, program premiums, fees and other charges must be adequate to these purposes;

d. Since the premiums, fees and other charges assessed by the fund are solely for the protection of the buyers of new homes enrolled in the program and since such charges bear directly on the affordability of those homes, the fees should be set in an actuarially sound manner, including prudent reinsurance, with provision for the distribution of any accumulated surplus to the buyers of new homes enrolled in the fund; and

e. The purposes of the "The New Home Warranty and Builders' Registration Act" shall be furthered through the creation of a Board of Trustees to provide independent oversight over the fund on behalf of those whose homes are covered by it.

C.46:3B-7.2 "New Home Warranty Security Fund Board of Trustees."

2. a. There is hereby established in, but not of, the Department of Community Affairs the "New Home Warranty Security Fund Board of Trustees." The duties of the board shall include, but shall not be limited to, monitoring, reporting and making recommendations to the commissioner on the financial soundness, premium structure, reinsurance adequacy and administrative efficiency of the new home warranty security fund and, when appropriate, the distribution of surplus reserves to the owners of enrolled homes. The board shall not make any determination regarding the payment of specific claims by the commissioner pursuant to section 7 of P.L.1977, c.467 (C.46:3B-7).

b. The board shall consist of five trustees to be appointed by the commissioner. One trustee shall represent the home buying public; one shall represent the New Jersey Builders Association; one shall be a certified public accountant licensed to practice in New Jersey; one shall be an attorney-at-law who is a member in good standing of the New Jersey bar; and one shall be a representative of the insurance industry.

c. Each trustee shall be appointed for a four-year term; however, among the trustees first appointed, one shall be appointed for a term of one year, two shall be appointed for a term of two years, one shall be appointed for a term of three years and one shall be appointed for a term of four years. The trustees shall annually select a chairperson from among themselves. The commissioner may reappoint a trustee. The commissioner may remove a trustee for cause.

d. Trustees shall serve without compensation, but may be reimbursed for expenses incurred in the performance of their duties.

C.46:3B-7.3 Functions, duties of board.

3. a. The Board of Trustees shall monitor and annually report to the Legislature on the financial performance of the new home warranty security fund, with particular attention to whether the fund's income from fees, premiums, interest and other sources, together with its reserves and reinsurance, will provide sufficient resources to meet anticipated claims on the fund.

b. The board shall commission an independent biennial actuarial analysis of the fund. The

initial analysis shall commence June 30, 2001.

c. Based on its continuing monitoring of the fund's financial performance and the adequacy of the fund relative to anticipated claims, the board shall annually submit to the commissioner recommendations concerning the fund's premiums, fees, investments and reinsurance. Within 90 days of receipt of the recommendations, the commissioner shall formally respond as to the implementation of the recommendations, including an explanation of any deviation from the board's recommendations.

d. If, based on the actuarial analysis of the fund, the board determines that the fund's reserves are in excess of what is sufficient to meet anticipated claims, the board shall recommend to the commissioner the amount of fund moneys that should be returned to, and the mode of calculating the distribution of such moneys among, the owners of the enrolled homes.

e. The board shall periodically review and make recommendations to the commissioner regarding the administration of the new home warranty program established in the department. Such review and recommendations shall include, but not be limited to, claims processing procedures, standards of construction and quality for the structural elements and components of a new home, and the degrees of noncompliance that shall constitute a defect subject to the warranty coverage.

4. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read as follows:

C.46:3B-2 Definitions relative to new home warranties.

2. As used in this act:

a. "Department" means the Department of Community Affairs.

b. "Commissioner" means the Commissioner of Community Affairs.

c. "Warranty" means the warranty prescribed by the commissioner pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.).

d. "New home" means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease.

e. "Owner" means any person for whom the new home is built or to whom the home is sold for occupation by him or his family as a home and his successors in title to the home or mortgagee in possession. Owner does not mean any development company, association or subsidiary company of the builder or any person or organization to whom the home may be sold or otherwise conveyed by the builder for subsequent resale, letting or other purpose.

f. "Builder" means any individual corporation, partnership or other business organizations engaged in the construction of new homes.

g. "Major construction defect" means any actual damage to the load bearing portion of the home including damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load bearing function and which vitally affects or is imminently likely to vitally affect use of the home for residential purposes.

h. "Warranty date" means the first occupation or settlement date, whichever is sooner.

i. "Approved claim" means, for the purposes of P.L.1991, c.202 (C.46:3B-13 et al.), a claim examined and approved by the commissioner in accordance with section 3 of P.L.1991, c.202 (C.46:3B-15).

j. "Approved method" means, for the purposes of P.L.1991, c.202 (C.46:3B-13 et al.), a method of remediation approved by the commissioner in accordance with section 3 of P.L.1991, c.202 (C.46:3B-15).

k. "Fund" means the new home warranty security fund established in the department pursuant to section 7 of P.L.1977, c.467 (C.46:3B-7).

l. "Warranty guarantor" means, for the purposes of P.L.1991, c.202 (C.46:3B-13 et al.), (1) the new home warranty program established in the department pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.) or (2) any alternate new home warranty security program approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

m. "Board" means the Board of Trustees established pursuant to section 2 of P.L.2001, c.147 (C.46:3B-7.2).

5. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read as follows:

C.46:3B-7 New home warranty security fund.

7. a. There is hereby established a new home warranty security fund to be maintained by the State Treasurer in a trust account, separate and apart from other funds and administered by the commissioner. The purpose of the fund is (1) to provide moneys sufficient to pay claims by owners against builders participating in the fund for defects in new homes covered by the new home warranty; and (2) to pay the costs of administering the new home warranty program established in the department, including the costs of obtaining sufficient reinsurance to prudently protect the fund against unanticipated risks and costs incurred by the board in the discharge of its duties. The amounts payable by participating builders shall be established and may be changed from time to time, as the experience of the fund shall require, by the commissioner, and shall be sufficient to cover anticipated claims, to provide a reasonable reserve and to cover the costs of administering the fund. Amounts paid by participating builders shall be forwarded to the State Treasurer and shall be accounted for and credited by him to the new home warranty security fund.

b. The State Treasurer shall hold, manage and, through the Division of Investment, invest and reinvest moneys in the fund and credit all income earned thereon to the fund in the same manner as provided by law for the investment of pension and retirement funds administered by the State. The department shall keep the State Treasurer and the board advised of anticipated cash demands for payment of claims against the fund. No funds shall be spent, appropriated or transferred from the fund other than for the express purposes of paying claims or costs related to administering the program or the fund as enumerated in subsections a, c, or e of this section. In the event funds are spent, appropriated or transferred from the fund for other purposes in violation of this subsection, the obligation of participating builders to contribute to the fund shall be suspended until such time as the funds are replenished, and if the amount in the fund shall become insufficient thereafter to pay claims or make awards, the payment of claims and making of awards shall be made from the General Fund. The Joint Budget Oversight Committee, or its successor, shall have the authority to investigate complaints of violative fund transfers under this section, and shall order the Commissioner of Community Affairs to suspend collection from participating builders if it determines that the provisions of this subsection have been violated.

c. Prior to making a claim against the fund for defects covered by the warranty, an owner shall notify the builder of such defects and allow a reasonable time period for their repair. If the repairs are not made within a reasonable time or are not satisfactory to the owner, he may file a claim against the fund in the form and manner prescribed by the commissioner. The commissioner shall investigate each claim to determine the validity thereof, and the amount of the award that shall be made thereon, and shall hold a hearing if requested by either party, in accordance with the provisions of the "Administrative Procedures Act", P.L.1968, c.410 (C.52:14B-1 et seq.) applicable to contested cases. Reasonable hearing fees shall be assessed against the unsuccessful party. The amount of the award shall be sufficient to cover the reasonable costs necessary to correct any defect or defects covered under the warranty, but the total amount of awards from the fund for any new home shall not exceed the purchase price of the home in the first good faith sale thereof or the fair market value on the home on its completion date if there is no good faith sale. All claims submitted by an owner shall first be reviewed through a conciliation or arbitration procedure by the department, and in the event that the owner is found to be in the right, then the builder shall be required to correct such claims as determined through the conciliation or arbitration procedure. If a builder is unable or willfully refuses to correct such deficiency, then an amount sufficient to cure the problem shall be paid from the fund to the owner. In such cases, the commissioner may then proceed against the builder in accordance with subsection b. of section 6 of P.L.1977, c.467 (C.46:3B-6). Upon certification from the commissioner of the amount of an award, the State Treasurer shall make payment to the claimant from the fund.

d. (Deleted by amendment, P.L.2001, c.147).

e. If the board determines that fund reserves and reinsurance may be insufficient to cover

anticipated claims, the board shall recommend steps to the commissioner to restore fund resources to sufficiency, which may include increases in premiums and fees, expanded reinsurance and changes in standards and claims adjudication procedures.

f. The commissioner may provide for surcharges against those builders who are responsible for a significant number of awards against the fund and may discontinue the participation in the fund of any builder who is responsible for an excessive number of awards against the fund after a hearing in accordance with the provisions of the "Administrative Procedure Act", P.L.1968, c. 410 (C.52:14B-1 et seq.) applicable to contested cases. At no time shall the State be required to contribute any moneys to the fund, nor shall the State have any liability to any person having any right to or claim against the fund over and above the amount therein except in those instances where it is determined by the Joint Budget Oversight Committee that the provisions of subsection b. of this section have been violated concerning amounts spent, appropriated or transferred from the fund.

g. The commissioner may order the return of funds to owners of enrolled homes as may be recommended by the board pursuant to section 3 of P.L.2001, c.147 (C.46:3B-7.3).

6. This act shall take effect immediately.

Approved July 10, 2001.