



*State of New Jersey*  
*Commission of Investigation*

***The Good, the Bad***  
***and the Ugly***

**New-Home  
Construction  
in New Jersey**

*March 2005*



*State of New Jersey  
Commission of Investigation*



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and the Ugly***

**New-Home  
Construction  
in New Jersey**

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# State of New Jersey

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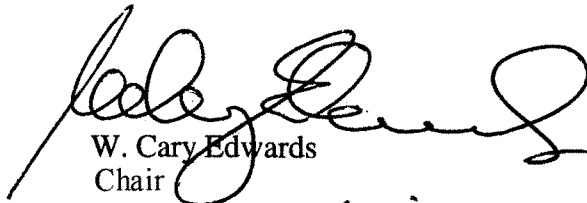
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March 2005

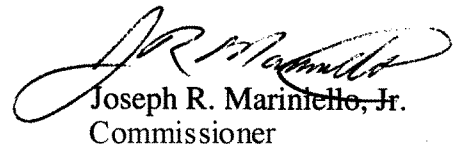
Acting Governor Richard J. Codey  
The President and Members of the Senate  
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith formally submits the final report of findings and recommendations stemming from an investigation of abuses in new-home construction and inspections in New Jersey.<sup>1</sup>

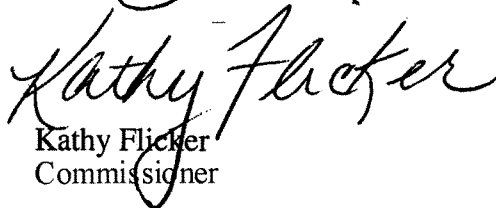
Respectfully,



W. Cary Edwards  
Chair



Joseph R. Mariniello, Jr.  
Commissioner



Kathy Flicker  
Commissioner

<sup>1</sup> Former Chair Francis E. Schiller presided over the public hearings in this investigation during his tenure on the Commission through November 2004, when he was succeeded by Commissioner Patrick E. Hobbs.



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## ***Introduction***

The Commission opened an investigation into new-home construction and inspection issues in July 2002 after receipt of a referral from the Office of the United States Attorney in Newark involving complaints filed by new-home buyers. In subsequent interviews with Commission staff, the buyers referenced a spectrum of problems in new-home construction, including shoddy and negligent workmanship, widespread inspection irregularities, potentially dangerous building code violations, and an unresponsive system of remediation. As the inquiry progressed, the range and volume of these complaints, together with the fact that they involved different housing developments and different builders in multiple New Jersey municipalities, suggested a broad and disturbing pattern.

Rigorous investigation and analysis confirmed an astonishing statewide panorama of waste, fraud and abuse. Casting a broad net that reached into every corner of New Jersey, the Commission found a system in which the public trust has been thoroughly shaken by graft, by greed and incompetence and by the failure of government to fulfill its fundamental duty to protect the safety and welfare of citizens. This is a system mired in the past, a system utterly incompatible with 21<sup>st</sup> century standards and expectations, a system that, in many respects, is as fractured and as imperiled by structural flaws as the problem-plagued homes it has produced.

This document represents the final report of the Commission's investigation, incorporating a comprehensive summary of findings and a detailed set of recommendations for systemic reform. It is based upon a thorough investigative record

developed over the course of more than two years, including interviews and sworn testimony from scores of witnesses, field surveillances, accounting analyses, and examination of thousands of pages of documentary evidence obtained from builders, homeowners, local construction code officials and regulatory personnel. Overall, 234 subpoenas were issued, more than half calling for the production of records and documents. Sixty-four individuals provided sworn testimony before the Commission in private executive session. In addition, Commission staff conducted nearly 400 field interviews.

The investigation focused initially on the inspection process for new homes but progressed to include the new-home warranty system as well as the activities and performance of builders and developers, engineers, subcontractors, laborers, and state and local regulatory offices. The investigation spanned all of New Jersey's 21 counties, and during its course, the Commission and its staff had direct or indirect contact with thousands of homeowners who experienced wide-ranging and sometimes harrowing problems with new homes they had purchased. Complaint scenarios were subjected to intensive scrutiny, and when the facts were established and carefully analyzed, failures of systemic proportions were apparent across the entire arena of new-home construction and inspections.

The Commission's findings were presented during five days of public hearings held in three segments over the course of nearly a year. The first hearing, held November 18-19, 2003, delineated problems faced by homeowners who had purchased homes fraught with significant construction-related defects. This hearing also traced the rise in defaults by builders who fail to complete construction of new homes, leaving buyers

adrift in significant financial losses without adequate remedy. Weakness and dysfunction in the structure and operation of new-home warranty programs were featured in a subsequent hearing, held January 21, 2004. The third and final set of hearings, held October 12-13, 2004, focused on obstacles faced by builders and inspectors during construction, on the adequacy of government oversight and regulation, and on a variety of proposals for systemic reform. Throughout the hearing process, 58 witnesses testified and dozens of documentary exhibits were presented. Transcripts of these proceedings form a critical supplement to this report.

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On one level, the systemic problems in new-home construction are evidenced by tangible defects that are emblematic of substandard workmanship and lax quality control from foundation to roof. Numerous examples of flagrant construction deficiencies, including structural and mechanical flaws – obvious, in some instance, even to the untrained eye – were found in single homes and in housing developments, large and small, high-priced and affordable, in suburban and urban communities across New Jersey.

On a more insidious level, the Commission found that new-home construction is prone to an assortment of questionable and ineffective practices that play out against a backdrop of lax governmental oversight.

The construction code inspection and enforcement process, in particular, is fraught with serious shortcomings. Among the most egregious is the fact that despite the presence of significant defects in newly built homes – including structural weaknesses

that constitute potentially hazardous conditions – certificates of occupancy have been issued by local governmental authorities, clearing the way for the transfer of ownership and liability to unsuspecting buyers. Under a properly functioning inspection system, defects of this nature should be detected by inspectors prior to closing and, if identified as code violations, should forestall the final transaction. The Commission found that in many instances, the required inspections either were never performed or were performed in an incomplete, haphazard fashion for various reasons, including pressure from builders to move quickly from one phase of a project to another.

In extreme situations, forged and fraudulent certificates of occupancy have been generated by builder representatives in order to speed the closing of sales with buyers who, for their part, have been led only to believe that everything is in proper order.

The Commission's investigation revealed that local construction offices and personnel accepted gifts and other inducements from representatives of builders and/or developers, violating prohibitions against such activities and tainting the public's perception of their ability to perform a vital function as dispassionate sentinels over the process.

New Jersey's residential code inspection and enforcement process also has been subverted by the failure of some municipal governments to dedicate adequate available resources to the inspection process. The Commission found that while hundreds of millions of dollars are collected from builders and developers annually in the form of fees to obtain local construction permits, only a portion of this revenue is used to underwrite the hiring and training of qualified inspection personnel.

Consumers, meanwhile, caught in the middle of these disturbing circumstances, often find no satisfactory way to protect or salvage their own interests. New-home “warranty” programs – so-called because ostensibly they provide guarantees of repair and remediation – frequently fail to fulfill their promise, defeated by delay and obfuscation at the hands of an industry that has actually coined a term to describe this cynical practice – “lulling.” Ultimately, what was intended as a fair and equitable method of recourse for consumers serves instead as the foundation of adversarial contests pitting ill-equipped home-buyers against powerful professionals with deep pockets.

Moreover, having invested trust and confidence – and tax dollars – in the presumed efficacy and fairness of state and local government oversight and assistance in this regard, victimized consumers instead find themselves caught in a bureaucratic maze where inertia and inaction seem to be the norm. Indeed, one of the most disturbing aspects of this frazzled and impaired system is the complete absence of an effective governmental entity charged specifically with assisting home-buying consumers and looking out for their best interests.

The playing field was thrown further out of kilter for consumers when, during the course of this investigation, a state appeals court ruled that once a certificate of occupancy is issued for a newly-built home, any code violations discovered subsequently become the responsibility of the buyer – even if they were the work of the builder. On appeal, this decision was reversed by the New Jersey Supreme Court in January 2005.<sup>1</sup>

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<sup>1</sup> DKM Corp. v. Twp. of Montgomery. 182 NJ 296 (2005).

The Commission is mindful that the residential development and construction industry is an integral component of New Jersey's overall economy. This industry provides gainful employment for thousands of workers, anchors and enriches the property-tax base in many communities, and offers the citizens of this state an opportunity to share in the American dream.

It is also true that not all builders are problem builders, not all code inspectors are corrupt or incompetent, and not all complaints and claims filed by home-buyers are valid. However, as the findings of the Commission's investigation clearly demonstrate, this industry – as well as those responsible for regulating it – find themselves today at a critical crossroad. Just as the consequences of runaway developmental sprawl in recent years have prompted significant land-use reforms, the very real problems inherent in the system of new-home construction and inspections require concerted attention and meaningful change as well.

To their credit, certain elements of both the residential construction industry and the regulatory community in recent months have expressed recognition of the troubling issues associated with maintaining the *status quo*. In response, they have taken it upon themselves to effectuate certain changes within their own spans of control. The Commission applauds this trend and herein presents to the Governor, the Legislature and the appropriate regulatory agencies a comprehensive package of reform recommendations grounded in the express findings of this investigation.

The Commission is grateful to all of those who cooperated with and assisted in this important effort – the dozens of concerned citizens; government officials at the local, county, state and federal level; technical experts; representatives of the construction and

building industry; and most prominently, new-home buyers. The scope of their participation and the urgency of their interest in examining and, where necessary, attempting to fix some of the difficult problems at hand in new-home construction combine to constitute a strong message that responsible authorities should heed.

## *Summary of Findings*

The Commission's key findings fall broadly into four major areas<sup>2</sup>:

- **Deficient and Incomplete Construction**
- **Subversion of Inspections and Code Enforcement**
- **Lax Government Oversight and Regulation**
- **Inadequate Consumer Protection and Remediation**

### **Deficient and Incomplete Construction**

#### *Shoddy Workmanship / Rampant Defects*

- New-home construction in New Jersey is vulnerable to, and has been tarnished by, a wide range of physical defects that beg fundamental questions of skill, competence and quality control.
- The gamut of construction deficiencies is far more serious and complex than the normal run of “nail pops,” drywall cracks, loose fixtures and other easily-remedied cosmetic flaws common to new homes, and includes:
  - Missing, broken, disfigured and/or improperly installed walls, beams, joists, decking, roof trusses and other structural supports
  - Cracked, crumbling foundations, and/or improper foundation anchorage

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<sup>2</sup> See Exhibit NCI-1391, *Summary of Key Findings*, Appendix at p. A-2



- Homes built smaller by hundreds of square feet than specified in architectural plans and, conversely, homes built larger than specified plans – a situation that can result in a potentially dangerous structural condition known as over-spanning
- Inappropriate and/or improperly installed and vented heating/air-conditioning systems
- Faulty plumbing
- Flawed electrical systems
- Basements, crawl spaces and habitable areas prone to flooding, moisture intrusion and/or toxic mold
- Site engineering deficiencies, including problems with drainage, collapsed roadways, sink holes and premature failure of storm-drainage systems

■ Deficiencies of this nature are neither rare nor isolated and could constitute potentially life-threatening hazards. In some instances, they are an outgrowth of, or are directly attributable to, low-quality materials and/or inferior construction.

■ Entire subdivisions consisting of hundreds of single-family detached homes, some ranging in price above \$300,000, were found to be plagued with assorted structural and mechanical problems; in the case of one 400-home development, surveys showed the same defect to be present in every house on every street.

■ In the worst individual cases, homeowners discovered that the new homes they had purchased came equipped with structurally unsound ceilings and roofs; façades unfastened from support structures; wobbly,

moving walls; walls fouled by sewage from cracked pipes; improperly installed heating systems venting poisonous exhaust, including carbon monoxide, directly into living areas; flooded crawl spaces; and collapsed porches.

### ***Lax Construction Practices and Supervision***

■ New-home construction in New Jersey, as elsewhere, is dominated today by large, highly competitive corporate enterprises known as “production builders” whose profit/loss picture is defined to a great extent by two key factors: the ability to achieve economic efficiencies and adherence to rigid construction deadlines. Indeed, it is generally the practice within the industry to reward management-level employees based primarily upon the speed and volume of production at residential construction sites. These factors, however, constitute pressure points that have created the circumstances for problematic construction practices and questionable supervision.

■ The bulk of new-home construction – that is, the actual practice of putting hammer to nail – is not always performed by direct employees of the builder whose name is affixed to the marketing and sales effort, but by teams and levels of subcontractors who employ laborers with no direct link to the builder. The vast majority of these subcontractors are neither licensed nor regulated by state or local governmental authorities.

- Although builders often assign their own personnel to serve on-site as construction project managers, there is no uniform system of certification and/or licensure to ensure that qualified individuals are on site to provide adequate supervision of the work performed.
  
- Supervisory problems are exacerbated by the fact that major segments of the new-home construction industry are plagued by an extraordinarily high personnel turn-over rate for on-site project managers, a situation that severely undermines accountability when construction deficiencies are discovered.
  
- Evolving technology and constantly changing construction methods and materials require specially trained and skilled expertise on-site at all times. The Commission found instances in which subcontractors employ laborers who are put to work, without proper supervision, on construction tasks for which they are unskilled or otherwise ill-suited.
  
- In recent years, the labor force in new-home construction has consisted increasingly of unskilled immigrants, many of whom are undocumented aliens who speak only their native non-English language, thus layering a communications problem onto the already challenging issue of ensuring adequate, skilled project supervision.

## ***Builder Default***

- Unscrupulous, unqualified and/or inept builders are able to abandon construction of homes in midstream or fail to even break ground, taking down-payments with them.
  
- Builders who default in one community can easily reorganize under a different corporate or trade name and continue conducting business as usual in communities elsewhere in New Jersey.
  
- Short of pursuing such delinquencies through civil litigation in the courts, victimized home-buyers have little recourse because New Jersey lacks appropriate and effective legal and regulatory remedies to protect consumer interests in cases where builders abandon legal and contractual obligations.

## **Subversion of Inspections and Code Enforcement**

Deficiencies in new-home construction in New Jersey are enabled and exacerbated by an inspection and code enforcement system whose ability to function properly has been weakened by insufficient resources, by inspectors unskilled and unschooled in changing technology and by the sheer volume of construction across the state. In extreme instances, the integrity and credibility of this system have been eroded by incompetence, conflicts of interest and outright corruption.

The Commission found that these and other disturbing issues are emblematic of a culture of negligence in which builder representatives and inspectors – operating either in league or based upon the mistaken assumption that one or the other is on top of the job – minimize, ignore or fail to detect blatant construction defects.

The serious problems in this area are driven by a number of key phenomena, including:

### ***Abuse of the Inspection Process***

- Local construction office personnel and other municipal officials have accepted gifts of liquor, food, tickets to sporting events, holiday parties, expense-paid golf outings, construction materials, large appliances and other inducements from builders/developers. At the same time, builders/developers seeking favorable treatment have even offered cash to local inspection personnel.
- Inspection personnel and builder employees who cooperated in this investigation described various artifices used by unscrupulous officials to cast the appearance of legitimate oversight. These include so-called “drive by” or “windshield” inspections in which inspectors falsely certify the required paperwork without ever exiting their vehicles to conduct even minimal inspections.
- In the worst instances, builder representatives have completely circumvented the official inspection process by issuing forged and fraudulent certificates of occupancy to unsuspecting buyers in order to

speed the sale of new homes, some rife with structural flaws and code violations.

### ***Inadequate Resources, Training and Coordination***

■ In many municipalities, New Jersey's new-home inspection and code enforcement processes have been thoroughly undermined and weakened by insufficient numbers of qualified personnel both to perform the actual inspections and to ensure that inspections are conducted properly and appropriately, especially during local construction booms. The resource crunch is further exacerbated by the need in many municipalities to conduct repeated re-inspections of residential construction projects found to be rife with structural and other defects. Additionally, it is not unusual for the same individual to be responsible for carrying out inspections in multiple municipalities. The Commission's investigation revealed instances where, given the multiplicity of employment venues, it would have been physically impossible for one individual to perform competent inspections and/or to properly oversee construction offices.

■ Although local governmental units in New Jersey collect hundreds of millions of dollars annually from builders and developers in the form of permit fees for residential construction, some municipal construction offices use only a portion of the revenue for its statutorily intended purpose: to fund local construction code enforcement offices, including the hiring of adequate numbers of competent inspectors.

- Even when serious construction deficiencies, including code violations, are found in new homes, there is little in the way of adequate follow-through on enforcement to ensure that the same construction mistakes, shortcomings and problems do not occur again.
- New Jersey's Uniform Construction Code (UCC) has not been updated in more than a decade and, thus, its provisions and requirements in some areas have not kept pace with the current state of residential construction.
- UCC requirements often are subject to interpretation from one job site to another, from one municipality to another, and from one code official or inspector to another, a situation that has resulted in the inconsistent application of a regulatory framework that was intended to provide uniform protection for the safety and welfare of the public. The Commission's investigation revealed examples in which common construction deficiencies were repeated in different developments in different municipalities throughout the state by the same builder. In some instances, the deficiencies were picked up by the inspection process; in others, they were missed.

### ***Obstacles to Inspection / Inappropriate Use of Inspectors***

- Although the role of local building inspectors is to ensure compliance with the UCC, some builders were found to rely inappropriately upon municipal inspectors as monitors and enforcers of quality control during

the construction process. Conversely, the investigation also revealed that some local inspectors rely on the quality of the builder to meet the UCC standards rather than on actual inspections of the work performed.

- Inspectors often have difficulty conducting and completing proper inspections and/or re-inspections because structural, mechanical and other key components have been rendered inaccessible by the installation of sheathing, sheetrock or other construction materials.

- Failure to require house-specific construction plans on-site for use by local inspectors during actual inspections undermines the accuracy and thoroughness of inspections.

- Subsequent changes in, or damage to, construction following performance of an inspection may go undetected.

## **Lax Government Oversight and Regulation**

### ***Inadequate and/or Nonexistent Oversight of Builders, Subcontractors and Professional Trades***

- In order to do business in New Jersey, residential builders need only pay a \$200 fee and submit a brief registration form to the New Jersey Department of Community Affairs (DCA), the state agency responsible for regulating the industry. There are no requirements that builders



demonstrate construction proficiency, possess sufficient financial backing or, until recently, even undergo criminal background checks.

- Although architects, electricians and plumbers are subject to licensing requirements and oversight by state-level professional boards, no such regulatory or certification mechanism exists for other trades that are critical to the quality of new-home construction, including those that specialize in structural framing, roofing and masonry.

- Builders often establish Limited Liability Corporations (LLCs) which typically stay in existence for a period of time after the last home in a development is completed. This arrangement makes it difficult for homeowners to obtain meaningful redress in the event of problems.

- Under the current statutory and regulatory configuration, builders responsible for defective construction are able to reorganize under different corporate names and thus evade scrutiny by appropriate governmental authorities.

- The Commission found that in terms of meaningful oversight, the regulatory process provides little recourse with regard to problem builders other than resorting to the ultimate step of revoking their DCA registrations.

## ***Inconsistent Record-Keeping / Lack of Data on Builder and Subcontractor Performance***

■ The Commission found widespread discrepancies in the quality and availability of official records related to residential construction projects at the municipal level. In some instances, substantial numbers of key documents, including sealed architectural blueprints, construction inspection reports and violation notices for residential developments could not be obtained from the appropriate municipal agencies, despite repeated attempts to locate them. In addition, the Commission found that required plans were not kept on site for many of the problem-plagued developments.

■ Neither the state nor its county and local government units maintains a centralized, easily accessible repository of data and information related to performance by builders and subcontractors available to the public. Such a system leaves many prospective home-buyers in the dark with regard to the integrity and track record of the builders to whom they will entrust what often amounts to the single largest financial investment of their lives.

## ***Inordinate Delays in Disciplinary Actions***

■ During the course of the investigation, the Commission found that the lag time between the filing of a complaint against an inspector and subsequent disciplinary action taken, if any, is often excessive. As a result, inspectors who have been confirmed to have been involved in

serious job-performance defalcations have continued to inspect additional homes without undergoing adequate remedial education and/or re-training. In some extreme cases, offending inspectors ultimately were removed from their positions, but not before they had continued to inspect numerous homes.

### ***Problems in Planned Real Estate Developments***

- The Commission discovered a serious gap in the regulatory framework for planned real estate developments – so-called “gated” or “private” communities – governed by homeowners’ associations. Despite the increasing prevalence of such communities in New Jersey, there are no laws to ensure proper transition between builders and these homeowners’ associations upon the completion of construction of such developments.
  
- Further, after transition, homeowners in planned real estate developments must assume responsibility for maintenance of common areas not covered by warranty programs or by municipal bonding requirements. Thus, the burden and cost of maintaining streets, sidewalks, water drainage, etc. – once strictly the domain of municipal government – must be borne by homeowners in such communities. During the pre-completion stage, homeowners can find themselves at a serious disadvantage in the event problems are discovered because the builder retains control of the association until a significant percentage of the homes are actually sold.

## **Inadequate Consumer Protection and Recourse**

New Jersey lacks an effective, responsive and meaningful system of safeguards to protect the interests of new-home buyers confronted with defective construction and to ensure that these consumers have reasonable access to fair and equitable recourse when the situation demands it.

Although pieces of such a system do exist, the Commission found that, to a large extent, they merely constitute an incomplete promise wrapped in bureaucratic red tape, fraught with needless complexity and biased in favor of the industry. Although the Department of Community Affairs, for example, houses a Bureau of Homeowner Protection, this entity, for many, is a consumer-oriented watchdog in name only. The bottom line for all too many consumers under the present system: confusion, misinformation and, ultimately, the prospect of months of legalistic wrangling and uncertainty plus thousands of dollars in out-of-pocket expenditures to resolve and remediate problems for which they bear no responsibility.

The significant systemic problems include:

### ***Flawed New-Home Warranty Program***

In 1979, New Jersey became the only state in the nation to require that new-home construction be covered by a warranty system, with builders having the option of offering coverage to homebuyers through a plan administered by the State of New Jersey through the Department of Community Affairs or a private plan administered by one of four New Jersey-approved warranty providers.

What began as a system designed to ensure quality construction and customer satisfaction, however, has devolved into a loophole-ridden mechanism that ill serves the best interests of consumers in the following ways:

- There is a limited time-frame within which actual coverage is provided. Under the standard 10-year warranty, builders are required to undertake necessary repairs and correct most deficiencies throughout a new home for a period of only one year following completion of sale. Mechanical and structural components are covered through the end of the second year. For years three through 10, warranty coverage is only provided for major structural defects, which are defined as those defects discovered in major load-bearing portions of a home's structure that vitally affect, or are imminently likely to vitally affect, the use of the home for residential purposes. Under the rules as currently written, a home would have to sustain actual damage or be near total collapse before warranty coverage would become effective.

- Buyers of new homes are provided with inadequate and confusing information with regard to their rights and the methods of recourse available under the standard warranty, making navigation of the process extremely difficult for the average homeowner.<sup>3</sup>

- In order to trigger actual coverage under the new-home warranty program, a homeowner must file a request for warranty service with the

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<sup>3</sup> See Exhibit NCI-250b, *New Home Warranty Request for Dispute Settlement Process*, Appendix at p. A-3.

warranty provider. For their part, builders sometimes deliberately delay responding to homeowner complaints until the warranty period has expired, leaving the homeowner without a remedy. This practice, known as “lulling,” often results in lapsed filing deadlines for pursuing remedies under warranty coverage and manifests itself in lingering construction deficiencies and other problems that remain unaddressed indefinitely.

- The burden of proof to verify the existence of a defect is on the homeowner, who often is required to incur the considerable expense of hiring professionals, i.e. architects, engineers and/or attorneys to prove claims.

- In the event homeowners choose to pursue litigation as opposed to arbitration as a remedy, they often incur considerable expense related to the cost of legal fees and the hiring of technical experts to proceed against the builder, even if it is proven that the builder is at fault. Homeowners often do not possess sufficient resources to pursue such a course of action.

- The process of effecting actual repairs under the new-home warranty can be lengthy, subjecting homeowners to the inconvenience of repeated attempts by builders to remedy warrantable problems. In some instances, homeowners have experienced additional damage to other areas of their homes during incompetent efforts to repair the initial problem.

- In cases of monetary settlement, warranty companies attempt to negotiate the lowest possible settlement, making use of high-pressure tactics to persuade homeowners to sign off on patently inequitable settlements which may not cover the full cost of the targeted repairs.

Although the Commission identified serious shortcomings in both the public and private warranty plans, lack of regulatory oversight looms as a particularly egregious problem with regard to the private-plan arena, even though most large builders utilize private-plan warranties and approximately 75 percent of all new homes are covered by that type of plan.

The lack of proper oversight of private warranty plans is symbolized by the fact that for years, they have been the purview of a single person at the State Department of Community Affairs. In addition, there exists no formal procedure for receipt or handling of complaints against private-plan warranty providers that come to the state's attention, and the state has no power of sanction short of revoking the ability of these entities to conduct business here. The oversight issue is further complicated by the fact that all current private-plan warranty providers are located beyond New Jersey's boundaries.

All of these factors have combined to foster an atmosphere of bias in favor of builders and warranty providers and has burdened new-home buyers with greater costs, both financially and in the form of frustration, in obtaining satisfactory and timely repairs.

## ***Dysfunctional Arbitration Process***

When builders dispute the validity of claims filed under the new-home warranty, homeowners may request the services of an arbitrator in an effort to resolve the outstanding issues. Although designed to provide consumers with a practical and reasonable alternative to litigation – indeed, those who request arbitration must relinquish their right to file suit – the process is encumbered with shortcomings and irregularities in several key areas:

- The Commission discovered evidence suggesting financial and personal connections and other conflicts of interest between builders and warranty plan providers in one of the two arbitration services utilized in New Jersey. The Commission learned of one instance in which representatives of this arbitration service actually performed informal inspections for a warranty provider while simultaneously providing arbitration services for that same warranty provider.
- The actual hands-on process of conducting arbitrations is prone to inconsistency and a lack of meticulousness. Examination of arbitrator information revealed lack of appropriate and necessary detail, and, in some instances, a complete absence of records memorializing the arbitration process. In part, this is a result of inadequate training and accountability, but it is also a reflection of the problematic way in which arbitrators are compensated. They are paid fixed fees regardless of the nature, number and complexity of alleged construction deficiencies – a



negative incentive that frustrates and undermines the ultimate goal of the arbitration exercise: the conduct of a fair and complete review of all unresolved issues.

■ The state warranty plan and one of the four currently-approved private-plan warranty providers utilize the services of New Jersey's Office of Dispute Settlement (ODS) in the New Jersey Office of the Public Defender to handle arbitrations. However, this approach does not provide an avenue of appeal.

■ Within the private-plan warranties, the arbitration process in New Jersey is subject to minimal regulatory oversight, evidenced as follows:

- The Commission found that one arbitration service handling cases in New Jersey was not even registered to do business in the state.
- An arbitrator who had conducted more than 300 arbitration proceedings between 1998 and 2001 was not certified.
- Personal and/or professional relationships between arbitrators and builders that could have been detected with a minimum of scrutiny were not known to regulators.

## ***Limited Recourse for Municipalities***

Just as home-buyers routinely encounter obstacles in safeguarding their interests in the face of problem builders, municipal government agencies sometimes face similar circumstances, such as:

- In instances where builders repeatedly fail to complete street paving, curb installations and other infrastructure improvements required under the terms of a development permit granted by a municipality – and then subsequently apply for additional development permits in the same community – local officials have no statutory authority to deny such applications on the grounds of prior non-performance.
  
- Although builders are required to place funds in bonded escrow accounts as a backup to cover the cost of infrastructure improvements, the system is structured in such a way that municipalities have difficulty gaining access to the funds without expensive and protracted litigation. Even in instances where the municipality gains access to the funds, with the passage of time, they often constitute amounts insufficient to cover the cost of necessary improvements.

## *Referrals and Recommendations*

The Commission refers the findings of this investigation to the following government agencies for whatever action they deem appropriate:

- The Governor and Legislature of New Jersey
- Office of the New Jersey Attorney General, Division of Criminal Justice
- Office of the New Jersey Department of Community Affairs
- Offices of the County Prosecutors of New Jersey
- Office of the United States Attorney

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The Commission's findings demonstrate a critical need for officials at all levels of government in New Jersey to take steps that will safeguard the quality and integrity of new-home construction in this state. Pursuant to that goal, the Commission has fashioned a detailed set of recommendations calling for statutory and regulatory reforms designed to provide adequate oversight of construction, strengthen the inspection and enforcement process, and ensure a greater measure of protection for consumers who find themselves victimized by incompetence, corruption and/or unresponsive remediation mechanisms, such as the new-home warranty program.

Given the broad range of weaknesses and abuses identified in this investigation, the Commission urges that any consequent legislative and regulatory reforms be cast in such a way as to be applicable to all new-home construction in New Jersey, without limit to type of residence or size of project. The Commission is mindful that, during the

course of its investigation, a number of initial steps toward stronger oversight and accountability in this arena were undertaken by the New Jersey Department of Community Affairs (DCA) through its various divisions and offices, and by elements of the new-home construction industry itself. The reforms proposed herein would provide the state and its localities with significant additional tools to protect the public interest. In many instances, DCA joins with the Commission in supporting and proposing the recommendations outlined below.

Ultimately, the Commission is constrained to point out that, even with explicit and substantive statutory and regulatory changes, there is no substitute for the exercise of common sense, civic responsibility and awareness by those involved in the process in the discharge of their duties on behalf of homebuyers.

## ***1. Government Oversight and Regulation of the Construction Process***

The Commission makes the following recommendations for legislative and regulatory reform to provide and strengthen oversight and accountability of the new-home construction process in New Jersey:

### ***Proposed Legislation***

#### **Licensing and Certification**

- Legislation should be enacted to require on-site presence of DCA-licensed/certified construction superintendents (persons responsible for construction) and trade supervisors (persons responsible for trades) based on experience, technical training and testing.

- Penalties and sanctions should be authorized for use against these licensed individuals, including suspension and revocation, for failure to perform the job.
- Mandatory continuing education for construction superintendents/trade supervisors should be a requirement of the licensing/certification process.

### **Collection of Key Builder Information**

- Applicants for builder registration (all officers, directors, stockholders and principal employees) should be required to provide social security numbers in order to facilitate the collection of background information, including criminal histories and bankruptcy information.

### **Certification of Application for Certificate of Occupancy**

- Certification language on the *Application for Certificate of Occupancy* should be attested to by a DCA-licensed construction superintendent familiar with the construction of the home, subjecting affiant to revocation of license for knowingly filing a false document, and subjecting the registered builder to monetary penalties.

### **Strengthen Criminal Penalties**

- The statutory definition of the crime of official misconduct should be expanded to include such actions as those of a code official/inspector who knowingly fails to perform inspections or who conducts them in such a reckless manner as to nullify the purpose of the inspection. In such instances,

code officials/inspectors shall not actually have to receive a benefit or intend to injure or deprive another of a benefit to be guilty of such offense.

- Criminal statutes should be expanded to provide for penalties and fines to builders/developers, or their representatives, who confer or offer to confer anything of value or benefit on any municipal or state government official, employee or inspector, or if the official, employee or inspector accepts same in connection with building inspections. This prohibition should extend to any benefit including cash, gifts, building materials, appliances, meals, sporting activities, holiday parties, trips, money, gratuities, or anything else of value.

#### **Suspension of Licenses**

- A state or municipal building inspector or official should be subject to suspension for a minimum of 30 days and a maximum of 180 days and face possible license suspension for the same period of time if he/she becomes knowledgeable of a situation in which a home has passed inspection or has received a certificate of occupancy despite failing to meet state building code requirements, and fails to submit this information to the DCA in writing within 30 days.

#### **Funding of Construction Offices**

- All municipal construction/inspection departments should be funded by “rider.” Presently, New Jersey Budget Law provides for two methods of accounting for fees collected: (1) Dedication by Budget, under which revenue

from fees is placed in the general fund and re-allocated annually to the construction office based on budgeted items; and (2) Dedication by Rider, which requires municipalities to establish trust funds. Under such arrangements, income and expenses related to construction activities are specifically dedicated to the trust for exclusive use in code enforcement activities. Currently, 45 municipalities are authorized to operate via Dedication by Rider, although only 21 have chosen to do so.

### **Code of Ethics**

- Legislation should be enacted to require that a code of ethics be promulgated for legislative and governmental agents (“lobbyists”), an influential sector affecting new-home construction legislation and the regulatory process. While statutory changes recently have addressed other issues involving legislative and governmental agents, no code of ethics has been enacted for this key industry.

### **Registration of Corporate Entities**

- All entities involved in new-home construction in New Jersey, including builders, contractors, subcontractors and arbitration and warranty plan providers, should be required to complete, maintain and keep current the State Treasury, Division of Revenue’s *Public Record Filing For New Business Entity* form that includes the designation of a registered agent and registered office within this state for the service of process (subpoena) for any legal action or inquiry, civil, criminal or otherwise. Moreover, proof of such filing

should be required during the application process to obtain a building permit or to provide warranty or arbitration services.

### ***Proposed Regulatory Reforms***

#### **Independent Inspections**

- Re-inspection for remedial work related to significant code violations should be handled by an individual other than the inspector who failed to detect the original violations. In order to confer integrity upon the process, the state should step in where necessary and proper to conduct such inspections through the appropriate DCA regional office.
- In instances where homeowners are entitled to timely and effective remediation due to a builder's defalcations, it is unfair and inappropriate for the builder's own employees or representatives to evaluate, inspect and determine what requires repair. In such instances, an independent, third-party engineer, hired by DCA, should be retained at a builder's expense to inspect and design fixes in the case of remediation work.

#### **Complaint Referral Procedures**

- Complaints against local officials should be memorialized in writing and filed with the appropriate authorities in DCA. Currently, there is no formal requirement.
- A formal complaint referral procedure should be implemented by DCA so that its new-home warranty and code enforcement units will be linked in terms of the ability to share, analyze and act upon this critical information.



### **Builder Non-Compliance**

- DCA should maintain a list of builders that have accumulated any number of confirmed code-compliance defalcations in order to keep abreast of the need for any possible remedial and/or disciplinary action targeted at repeat offenders. This requirement should be a component of any new building licensing scheme adopted by DCA pursuant to Recommendation No. 1, *Government Oversight and Regulation of the Construction Process*, at p. 27.

### **Additional Staffing**

- The DCA Office of Regulatory Affairs should be augmented – on an emergent basis, if necessary – with the necessary funding and resources to deal with workload changes brought on by activity in the construction industry.

### **Disciplinary Action Against Inspectors**

- DCA should not delay or suspend administrative action against local code officials or inspectors, or fail to take action against builders, in instances in which a homeowner chooses to litigate or when a criminal referral has resulted from an inspector's activities. Current circumstances enable problem code inspectors or construction officials to continue performing their duties, possibly subjecting future homeowners to poor or deficient inspections and/or construction. The potential for consumer harm is too great to delay administrative action and provision of necessary training.

### **Duties of Construction Officials**

- The position of the local construction official should be more than a mere administrative position. The individual who fills this position should have direct expertise and authority (i.e. hold all or most sub-code licenses) over all sub-code inspectors to oversee and be in a position to evaluate work performed by staff. This official also should randomly check inspections done by his/her staff to ensure that they were performed according to acceptable and required standards. Having the licenses to do so is of critical importance.

### **Inspectors Working in Multiple Municipalities**

- Inspectors working in more than one municipality should be subject to greater oversight and standardization. This process should include analysis by DCA of data on the number of inspections being performed, time required, etc.

### **Promulgation of Code of Ethics**

- DCA should establish and promulgate a strict code of ethics for all state, county and municipal building inspectors and construction code officials. On an annual basis, ideally each year at the winter holiday season, DCA should remind responsible officials of policies prohibiting acceptance of gifts and gratuities by public employees.

## ***2. Consumer Protection and Remediation***

The Commission recommends the following legislation and regulatory reforms to enhance the government’s ability to fulfill its administrative duty to protect the safety and welfare of the citizens:

### ***Proposed Legislation***

#### **Expand Consumer Fraud Act**

- New Jersey’s premier consumer protection law, the Consumer Fraud Act, as promulgated by the Administrative Code, covers a multitude of activities related to “home improvement.” As currently written, however, the Code explicitly excludes the most extensive and fundamental type of improvement in this regard – the actual construction of a new home.<sup>4</sup> This statute, as well as the relevant language in the Administrative Code, should be amended and expanded to cover the activities of new-home builders and developers. It should also be extended to cover circumstances involving faulty workmanship, in addition to its current focus on the conveyance of false, misleading and deceptive information. In the event a homeowner chooses to

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<sup>4</sup> NJ ADC 13:45A-16.1 defines “home improvement” as “the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or noncommercial property or the remaking of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming part of the residential or noncommercial property, **but does not include the construction of a new residence.**” [Emphasis added]

pursue litigation as an election of remedy, these fundamental changes in the Consumer Fraud Act would expand that homeowner's options beyond those currently available in an action under common-law fraud.

#### **Establish New-Home "Lemon Law"**

- The Legislature should enact a new-home "Lemon Law" requiring that, in instances where a reasonable number of repair attempts fails to cure a defect that poses a serious safety hazard or substantially impairs the use or market value of a new home, the builder/developer – at the homeowner's option – must purchase the structure and provide reimbursement to the homeowner for all relevant expenses, including costs related to purchase, resolution of the issue, legal representation, inspections, expert analysis, etc. Reimbursement should include the cost of any upgrades, and be adjusted for increased or diminished market value.

#### **Public Disclosure**

- Legislation should be enacted to permit the collection, and disclosure to the public, of information electronically maintained on warranty-claim activity, violations of the Consumer Fraud Act and common-law fraud, judgments and bankruptcies involving builders and developers, and criminal convictions of officers, directors and stockholders.
- Homeowners should be permitted to disclose code violations and substandard building practices to federal, state and local government entities and investigatory bodies. Legal judgments and/or out-of-court settlements

requiring sealing of such information (“gag orders”) should be deemed to be in contravention of proper and appropriate public policy.

- Legislation should be enacted to extend applicability of laws that govern disclosure on resale of homes to the sale of new homes. Subsequent homebuyers, especially those purchasing a home previously bought back by a builder, should be advised of all code violations, structural problems and remedial action taken on structural issues in that home as part of the purchase process.

### **Contract Documents**

- Legislation should be enacted to require that detailed plans and specifications be a part of the contract documents for the purchase of a home and shall not be subject to change without approval of both parties.

### **Escrow of Funds**

- Homebuyers, at the time of closing, should be authorized to place in escrow proceeds to cover the cost of incomplete construction, without affecting their right to file a request for warranty performance for defects in other areas.
- All homebuyers’ deposit money should be required to be held in escrow to protect such funds in the event of builder default.

### **Inspections by Home-buyers**

- Home-buyers should be authorized to personally undertake progress inspections during construction and during the pre-closing period, or to have a designated professional retained by them do so.

### **Option to Cancel**

- Home-buyers should be authorized by law to cancel prospective home purchases with full refund of deposits if closing of title is delayed more than 90 days from the date set forth in the contract due to builder fault. No reciprocal right of builder cancellation should be authorized for the same delay.

### **Posting of Bonds**

- Builders should be required to post bonds to secure the satisfactory completion of common elements not covered by warranty law or municipal land-use bonds.

### **Procedures for Planned Real Estate Developments**

- In order to protect the interests of home-buyers in planned real estate developments (so-called “gated communities”), a formal transition procedure should be established to provide homeowners with: engineering reports for common elements, at the expense of builder-controlled homeowners’ associations; evidence that all required municipal approvals have been obtained; and a full accounting of all association activities during the period of builder control.
- Procedures should be established for homeowners associations, through designated committees, to file warranty claims during the period when builders still control such associations.

### **Prohibit Mandatory Binding Arbitration**

- Arbitration mediation clauses in homeowner purchase contracts and/or warranties should be optional. Homeowners should have the right to decide if they prefer a form of mediation outside of the courts, but should not have to give up their rights to pursue litigation regarding home-purchase contracts and home defects of any type and/or home warranties based on “fine print” in their agreement to purchase. It should only be done based upon informed consent.

## ***Proposed Regulatory Reforms***

### **Web Site for Consumers**

- Given the fact that the Commission, through its investigation, found that prospective home-buyers are utterly in the dark with regard to the performance record of builders/developers in New Jersey, a free, consumer-friendly website and information system should be established and made accessible to the public by links on Internet websites maintained by both DCA and the Division of Consumer Affairs. At a minimum, this website should provide information to prospective new-home buyers, including topics covered in a new-home consumer education course and the following materials and/or links:
  - The Uniform Construction Code
  - The New Home Warranty and Builder's Registration Act
  - Industry standard guides
  - Homebuyer's Bill of Rights
  - A home warranty process flowchart and guidelines
  - An arbitration process flowchart and guidelines, including terms, deadlines and conditions

- A list of registered builders and adjudicated complaints against them
- Complaints/questions/suggestions, e-mail hotline
- Explanation of the difference between code violations and warranty violations

### **Complaint Processing**

- All complaints from homeowners alleging consumer fraud violations with regard to new-home construction should be investigated by the New Jersey Division of Consumer Affairs and, if found to have merit, a written report of the findings should be provided to the homeowners. In the event the complaint is unfounded, homeowners should be advised of that as well. In cases where findings against a builder are substantiated, the results should be posted on the proposed consumer web site. The cost of these investigations should be defrayed by fees and fines assessed against builders.

## ***3. New-Home Warranty Reform***

The Commission recommends the following legislative and regulatory reforms be enacted to provide homeowners with a more responsive and meaningful system of safeguards to protect their interests and ensure they have reasonable access to fair and equitable recourse when confronted with defective construction:

### ***Proposed Legislation***

#### **Expand Definition of Major Structural Defect**

- The definition of “major structural defect” should be changed to include substantial failure to meet structural requirements, as opposed to its current



statutory definition requiring what amounts to a virtual collapse that impairs the use of the building for dwelling purposes.

### **Extension of Warranty Coverage**

- The effective period for basic warranty coverage should be increased from the current standard of one year to two years, and warranty coverage should be extended to three years for water damage caused by construction and for lot defects; to three years for deficiencies caused by defective materials, faulty design or installation of plumbing, electrical, heating and cooling, mechanical, fire protection, and well or septic systems; and to 10 years for major construction and fire safety defects.
- In instances where a determination has been made that a verified code violation affecting life-safety or the habitability of a home exists after issuance of a Certificate of Occupancy (CO), the homeowner shall be afforded automatic protection of the new-home warranty program with respect to that violation.

### **Upgrading of Penalties**

- DCA should be empowered to impose fines up to a maximum of \$5,000 per offense, for additional violations beyond merely the failure of a builder to enroll a new home under the warranty law.

## *Proposed Regulatory Reforms*

### **Homebuyer's Bill of Rights**

- A Homebuyer's Bill of Rights should be enacted to:
  - Define builder responsibility
  - Advise that the home-buyer has the right to attorney review of the contract
  - Explain that contract documents include plans and specifications
  - Describe homebuyer's rights of access to local construction office files as well as what a typically complete construction file should contain
  - Explain what laws protect the homebuyer and what regulations builders, inspectors, arbitrators, and warranty providers should be following/enforcing
  - Describe homebuyer's rights and responsibilities in the warranty process, including an explanation that selection of arbitration regarding a defect precludes the option of civil litigation
  - Outline the various periods of warranty coverage and what is covered in each
  - Describe explicit steps homebuyers should follow to protect their interests
  - Alert prospective buyers to the importance of adhering to warranty deadlines and advise on ways to recognize "lulling" and other delaying tactics
  - Define a homebuyer's rights and responsibilities in arbitration and what to do in the event of a biased or incompetent arbitration award

This Bill of Rights should be provided to prospective home-buyers no later than the time of the signing of a contract for a new home.

### **Warranty Rights Booklet**

- A new information booklet should be prepared and mailed to owners of new homes within four months after closing, with information on warranty and the importance of filing timely claims. At closing, the new-home purchaser is typically busy and unable to focus on this information.

### **Standardization of Escrow**

- The pre-closing walk-through inspection form should be standardized to make clear the effect on warranty coverage of escrowing funds to correct any deficiencies noted at that time.

### **Filing of Warranty Claims**

- All complaints/requests for service made by homeowners to builders and/or their affiliated service providers should serve as notice to the New Jersey-approved warranty provider. Such complaints should be copied by the builder and forwarded to the warranty provider and to DCA.

### **Update Warranty Coverage**

- Warranty coverage should be revised on a regular or periodic basis to include current issues, such as mold and brick veneer problems, and prevalent defects that may arise due to changes in construction methodology and materials.

### **Extension of Coverage**

- Warranty coverage should be extended to include decks, porches and garages, whether attached or detached, as long as they were built at the time of the home construction.

### **Limit Opportunities for Repair**

- Instead of getting caught up in method-of-repair disputes, a builder should have to undertake a repair satisfactory to code, industry standards and warranty program requirements. If a fix is not effective, the builder would get a second opportunity to repair within a reasonable period of time. However, after two failed tries, the builder would be declared in default, DCA would be notified, and the warranty plan would take over.

### **Monetary Settlement Standards**

- In cases where monetary settlement is the only option due to inability of the builder or the warranty-provider delegate to effectively perform repairs, a fair settlement process should be established and monitored by DCA. The method-of-repair standard should be defined as the repair necessary to put the home in “as new” condition and place the residence in compliance with applicable codes and industry standards. Costs necessary to achieve these standards should be the basis for settlement.

### **Augment Staffing**

- Given the thoroughly inadequate staffing of DCA’s Bureau of Homeowner Protection – Private Plan Section, this unit should be equipped as soon as

practicable with sufficient resources and personnel to implement proper and adequate oversight of private-plan warranty provider activity and to address the needs of home-buyers in this regard. This office should have the authority and capability to impose graduated fines on private-plan warranty providers to address compliance failures in which DCA directives are ignored to the detriment of New Jersey homeowners.

### **Audit Requirements**

- State and private warranty programs should be periodically audited (functional and financial) to assess their adherence to state standards governing adequacy of reserves, processing of claims and the handling of builders who warrant a “poor risk” rating.

### **Arbitration Process**

- The current multi-step arbitration process should be eliminated in favor of one arbitration, which should focus on correction (repair) of defects rather than monetary settlement. The method-of-repair standard should be the repair necessary to restore the home to “as new” condition and place the residence in compliance with applicable codes and industry standards.
- The burden of proving a defect should be removed from the homeowner and placed on the warranty arbitration process itself to alleviate the homeowner from incurring the considerable costs associated with hiring professionals to establish the existence of defects.

- DCA oversight of the arbitration process in New Jersey should be strengthened to include: reviewing of arbitrator qualifications; requiring that all arbitrators who handle major structural or fire safety defect claims be licensed as architects or professional engineers, specifically qualified in residential construction technology; and ensuring that arbitrators and arbitration services performing in New Jersey are in full compliance with disclosure requirements of New Jersey’s arbitration law.<sup>5</sup>
- A clearly delineated right to arbitration dispute settlement should be incorporated into the existing warranty law.
- Private warranty plans should be required to actively eliminate conflicts of interest of arbitrators through a rigorous plan-administered economic disclosure and disqualification procedure, with copies of documents pertaining to this process forwarded to DCA with a certification by the warranty plan as to due diligence.
- DCA should review any cases of homeowner dissatisfaction with the warranty process.
- Warranty plans should provide DCA with records of all complaints, beyond mere numerical reporting.
- The fee schedule for arbitrators should be examined and evaluated.
- All arbitration hearings should be recorded and copies should be made available to interested parties.

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<sup>5</sup> *N.J.S.A. 2A:23B-1 et seq.*, entitled, “*AN ACT concerning arbitration procedures and supplementing 2A of the New Jersey Statutes*”, effective January 1, 2003.

- Arbitration deadlines should be evaluated as to reasonableness, and a method of documenting notification (i.e. certified mail) should be established to accurately record whether deadlines are met.
- Arbitration services should be required to follow documented uniform standards, available to the public through the DCA website. For example, the American Arbitration Association provides a panel of arbitrators with resumes from which one can choose, a standard which should be required in New Jersey. A pamphlet should provide the homeowners with the needed guidance to determine whether or not arbitrators are following their uniform procedures.
- In addition to delineating the warranty process in clear terms, warranty booklets should discuss, in consumer-friendly detail, the UCC, the arbitration process, the arbitration company and fees related to arbitration. Flow-charts depicting the steps in the warranty process should be a mandatory part of all private warranty provider booklets. A similar flow-chart should be included in the New Jersey state-operated warranty plan booklet.
- Oversight of the arbitration process should be undertaken by DCA to ensure decisions are as objective as possible. Currently, there is nothing to ensure that arbitrators follow the American Bar Association code of judicial conduct. Arbitrators should be required to make decisions based upon objective data and guidelines, such as industry standards, expert reports, and UCC requirements. These standards, as well as all information and criteria presented and/or used in arbitration, (i.e. arbitrator notations and comments)

should be contained in arbitrator files, which should be maintained by an appropriate office within DCA for a specified period after completion of the arbitration. These files would be accessed and reviewed only on the question of bias or incompetence related to the arbitration.

### **Explanation of Coverage**

- Warranty booklets should explain to homeowners which code defects would fall under UCC and other applicable construction codes and provide information on obtaining the code(s) and industry standards.
- The difference between a workmanship defect and a UCC violation should be explained in the warranty booklet.
- The role of the DCA as the watchdog agency or other consumer advocate in warranty matters should be separately identified and explained on a dedicated page in the front of the warranty booklet. Many homeowners confuse information currently presented as just another bureaucratic level within the approved warranty-provider institution. (Currently, it is not clear that one should contact DCA to file a complaint about the builder, arbitration, or warranty process.)
- Warranty administrators should be required to issue homeowners reminders of expiration of warranty coverage for select warranty periods at least thirty days prior to the expiration of each warranty period, and to list those items covered for that period.



#### ***4. Strengthening the Inspection and Enforcement Process***

Given the critical importance of the inspection process in certifying that homes are built in compliance with the applicable codes, the Commission recommends the following legislative and regulatory reforms:

##### ***Proposed Legislation***

###### **Supplement Municipal Inspections**

- Additional inspection personnel, either through DCA or architects and engineers working under the control of DCA, should be made available when it is determined by the state that a municipality does not have adequate staffing in relation to the amount of construction occurring therein. Further, if DCA makes such a determination, action by the DCA should not be subject to appeal.

###### **Increase Penalties**

- Penalties for violations of the UCC should be increased to a maximum of \$5,000 per violation to promote compliance with the code and to make sanctions more than “the mere cost of doing business.”

###### **Extension of Code Coverage**

- Statutory code coverage should be extended to lot improvements not currently covered by the Municipal Land Use Law or the UCC. Standards should be adopted for construction of driveways, porches, decks and site drainage.

Inspection coverage should be provided for these additional areas through the promulgation of an additional licensed site engineering subcode under DCA's auspices.

#### **Periodic Reviews of the UCC**

- Statutorily mandated reviews should be conducted periodically to assess and update the UCC and other applicable codes to reflect industry changes in building materials, construction practices and technology.

### ***Proposed Regulatory Reforms***

#### **Builder Compliance with Framing Checklist**

- Given the critical importance of proper structural framing of new homes, DCA should require all builders to utilize and certify compliance with its framing checklist in order to provide builders with guidance as to what is required, to increase accountability in this key area and to insure inspectors are not being called out prematurely.

#### **Coordination of Resources**

- Municipalities should be encouraged to consider entering into shared-service agreements for code inspections. Thus, smaller towns could share resources and increase efficiency throughout the State, in this critical area, without incurring increased costs.
- The use of regional or county construction inspection offices should be studied to determine if such a system would provide greater efficiencies and

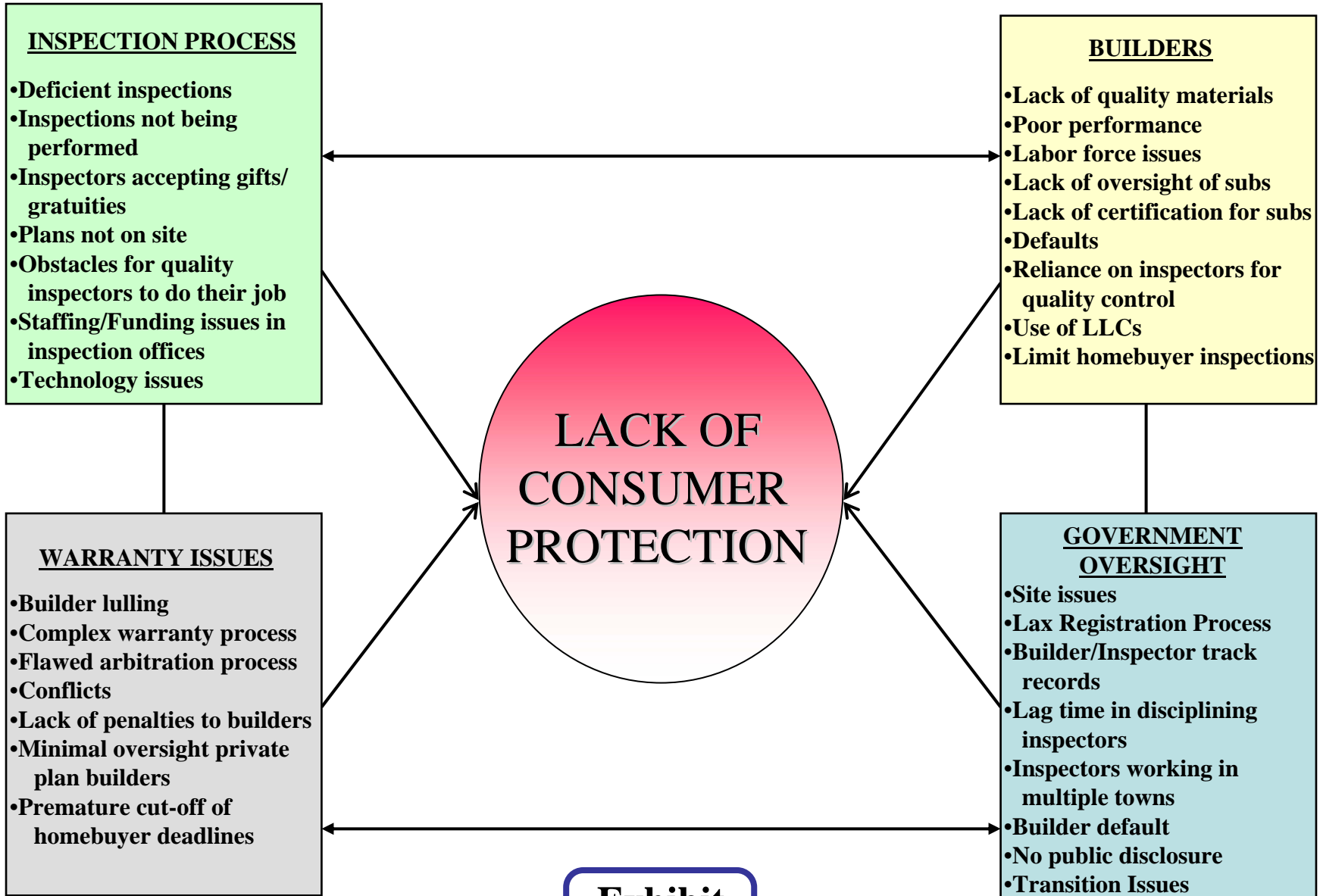
inspection resources while lowering or maintaining administrative costs. Evaluation criteria should include whether such a system would serve to foster independent, high-quality inspections by rotating inspectors, thus minimizing familiarity among parties in fixed geographic areas or on large projects, and by allowing inspectors to be deployed, as needed, throughout a given region. Such an approach should also be examined to determine whether it would advance a consistent approach to the interpretation and application of the construction code.



# **APPENDIX**



# SUMMARY OF KEY FINDINGS



**Exhibit  
NCI-1391**

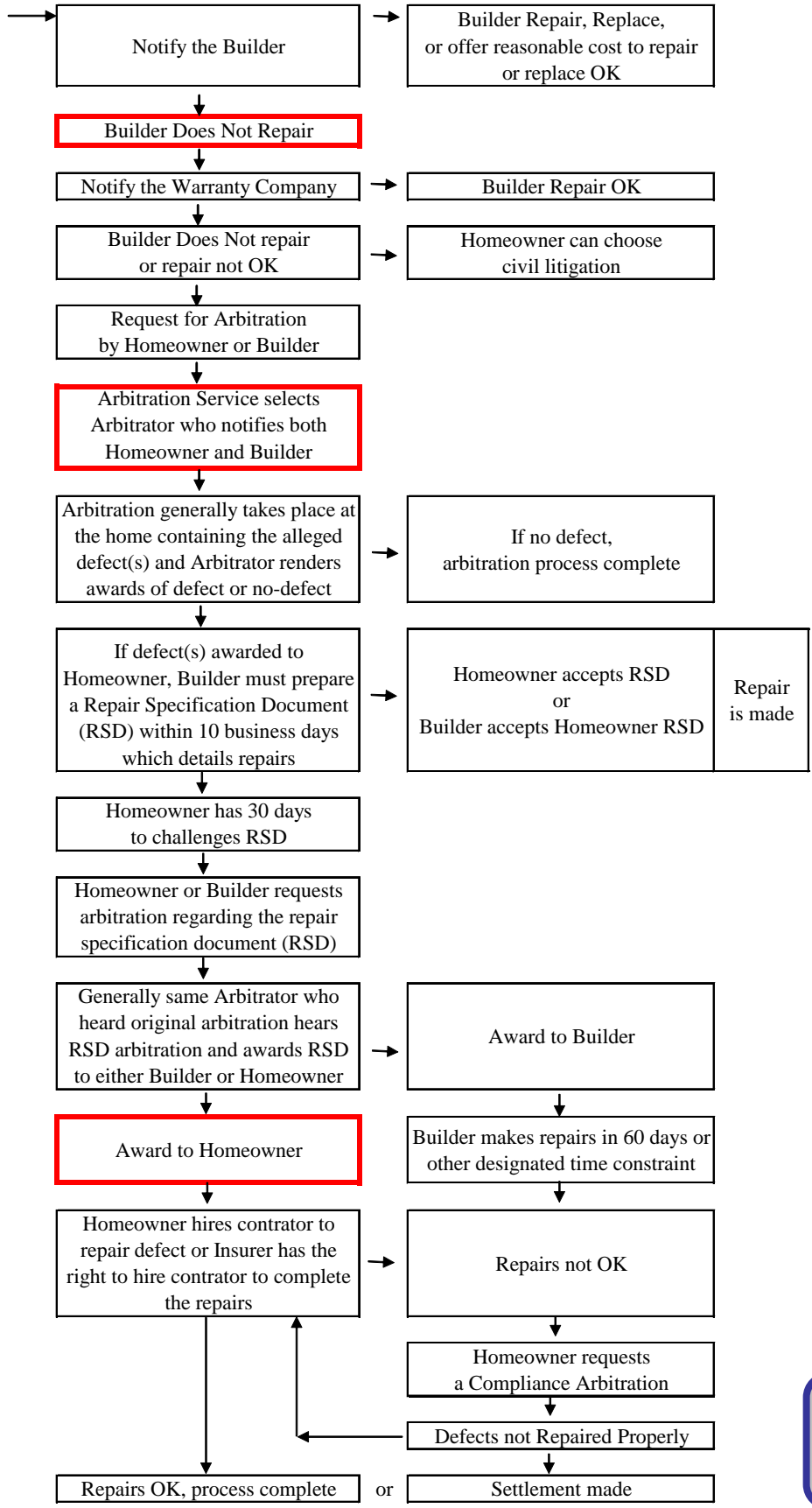
A-2





# New Home Warranty Request for Dispute Settlement Process

Notification to/  
education of the  
homeowner  
regarding the  
provisions of the  
warranty



**Exhibit  
NCI-250b**

\* Items in red indicate problem areas



## Outline of Public Hearings

### Hearing 1 – November 18 & 19, 2003

Synopsis: The hearings provided an overview of the Commission’s findings regarding abuses in the new-home construction process in New Jersey. Homeowners described significant construction deficiencies, including code violations, which they discovered in their new homes, despite the issuance of Certificates of Occupancy. The second day of the hearing also focused on the issue of builder defaults and the lack of recourse available for victimized homeowners in the State of New Jersey.

#### Witness Lists:

- November 18, 2003

New Jersey Attorney General Peter C. Harvey (p.7)

Panel: Amy Campbell, *SCI Investigative Accountant*  
Peter J. Glassman, *SCI Special Agent*  
Debra A. Sowney, *SCI Investigative Analyst* (p. 24)

Panel: Michael A. Pierce, *Engineer*  
Sander Kelman, *Homeowner, Four Seasons at Wall, Wall Township* (p.52)

Gregory H. Kirk, *then-Wall Township Construction Official* (p.101)

Glenn Gerken, *former Wall Township Engineer* (p.130)

John A. Wadja, *Construction Superintendent* (p.189)

Panel: Gary Baldino, *Homeowner, Holiday City, Monroe Township*  
Michael DePalma, *Monroe Township Construction Official*  
Edward O’Neill, *Monroe Township Sub-Code Official* (p.208)

Antonio (“Tony”) Acevedo, *Homeowner, Manalapan Chase, Manalapan Township* (p.290)

Panel: Charles A. Kuyl, *SCI Special Agent*  
Joseph A. Becht, *SCI Chief Accountant* (p.304)

- November 19, 2003

James P. Conroy, *SCI Special Agent* (p.5)

Ricardo Cardona, *Homeowner, Society Hill at University Heights, Newark* (p.24)

Jeffrey R. Cartwright, *Assistant Essex County Prosecutor* (p.110)

Panel: Joseph A. Becht, *SCI Chief Accountant*  
Karen A. Guhl, *SCI Special Agent* (p.149)

*Protected Witness* (p.169)

William J. Kondla, *Homeowner, Four Seasons at Wayne, Wayne Township* (p.180)

Panel: Richard Mursheno, *SCI Special Agent*  
Mary L. DeVaney, *Homeowner*  
James A. Sabetta, *Woolwich Township Construction Official* (p.203)

Abraham J. Chasnoff, *Assistant Middlesex County Prosecutor* (p.254)

### **Hearing 2 – January 21, 2004**

Synopsis: In this hearing, Commission staff provided an update of the investigation to date, highlighting additional scenarios that were uncovered since the previous hearing that were illustrative of the types of problems that were discovered during the course of the investigation. The main focal point of the hearing was to outline, through various witnesses, systemic weaknesses in New Jersey's new home warranty program.

### **Witness List**

Panel: Joseph A. Becht, *SCI Chief Accountant*  
James P. Conroy, *SCI Special Agent*  
Karen A. Guhl, *SCI Special Agent*  
Charles A. Kuyl, *SCI Special Agent* (p.6)

Amy Campbell, *SCI Investigative Accountant* (p.54)

Kenneth J. Butko, *Supervisor, Private Warranty Section, NJDCA* (p.106)

Panel: Richard A. Becraft, *Homeowner*  
Valerie J. Cyr, *Homeowner*  
Graham Fill, *Homeowner*  
Victor Donahue, *Homeowner* (p.179)

Carl F. Savage, *Homeowner, Greenfield III, Greenwich Township* (p.246)

Peter Desch, *Chief, Bureau of Homeowner Protection, NJDCA* (p.276)

### **Hearing 3 – October 12 & 13, 2004**

Synopsis: The last set of hearings focused on three major areas: 1) the obstacles faced by builders and inspectors in the new home construction process; 2) the adequacy of government oversight and 3) proposals for reform of the process.

## Witness Lists

- October 12, 2004

Panel: Amy Campbell, *SCI Investigative Accountant*  
James T. McAleer, *SCI Special Agent* (p.8)

*Protected Witness* (p.40)

Charles A. Kuyl, *SCI Special Agent* (p.41)

Eli Kornberg, *former V.P., Victor Construction Company* (p.71)

Ran Korolik, *V.P., Victor Construction Company* (p.78)

Gregory H. Kirk, *then-Wall Township Construction Official* (p.124)

Joseph Riggs, *K. Hovnanian Companies* (p.169)

Edele Hovnanian, *Menk Corp. and Hovsons, Inc.* (p.254)

- October 13, 2004

Kenneth Cooley, *SCI Investigative Accountant, reciting the testimony of Bradley Little, Centex Corporation* (p.7)

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