

# STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



## ADMINISTRATIVE REGULATIONS AND CONSTRUCTION STANDARDS OF THE CONTRACTORS' REGISTRATION BOARD

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**Rhode Island Contractors' Registration Board**  
*Administrative Regulations and Construction Standards*

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**1 DIVISION 1 - - - ADMINISTRATION**

**1.0 NOTICE OF PROPOSED REGULATION**

Before adopting, amending, or repealing any rule, the Board shall give notice of the proposed adoption, amendment, or repeal as required by the Administrative Procedures Act, Chapter 42-35.

**1.2 TEMPORARY REGULATION**

1.2.1 The Board Administrator may adopt, amend, or suspend a regulation as provided in Administrative Procedures Act, Chapter 42-35.

**1.3 GENERAL PROCEDURES**

1.3.1 The Board adopts the Administrative Procedures Act, Chapter 42-35 as the procedures to be utilized for administrative hearings of the Board or administrative hearing officers.

- (1) To be timely received, the following items must be received by the Commission within 20 days from the date a proposed order is mailed by the Commission:
- a) A request for hearing;
  - b) Exceptions to an Agency order.

**1.4 HEARINGS POSTPONEMENTS**

**1.4.1 A postponement of a hearing may be granted at the request of a party if:**

- (1) The request is promptly made after the party receives the notice of hearing; and
- (2) The party has good cause as stated in the request, for not attending the hearing at the time and date set. For the purposes of this section, good cause exists when:
  - (a) The circumstances causing the request are beyond the reasonable control of the requesting party; and
  - (b) Failure to grant the postponement would result in undue hardship to the requesting party.
- (3) The Executive Director or designee, upon receipt of documentation, within 24 hours, may postpone a hearing for just cause.

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**1.5 COMMISSION REPRESENTATION BY OFFICER OR EMPLOYEE**

- 1.5.1 (1) Commission officers and employees may appear, but not make legal argument, on behalf of the Commission in compliance hearings involving the possible imposition of civil penalties, and in other compliance and claim hearings on an individual case basis.
- (2) When Commission officers or employees are representing the Commission in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver of the duty to make timely objection. Where such objections may involve legal argument, the presiding officer shall provide reasonable opportunity for commission officers or employees to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

**1.6 DELIVERY OF NOTICES**

- (1) Time for response to all notices delivered pursuant to Section 5-65-12 of the law shall run from the date of mailing.
- (2) Unless otherwise agreed to by the Commission and the parties, the Commission shall schedule contested case hearings no sooner than 20 calendar days from the date the parties are notified of hearing pursuant to Section 5-65-12 of the law.
- (3) Appeals or motions will be heard at the next Board meeting or as the calendar permits.

**1.7 INFORMATION REQUESTS**

1.7.1 (1) Claims filed with the Board will be classified under investigation, and shall be deemed to be confidential, and any information in regard to this claim will not be provided by telephone inquiries or written request until such time as an investigator has had the opportunity to review the matter filed. Upon investigation and a determination that the claim is valid, information provided will be deemed public record. Upon sending the matter to an Administrative hearing, resulting in an order issued by the Commission, the information will remain on the contractors record, unless petitioned to the Board.

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- (2) The Commission will provide the following information in response to telephone requests for registration information relating to a specific person:
  - (a) Whether or not the person is or has ever been registered.
  - (b) The registration number(s).
  - (c) The business names used by the entity of record with the Commission.
  - (d) Type of business organization (individual proprietorship, partnership, or corporation).
  - (e) Personal names of owners, partners, or corporate officers.
  - (f) Last known address of person.
  - (g) Expiration date or date upon which the registration became inactive and the reason it became inactive.
  - (h) The date the person first became registered.
  - (i) Validity of insurance and company name.
  - (j) Number of proposed or final order claims on computer record.
    - (1) Status of each claim filed, except those under investigation.
    - (2) Type of each claim filed.
    - (3) Date each claim filed.
    - (4) Alleged amount of claim or amount awarded inclusive of fines.
  - (k) Any violations issued by the Board.
- (3) The Commission shall provide certification of registration or non-registration relating to a specific entity upon written request and payment of required fee. This certification will include the following information:
  - (a) Registration number(s).
  - (b) Name of registered person and any business names registered with the Commission.
  - (c) Type of business (individual proprietorship, partnership, or corporation).
  - (d) Personal names of owner, partners, or corporate officers.
  - (e) The important dates in the registration history and the action that took place on those dates.
- (4) If more information is required than that listed in Section (1 or 2) of this regulation the request for information should be made in writing. All requests for information should comply with R.I.G.L. 38-2-6 which disallows the commercial use of public records.

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- (5) If no claims have been filed or if it appears to the Commission that the person about whom the inquiry is being made is non-registered, the caller will be given this information by telephone.
- (6) The Commission may impose the following charges for records and filing fees:
  - (a) \$10.00 for each certification that an entity has or has not been registered with the Board.
  - (b) \$10.00 for certified copies of documents.
  - (c) \$5.00 for every 35 copies made, or 15 cents per copy.
  - (d) \$30.00 per tape for duplicate tape recordings of Commission hearings.
  - (e) \$100.00 for a quarterly list of registrants, or computer disks, except that the list will be provided free of charge to city and state building departments. Requesting parties shall bear the cost of mailing.
  - (f) Charge as determined by production cost for mailing labels of registrants.
  - (g) The Commission shall not refund fees or civil penalties, unless an administrative error occurred.
  - (h) When an applicant fails to complete the registration or renewal process within six months of the date the application was received by the Commission, the Commission may retain fee.
  - (i) A filing fee of \$25.00 shall be imposed for any claims filed with the Board for processing.
  - (j) A fee of \$20.00 is imposed for any Administrative appeal or action.
  - (k) There will be no fee charged for action on a contractors' registration number or on an appeal in this regard.

#### **1.8 RULES OF PROCEDURE FOR BOARD MEETINGS**

1.8.1 The Board adopts the following rules of procedure for its meetings.

- (1) A quorum shall be six (6) members. A majority of affirmative votes among the members present are required for any official action or decision of the Board. A quorum must be present for the Board to be called to order and to make decisions. Except in cases where a member's vote would result in a prejudiced, biased, or unfair decision or action, no member shall abstain from voting.
- (2) In accordance with applicable governing statutes, the chair shall establish the time, date, and place for the Board to convene. Proper notice of all meetings, hearings, and matters requiring notice shall be given to the

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members of the Board, the news media, and all interested persons requesting notice in accordance with General Law.

- (3) The chair shall work with the Board's Executive Director to determine the substance of the agenda for each meeting. The order of business shall be:
  - (a) Call to order.
  - (b) Approval of agenda and order of business.
  - (c) Approval of minutes of previous meetings.
  - (d) Consideration of cases on appeal and oral argument.
  - (e) Report of Executive Director and staff.
  - (f) Old business.
  - (g) New business.
  - (h) Public comment.
  - (i) Announcements.
  - (j) Adjournment.
- (4) Members of the public wishing to testify before the Board at public meetings on issues relevant to its business shall sign a registration form.
- (5) If any person engages in disruptive conduct at a meeting, such conduct shall be grounds for the chair to expel the person from the meeting.
- (6) The chair shall exercise all the rights and duties of other members, including the right to introduce motions and proposals and to speak and vote on them while presiding.
- (7) No member of the Board shall speak or act on behalf of the Board without specific authorization by law or by the Board. The Board shall not delegate its statutory rule making authority, except to an officer or employee within the Commission who shall be authorized by the Board to adopt temporary regulations pursuant to the A.P.A. RI General Law 42-35-3(5)(b).

### **1.9 ETHICS POLICY**

1.9.1 The Board is subject to the ethics policy as established by Title 36, Chapter 14 of the R.I. General Laws.

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**2 DIVISION 2 - - - DEFINITIONS**

**2.1 As used in these regulations:**

- (1) "Board" means the 11 members appointed Contractors' Registration Board.
- (2) "Commission" means the Building Code Commission supportive of the Contractors' Registration Board.
- (3) A "Contractor" is a person who has a contract, either oral or written, with the owner of a structure to perform work subject to Chapter 5-65 or who is building a structure speculatively; who may engage one or more subcontractors to perform all or part of the work; and who may have responsibility for the entire project which is the subject of the contract. A "contractor" includes, but is not limited to, any person, which, in the pursuit of an independent business, undertakes or offers to undertake or submits a bid to perform or arranges for the performance of any of the following, unless specifically excluded under the provisions of the law.
  - (A) Construction, alteration, repair, improvement, moving, or demolition of residential apartments of four units or less, homes, carports, garages, or condominiums, including all appurtenances, as herein after defined whether done speculatively or under contract.
  - (B) Alteration, repair, improvement, set up or demolition of mobile homes, including all appurtenances, as herein after defined, whether done speculatively or under contract.
  - (C) Installation or repair in a residence of: Air Conditioning (self-contained through wall); Alarms; Appliances (built-in); Asphalt driveways or walks; Awnings; Barbecues (built-in); Basements; Bathtub enclosures; Cabinets; Cable TV wiring; Carpeting or other floor coverings; Chimneys or flues; Closet systems (built-in); Countertops; Drywall or plaster; Elevators (residential); Fans or ventilating equipment; Fence installations; Fireplaces or wood-burning stoves; Foundations; Framing; Garage doors or garage door opening equipment; Glass or glazing; Gutters and downspouts; Hardwood flooring; Insulation, storm windows, or other weatherization; Iron or other metal work; Laminates; Lath; Lawn sprinkler systems; Locks; Masonry; Millwork and trim; Painting exterior and interior; Paneling; Pools; Roof structures; Roofing or flashing; Saunas, hot tubs, spas (built-in); Security systems; Sheet metal; Shower doors or shower enclosures; Siding; Skylights; Solar energy systems or equipment; Stairways; Stucco or gunite; Telephone prewiring and cable



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installation; Tile or grouting; Underground drain lines when not regulated by another agency; Underlayment; Vacuum systems (built-in); Wallcovering installers; Water purification or conditioning equipment; Waterproofing; Weatherstripping; Well installers; Window treatments.

(D) Residential work including:

- a) Excavation for the structure or its appurtenances.
- b) Backfill or grading when rough grading the site to accomplish proper drainage and not for landscaping.
- c) Trenching when done for the structure, its appurtenances or the installation of lawn sprinkler systems.
- d) Concrete flatwork, including installation, cutting or breaking, when related to the structure or its appurtenances.
- e) Curbing or paving when related to the structure or its appurtenances.
- f) Installation or repair of an "appurtenance" as defined in this rule.
- g) Pest control, if in the course of that work any structural repairs are performed.
- h) Sandblasting;
- i) Pressure washing;
- j) Chemical treatment
- k) Chimney or flue repair

(E) Erection - Installation of modular housing constructed off site homes.

(F) Labor only, regardless of whether compensated by the hour or by the job.

(G) Development of lots as a developer with the intent of selling residence(s), contracting with a builder - contractor to construct, alter or improve residence(s) on land owned by the developer.

(4) Building Officials - official charged with administration and enforcement of the State Building Code.

(5) "Appurtenance" is limited to one of the following, located on land owned by the owner of the structure to enhance the residential use of the structure.

- a) Garage or carport;
- b) Porch, patio, decks and deck steps, docks, sheds, gazebos, walkways, or fencing;
- c) Driveways;

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- d) An installation for domestic water supply including well drilling, installation and repair of pumps;
  - e) A retaining wall when necessary to protect a structure or its appurtenances or to comply with building code slope requirements or when done in conjunction with landscaping work;
  - f) Swimming pools;
  - g) Sidewalks;
  - h) Stone/masonry walls.
- (6) "Residence", as defined in section 5-65-1 does not include:
- a) Commercial improvements or dwellings otherwise residential in nature used for commercial purposes, or
  - b) Buildings primarily commercial, which contain one to four apartment units or where the owners of the building provide medical care, supervision, counseling or other services to the residents of the structure.
- (7) "Structure" includes modular and mobile homes, which come within the jurisdiction of the Board as structures at the time they are placed on support blocking or permanent foundations in the place they will be used.
- (8) "Person" means a self-employed individual, a partnership, or a corporation.
- (9) "The pursuit of an independent business: as used in Section 5-651(4) means that the person operates as an independent contractor. Evidence of operating as an independent contractor and not as an employee may include, but not be limited to the following criteria:
- (a) Is free from close supervision by the homeowner or contractor over the details of the work being performed, including hours of work;
  - (b) Enters into a contract, either oral or written, which calls for the completion of certain work on a specific project or job site for which payment is made on a per-hour, time-and materials, barter, or entire job basis;
  - (c) May have two or more effective contracts at any one time;
  - (d) Hires and supervises other subcontractors and/or employees and may be responsible for business insurance and payroll taxes if help is hired;
  - (e) Enters into a contract, either oral or written, which does not require the employer to consider remuneration paid to be wages for the purposes of unemployment compensation benefits, workers' compensation payments, or federal or state withholding;
  - (f) Uses as normal business practices, telephone services, business cards, or commercial advertising;

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- (g) Furnishes substantially all of the equipment, tools, and supplies necessary to carry out contractual obligations.
- (10) "Casual, minor or inconsequential" as used in Section 5-65-2(4) means work not of a structural nature which cannot affect the health or safety of the owner or occupant of the structure, the value of which is less than \$500.00.
- (11) "Speculative" means in anticipation of or with the intent of selling to another entity during or after construction.
- (12) A "subcontractor" is a person who has a contract, either oral or written, with a contractor but not with the owner of the structure to perform work subject to Chapter 5-65 and who is responsible for a specific portion of the project.
- (13) "Work period" means the time period from the date a contract is entered into until the date the contracted work is substantially completed by the original builder/contractor, or if not substantially completed, the date work by the original builder/contractor ceased.
- (14) "Substantial completion" may occur at the time of, but not be limited to, the following events: final inspection is completed, certificate of occupancy is issued, the house or portion of house is in a habitable or usable condition, most or all of payment is made.
- (15) "Occupancy" may occur at the time of but not be limited to the following events: a majority of furniture and personal belongings is moved in, utility service begins, certificate of occupancy is issued, resident prepares meals and remains overnight.
- (16) "Monetary damages" is the dollar amount required in excess of the contract amount to provide the claimant what was agreed to be provided under the terms of the contract minus any amount due and unpaid to the registrant.
- (17) "Labor" as used in Section 5-65-11(4) means work subject to Chapter 5-65 performed as an employee of a registrant as well as work subject to Chapter 5-65 contractor and contractor and a subcontractor.
- (18) A "developer" is a person who owns property and contracts with a general contractor to construct, improve or alter one or more residences on the land for the purpose of selling those residences to their final owners.
- (19) "For compensation and with the intent to sell" as used in Section 5-65-1 is not intended to include real estate licenses engaged in professional real estate activities as defined in Chapter 5-20.5 of the General Laws, unless arrange to have work performed or a house constructed.

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- (20) An "owner of a structure" means a person not required to be registered under Section 5-65-2 who has a structure built by or who purchases a structure from a contractor or developer or who owns a structure on which alterations or repairs are being or have been made, and who owns that structure either as a personal residence, place of business, or rental.
- (21) A "registrant or applicant" shall include the owner, individual partners (including joint ventures), or individual corporate officers who make application to register or subsequently operate the individual proprietorship, partnership (joint venture), or corporation as well as the individual proprietorship, partnership (joint venture), corporation.
- (22) Claims:
- a) An "employee claim" is a claim for unpaid wages filed by an employee employed by a registrant to perform work subject to Chapter 5-65.
  - b) A "material claim" is a claim filed by a registered supplier who has not been paid for materials sold to a registrant to be used and installed in a specific structure located within the boundaries of the State of Rhode Island, or for the rental of equipment to a registrant to be used in the performance of the work of a registrant in connection with such a structure. A claim may not be made for nonpayment for tools sold to a registrant, for equipment sold to a registrant and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.
  - c) A "subcontractor claim" is a claim filed by a registered subcontractor arising out of a contract between the subcontractor and a general contractor or other subcontractor for unpaid labor and/or materials furnished under the contract.
  - d) An "owner claim" is a claim filed by an owner of a structure for breach of contract, or for negligent or improper work subject to Section 5-65-11, or a mechanics lien claim.
  - e) A "mechanics lien claim" is a claim filed by an owner against a contractor or a subcontractor, when the owner is acting as a contractor, to discharge or to recoup funds expended in discharging a mechanics lien. A mechanics lien claim may not include excess interest paid as the result of the owners inability to refinance at a lower interest rate due to the existence of the lien.
  - f) A contractor claim is a claim by a registered contractor against a registered subcontractor.
  - g) A "testing claim" is a claim for unpaid labor or materials supplied in conjunction with a particular structure, for soil, asphalt, or concrete testing.

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- (23) A "Dishonest or fraudulent conduct injurious to the welfare of the public" includes, but is not limited to, the following:
- a) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or registrant as contractor, has resulted in injury or damage to another person; or
  - b) Failing to pay monies when due for materials or services rendered in connection with the applicant's or registrant's operations as a contractor when the applicant or registrant has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or
  - c) Accepting payment in advance on a contract or agreement and failing to perform work or provide services required by the contract or agreement and failing to return the payment; or
  - d) Giving false, misleading or deceptive advertising whereby a reasonable person could be misled or injured; or
  - e) Submitting an application for registration that includes false or misleading information.
  - f) Using a revoked invalid or suspended registration.
- (24) The "date the registrant incurred the indebtedness", regarding material claims, is the date of delivery or the date the purchaser takes possession of the materials. If the delivery date is unknown, the date of the invoice applies except that in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness.
- (25) "Nature and complexity" includes, but is not limited to the following meaning:
- a) Involves issues requiring legal interpretation of statutes in addition to Chapter 5-65 (i.e. contract law, corporate law, etc.); or
  - b) In the interest of fairness and equity, requires rulings on persons or entities outside the jurisdiction of the Commission.
  - c) Is outside the expertise of the commission.
- (26) "Employee" means any person permitted to work by an employer, who receives wages, except that independent contractors or subcontractors shall not be considered employees. Documents such as W-2's, payroll taxes, and IRS forms, may be requested by the Commission to substantiate on an employee's status.
- (27) "Employer" means any individual, firm, partnership, association, joint stock company, trust, corporation, receiver, or other like officer appointed by a court of this state, and any agent or officer of any of the above mentioned classes, employing any person in this state.

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- (28) "Wages" shall mean all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method of calculation.

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**3 DIVISION 3 - - REGISTRATION**

**3.0 REGISTRATION GENERALLY**

- (1) A certificate of registration will be issued to one person only. Other persons shall not be included in that certificate, but each shall be separately registered and shall separately meet the requirements of registration. No entity may perform work subject to Chapter 5-65 through the use of another person's certificate of registration.
- (2) Registration shall be limited to residential work as established by law.
- (3) If a person registered as an individual, partnership, or corporation, seeks to change to another person the former registration will be terminated and the new person must register anew.
- (4) All partners within a partnership shall be of record with the Board. Partnerships consisting of spouses shall be treated as are partnerships consisting of unrelated persons. Notification must be made to the Commission for any change in the composition of that partnership; except of the reallocation of interest among the existing partners.
- (5) Each person shall list on its application for registration or renewal all business names under which business as a contractor is to be conducted.
- (6) (a) A certificate of registration is valid for the term for which it is issued only if the following conditions are met throughout the registration period:
  - A. The insurance required by Section 5-65-7 remains in effect; and
  - B. If the registrant is an individual, survival of that individual; or
  - C. If the registrant is a partnership, no change in the composition of that partnership, by death or otherwise; or
  - D. If the registrant is a corporation, survival of that corporation, including compliance with all applicable laws governing corporation.
- (b) A person whose certificate of registration has lapsed is considered non-registered from the date the lapse occurred until the date the registration is renewed, reissued, or reinstated. During a period of lapse, the person shall not perform the work of a contractor.
- (c) If a certificate of registration becomes invalid, or lapses, the Commission requires the return of the certificate and identification card(s).

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- (7) No person shall advertise or otherwise hold out to the public that persons services as a contractor unless that person holds a current, valid certificate of registration, nor shall any person claim by advertising or by any other means to be registered unless that person holds a current, valid certificate of registration.
- (a) All newsprint classified advertising and newsprint display advertising for work subject to Chapter 5-65 prepared by a contractor or at the contractor's request or direction, shall show the contractors registration number.
  - (b) All written building contracts subject to Chapter 5-65 shall show the contractors registration number.
  - (c) All telephone directory space ads and display ads shall show the contractors registration number.
  - (d) It is necessary to show the contractors registration number in accordance with 5-65 3(L).
- (8) The fee for original registration is \$60.00 per year. The fee for renewal of registration is \$60.00 per year. A late fee of 25.00 shall be charged for any renewal, reissued, or reinstatement received by the Commission after the expiration date. Any registrant who fails to surrender their registration will be charged \$5.00 per month up to two years. If a card is surrendered and registrant wishes to reinstate, no additional charge will be administered. If a card is surrendered it will not be reissued without penalty for a period of 90 days. Identification cards for other partners or corporate members will be issued upon receipt of a \$10.00 fee. These cards may be used for permit applications and registrant identification.
- (9) Reciprocity with other state shall be limited to the exchange of information.

### **3.1 RECORD CHANGES**

- 3.1.1 (1) Requests for record modifications necessitating a certificate of registration change shall be accompanied by a \$10.00 fee.
- (2) No charge will be made for address changes on the record.

### **3.2 APPLICATIONS FOR REGISTRATION**

- 3.2.1 (1) (a) The application required under subsection (3) of this regulation together with the fee required shall be on file with the Commission before a certificate of registration may be issued, except as provided in this section of this regulation.



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- (b) The effective date of a certificate of registration or renewal may be prior to the date of receipt of all documents and/or fees required by law and by these regulations if the Commission determines that delays in receipt of required documents and/or fees were caused by Commission error.
- (2)
- (a) An applicant for registration or renewal shall certify that the applicant has procured insurance as required by Section 5 65 7 and will continue to meet those insurance requirements for as long as the applicant is registered.
  - (b) This certification constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.
  - (c) If the requirements of subsection (2)(A) of this regulation have been met, and the Commission receives a notice of cancellation, the Commission may send a notice to the registrant, by regular mail, reminding the registrant of the obligation imposed by the registrants insurance certification.
  - (d) The registrant shall maintain the insurance required by Section 5 65 7 in effect continuously until the certificate of registration is terminated, revoked, or expired. If the registrant, in performance of work subject to Chapter 5-65 through failure to comply with this subsection, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurance company had the required insurance been in effect, the Commission may assess a civil penalty against the registrant in an amount up to \$1,000.00 in addition to such other action as may be taken under Section 5-65-10.
  - (e) It is the responsibility of the registrant to assure insurance certificates are maintained and are on file with the Contractors' Registration Board.
- (3) A complete application for registration includes:
- (a) A completed application on proper form.
  - (b) The certification of insurance coverage with an indication that insurance agent or company shall directly notify the Commission upon termination of insurance coverage;
  - (c) The application fee;
  - (d) The Commission may return an incomplete application for registration to the applicant with an explanation of the deficiencies. Returned forms may be subject to late filing fees.
- (4) A certificate of registration shall be issued by the Commission effective the date on which all fees required by law have been paid and all documents required by law and by these regulations are on file with the Commission.

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- (5) If a certificate of registration is lost, misplaced or destroyed, the registrant shall file an affidavit to that effect and for a fee of \$25.00, it shall be reissued.

### **3.3 RENEWAL AND REISSUE OF REGISTRATION**

- 3.3.1 (1) A certificate of registration may be reissued upon the applicants completion of the renewal form or application form prescribed by the Commission and upon payment of the fee or fees, and if it appears to the Commission that the applicant has supplied the required certification of insurance coverage as described in Section 3.2.1(3)(a)(b).
- (2) Certificates of registration issued by the Board shall expire on first day of the birth month of the individual qualifying for said certificate and may be renewed on or after that date for a period of twelve (12) months or to the registrants next birth month upon payment of the appropriate renewal fee which shall be equal to the respective fees as set forth in Section 5 65 9. The fee in Regulation 3.0(9) for the first certificate of registration will be calculated from the date of issuance to the individuals birth month. Partnership or corporation certificates of registration shall expire one year after the date they are registered. The effective date of renewal shall be the previous registration expiration date when;
  - (a) all requirements for renewal are met prior to the previous registration expiration date,
  - (b) including submission of a required certification of insurance coverage, and payment of renewal fee plus late fees are met, or any outstanding violations issued and fines occurred.
- (3) The effective date of reissue shall be the date all requirements for registration, including submission of a certification of insurance coverage, and payment of the renewal fee plus late fees are met, whenever that date is after the expiration date of the prior registration.

### **3.4 REVOCATION OR SUSPENSION OF REGISTRATION**

3.4.1 If the Commission adjudges one or more claim against a registrant which that person fails to pay in full, the Commission will revoke, suspend, or refuse to issue or reissue a certificate of registration, unless the person submits proof to the Commission that the amounts adjudged against the person represents debts discharged in bankruptcy or otherwise provided for by an approved plan of bankruptcy reorganization. Revocations will be conducted in accordance with the Administrative Procedures Act, Chapter 42 35 of the General Laws as amended. A registration revoked will only be reissued upon presenting to the Board sufficient evidence or proof of settlement. The Executive Director may reissue, or allow

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suspended registrants reinstatement upon proof of compliance to all outstanding orders issued by the Board, and settlements.

3.4.2 Registration numbers previously issued may be reissued by the Executive Director one year from the date a person dies, business is dissolved, retirement occurs, bankruptcy is filed, or registration is surrendered.

3.4.3 In order to expunge the record of any proposed or final orders the registrant may petition the Board to withdraw this information from the record. Upon reviewing the matter and discussion, and a determination by the Board the Executive Director may delete this public information for just cause.

3.4.4 The Contractors' Registration Board may refuse to process a claim that involves a contract that is administered, reviewed and inspected by a local state or federal agency, when disbursement of the contract sum is contingent upon the approval of that agency.

3.4.5 If another registrants number is fraudulently used, or modifications made to the registration card, a penalty of \$1,000.00 shall be imposed.

3.4.6 Action on a corporation's registration or other entity may preclude future registrations or action or other registrations held by the same corporate principles or officers, concurrently.

3.4.7 At the discretion of the Commission, a warning or a fine in any amount of up to \$1,000.00 for failing to provide notice to homeowners regarding construction liens.

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**4 DIVISION 4 - - - CLAIMS**

**4.0 FILING OF CLAIMS**

- (1)
  - (a) Claims will be accepted only against registered contractors.
  - (b) For owner claims, employee claims, contractor claims, subcontractor claims and testing claims the person against whom the claim is filed will be considered registered if that person was registered during all or part of the work period.
  - (c) For material claims, the person against whom the claim is filed will be considered registered if one or more invoices or payroll records involve material delivered while the person was registered. Damages will be awarded only for material delivered within the period of registration, and when filed by registered contractors.
  - (d) If a claim is a contractor claim or a subcontractor claim, the claimant must have been registered at the time the bid was made or the contract was entered and continuously throughout the work period before the claim will be accepted. The registration requirement for claimants does not apply to persons who are exempt from registration under Section 5-65-2(7).
- (2) Claims submitted to the Commission shall be deemed to have been filed when a statement of claim, in compliance with Regulation 4.1(1) and (2), is received by the Commission. Claims will be accepted only when a direct contractual relationship, an employment relationship, or an assigned relationship exists between claimant and registrant.
- (3) Claims will be accepted only for work performed within the boundaries of the State of Rhode Island or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Rhode Island.
- (4) The Commission may refuse to accept a claim if the facts and issues of the claim are the same as those in a claim previously filed by the same claimant and disposed, unless it regards a repair ordered by the Board, in which case the claimant has one year from the time of the repair in which to file a statement of claim.

**4.1 CLAIM TYPES**

- (1) Homeowner for negligent and improper work.
- (2) Homeowner for breach of contract.
- (3) Homeowner when mechanics lien is filed.
- (4) Contractor against a subcontractor.

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- (5) Subcontractor against a Contractor.
- (6) Employee for unpaid wages.
- (7) Soil, asphalt or concrete testing: labor or material.
- (8) Material and/or equipment supplier.

### **4.2 COMMISSION REQUIREMENTS FOR ACCEPTABLE CLAIMS.**

- (1) For claim types 4.1(1) through 4.1(6) and 4.1(7) labor: The Commission will accept claims only against persons registered during the "work period". That is, the time that a contract, written or oral, was entered into until the work ceased or was substantially completed.
- (2) For claim types 4.1(4) and (5) it is also required that the claimant be registered at the time the bid was made or when the contract was entered into and remain registered throughout the "work period".
- (3) For claim type 4.1(6) the "employee" claimant is exempt from the registration requirement in accordance with RI General Law 5-65-2(7).
- (4) For claim types 4.1(7) and (8) material/equipment the person against whom the claim is filed is considered registered if any invoices or payroll records involve material deliveries or equipment rentals while that person was registered. Damages assessed will be considered only for those items delivered or rented during the period of registration.
- (5) Claims must be submitted in the format specified by the Commission and on the claim forms provided by the Commission (see claim form guidelines in Section 4.3).
- (6) The claimant and the registrant must have either a direct contractual, an employment, or an assigned relationship.
- (7) All labor, materials, or equipment supplied or rented must be performed, fabricated into, or used on structures located within the State of Rhode Island.

#### **4.2.1 Claim Forms**

- (1) Claims shall be submitted on Statement of Claim forms provided by the Commission. The Commission may require the use of the most recent revision of the Statement of Claim Form.
- (2) The claimant shall submit the following information if available:
  - (a) The name, address, and telephone number of the claimant;

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- (b) The name, address, telephone number, and registration number of the registrant;
- (c) The amount claimant alleges to be due from the registrant after crediting payments, offsets, and counter claims in favor of the registrant to which claimant agrees;
- (d) Identification of the type of claim;
- (e) The date on which the contract was entered into; if the contract was in writing, a copy of the contract shall be attached to the Statement of Claim;
- (f) Job location;
- (g) The beginning and ending date of the work or invoices;
- (h) Payments, offsets, and counter claims of the contractor, if known;
- (i) A certification by the claimant that the Statement of Claim is true;
- (j) Copies of any adjudication by a court or by binding arbitration;
- (k) Subcontractor claims and material claims shall be accompanied by copies of each original invoice relating to the claim and a recapitulation showing the date, number, amount and description for each invoice submitted.
- (l) Employee claims shall be accompanied, if possible, by copies of time cards or other evidence of time worked.
- (m) Mechanics lien claims shall be accompanied by evidence that the claimant has paid the contractor, a copy of the notice of right to lien, a copy of the lien bearing the city or town recorders stamp and signature.
- (n) Material claims shall be accompanied by recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, and each invoice amount.

#### **4.3 CLAIMS FOR GUIDELINES AND SAMPLE FORMS (CRB 2-98 AND 3-95):**

- (1) For claim types 4.1(1) through 4.1(6) and 4.1(7) labor only use Commission form CRB 2-98.
- (2) For claim types 4.1(7) and (8) material and equipment only use Commission form CRB 3-95.
- (3) Claimants are required to provide all available information requested by the Commission. Said information shall include, but not be limited to; that information outlined on forms CRB 2-98 and 3-95.

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- (4) Claimants are required to provide copies of all available supporting documentation required by the Commission. Said documentation shall include, but not limited to:
  - (c)
    - (a) Written contract and agreements;
    - (b) Invoices;
    - (c) Billings;
    - (d) Estimates;
    - (e) Receipts;
    - (f) Canceled checks;
    - (g) Time cards or other payroll data;
    - (h) Court Adjudication or binding arbitration data;
    - (i) Notices of counter claims by registrants.
- (5) Mechanic lien claimants are required to provide copies of all available data required by the Commission. Said data shall include, but not limited to:
  - (a) Evidence that the claimant has paid the contractor;
  - (b) Notice of right to lien;
  - (c) Lien copy bearing the city or town Recorder's stamp and signature;
  - (d) All invoices, billings and other accounting data used as a basis for the lien;
  - (e) Any foreclosure data.
- (6) Whenever the claimant fails to respond to the Commission's requests for information and documentation within the time period specified by the Commission, the Commission may close the claim file without notice.

#### **4.4 COMMISSION PROCEDURES FOR PROCESSING CLAIMS**

- (1) In determining the acceptability for a claim, the Commission shall determine whether it falls within the parameters outlined in Rhode Island General Law 5-65 as to scope, Commission jurisdiction and damages.
- (2) The Commission will provide a copy of all claims filed to the person(s) against whom the claim is filed.
- (3) The Commission reserves the right to inspect the property subject to the claim. If the claimant refuses access, the Commission may dismiss the claim permanently.
- (4) When an owner claim is received by the Commission while the Commission is processing a contractor/sub contractor claim involving the same property, both claims will be processed together.



Department of Administration
BUILDING CODE COMMISSION
CONTRACTORS'
REGISTRATION BOARD
One Capitol Hill
Providence, RI 02908-5859

(401) 222-1270
TDD (401) 222-6334
Web site: www.crb.state.ri.us

FOR OFFICE USE ONLY
CLAIM NUMBER:

STATEMENT OF CLAIM

A non-refundable application fee of \$25.00 must accompany this form before processing can begin.

1. Person Making Complaint: Name, Company, Mailing Address, City, Zip, Phone(s)
2. Complaint Against: Name, Regis #, Company, Mailing Address, City, Zip, Phone(s)
3. Nature of Complaint: Claim by Homeowner - Negligent/Improper Work, Claim by Homeowner - Breach of Contract, etc.
4. Contract: Oral or Written, Contract Date, Total Amt. of Contract, Amt. Paid to Date, Job Address, Date work started, Date work ceased, Completion Date, Occupancy Date
5. Check this box if other claim(s) have been filed relating to this claim.
6. Briefly list items of complaint BY NUMBER

The foregoing is true, complete, and correct to the best of my knowledge and belief.

Date \_\_\_\_\_

Signature \_\_\_\_\_

RETURN ALL COPIES TO
CONTRACTORS' REGISTRATION BOARD
Copy of written contract must be attached.



No.	6. Briefly list items of complaint BY NUMBER

**INSTRUCTIONS FOR COMPLETION OF THE CLAIM FORM**

1. Before a claim can be processed an application fee of \$25.00 in the form of check must accompany this claim for. This fee is non-refundable and will only be returned if, upon review, it is found that the claim is outside the Boards jurisdiction.  
Checks should be made out to the Contractors' Registration Board.
2. Print or type all entries on the claim form. Press hard if printing.
3. Complete all numbered boxes, 1 through 6, on the claim form. If these are not completed, the form will be returned to you for completion.
4. Box 4 of the claim form deals with the information regarding your contract with the contractor.

**IF YOUR CONTRACT WAS AN ORAL AGREEMENT, YOU MUST PROVIDE DOCUMENTATION TO VERIFY YOUR CLAIM, SUCH AS LEGIBLE, REPRODUCIBLE COPIES OF CANCELLED CHECKS, STATEMENTS, OR BILLINGS, FROM THE CONTRACTOR.**

**IF YOUR CONTRACT WAS A WRITTEN CONTRACT, YOU MUST PROVIDE A LEGIBLE, REPRODUCIBLE COPY OF THE CONTRACT OR EARNEST MONEY AGREEMENT BEARING BOTH THE CONTRACTOR'S AND YOUR SIGNATURES.**

5. If your claim involves a mechanics lien, you must send a copy of the notice of right of lien, a copy of the lien showing the city or town's recorder's stamp and signature, a copy of each invoice constituting a basis for the lien and evidence that you have paid the contractor. If the lien is being foreclosed, also send a copy of the lien foreclosure documents.

**PLEASE READ THE ABOVE INSTRUCTIONS, ANSWER THE QUESTION ASKED; SIGN, DATE AND RETURN THIS FORM WITH YOUR STATEMENT OF CLAIM. FAILURE TO DO SO WILL DELAY PROCESSING YOUR CLAIM.**



FOR OFFICE USE ONLY
CLAIM NUMBER: _____

### STATEMENT OF CLAIM — MATERIAL/EQUIPMENT

<b>1. Company Making Complaint:</b>			<b>2. Complaint Against:</b>		
Company Name _____			Name _____	Regis # _____	
Name of Representative _____		Position/Title _____	Company _____		
Mailing Address _____			Mailing Address _____		
City _____	Zip _____	Phone(s) _____	City _____	Zip _____	Phone(s) _____
<b>3. Materials or equipment were used for work in Rhode Island:</b>			<b>FOR OFFICE USE ONLY</b>		
<b>4. Job Site Address(es):</b> _____			Registration Dates _____		
<b>5. Beginning date of invoices:</b> _____ <b>Ending date of invoices:</b> _____			Claim Type _____		
<input type="checkbox"/> Check this box if other claim(s) have been filed relating to this claim. (Claim No.(s) _____ )  <input type="checkbox"/> Check this box if this issue has been submitted to a court or arbitration for determination or resolution, and attach details.			Registered Name of Builder _____		

Please complete the following recap and attach to this Statement of Claim two copies of each invoice listed on the recap. Invoices must be listed in chronological order (oldest first, most recent last). The total amount claimed must reconcile with the invoices attached.

DATE OF INVOICE	INVOICE #	INVOICE AMOUNT	DATE OF INVOICE	INVOICE #	INVOICE AMOUNT

A. Total of invoices listed ..... \$ \_\_\_\_\_

B. Enter total amount of tools, interest, and service charges included in above invoices ..... \$ \_\_\_\_\_

C. Enter total payments received or other credits to apply against above invoices ..... \$ \_\_\_\_\_

D. Enter total of B and C (B plus C) ..... \$ \_\_\_\_\_

E. Total amount claimed (A minus D) ..... \$ \_\_\_\_\_

The foregoing is true, complete, and correct to the best of my knowledge and belief.

Date \_\_\_\_\_

Signature \_\_\_\_\_

RETURN ALL COPIES TO  
 BUILDING CONTRACTORS' REGISTRATION BOARD

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- (5) When the Commission determines that a registrant, against whom a claim has been filed, has breached a contract or performed negligent work; the Commission may recommend a resolution consistent with the terms of the contract or with generally accepted building and industry standards.
- (6) The Commission may propose a settlement to resolve any claim. If the parties involved sign a settlement agreement put forth by the Commission, the agreement shall be binding unless breached by either party. The commission may close the file without notifying the claimant whenever:
  - (a) The claimant notifies the Commission that the terms of the settlement agreement has been fulfilled;
  - (b) The claimant fails to notify the Commission in writing, and within thirty (30) days of the agreed upon completion date shown in the settlement that the terms have not been fulfilled.
- (7) The claimant may seek monetary damages whenever:
  - (a) The claim has not been disposed and/or dismissed;
  - (b) The claimant or the person(s) against whom the claim is filed does not agree with the settlement proposed by the Commission;
  - (c) The person(s) against whom the claim is filed does not fulfill the terms of the settlement agreements through no fault of the claimant and the claimant notifies the Commission in writing within thirty (30) days of the agreed upon completion date.
- (8) Whenever the Commission determines that monetary damages may be considered in lieu of other remedies to resolve a claim, the claimant:
  - (a) Shall submit substantiating evidence to support the amount alleged to be due;
  - (b) Shall seek payment for only those items shown on the statement of claim form;
  - (c) May be required to submit an estimate for the cost of correction for the items shown on the statement of claim form. Said estimate must be obtained from a registrant.
- (9) To resolve a claim involving monetary damage the Commission may:
  - (a) Issue a notice of hearing to parties to give the opportunity for a hearing;
  - (b) Set an Administrative hearing to mediate the facts of the claim and the amount alleged due.

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- (10) The Commission shall not issue an order for damages in an amount greater than the amount claimed due at the hearing.
- (11) No monetary award shall be made for attorney fees, interest, or other Administrative costs, except as provided for; in Section 4.8 (mechanic lien claims), by court order or by specific written contract language.
- (12) Administrative hearings may be held before a hearing officer of the Commission. The claimant must prove that damages have occurred and that those damages have been caused by the registrant, and the monetary value of those damages. If the claimant fails to carry this burden of proof, the Commission will dismiss the claim.
- (13) If the claimant, after being properly served notice of the hearing in accordance with these rules, fails to appear at a hearing, the Commission will dismiss the claim, unless it finds that failure to appear was caused by circumstances outside the control of the claimant.
- (14) If the registrant, after being properly served notice of a hearing in accordance with these rules, fails to appear at a hearing, the Commission will issue a default order based upon the claimants' representation of a prima facie case. The only exceptions will be those situations in which the registrants failure to appear was caused by circumstances outside the registrants control. At the discretion of the Executive Director, if cause is beyond the control of the registrant, a new Administrative hearing may be schedule.
- (15) Claimant or registrant may challenge and offer evidence to disprove the Commissions investigative report, if any, at an Administrative hearing.
- (16) Based upon evidence received at the hearing, the hearing officer will prepare findings of fact and conclusions, will issue a proposed order. The proposed order may order the registrant to pay monetary damages to the claimant, send the contractor back to repair, or order a combination of monetary damages and repair work, or dismiss the claim. The Commission may consider any amounts due and unpaid to the registrant from the claimant under the terms of the contact and may reduce any proposed award by that amount.
- (17) The record of the Commission hearings will include a tape recording of the proceeding. Tape recordings more than thirty (30) days beyond the end of the 30 day appeal period, following the issuance of the Commissions final order will be discarded, except when the petition for judicial review to the Court of Appeals has been timely filed. Any additional cost incurred due to

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service or processing of the final order will be the responsibility of the registrant or party found at fault.

- (18) Final orders issued may reflect a monetary award if the proposed order was not fulfilled.
- (19) Throughout the processing of a claim, the claimant has the responsibility to pursue the claim and to respond in a timely manner to requests from the Commission for information or documentation. Failure of a claimant to respond to correspondence from the Commission, or to provide requested information or documentation within a time frame specified in that correspondence or request, may result in closure of the claim file by the Commission without further notice to the claimant.
- (20) Estimates are required prior to an Administrative hearing or at the hearing to be used as the basis for a monetary award. All estimates must be from registered contractors, if work to be conducted requires a registration. Criminal prosecution of violations of final orders may not result where estimates are not submitted at an Administrative hearing. A monetary award may be determined by the hearing officer from the contract balance or for repair work at the hearing officers discretion, based on his/her expertise.

#### **4.5 THE COMMISSIONS RIGHT TO REFUSE AND/OR DISMISS CLAIMS**

- (1) The Commission may, under the authority of 5-65-2(4), discontinue processing a claim whenever it determines that the issued involved are more suited to adjudication by a court.

The Commission may resume processing the claim if:

- (a) The claimant had delivered a copy of the final judgment rendered by the court within 30 days of that action. The Board may then act on the contractor's registration, after providing notice and opportunity for a hearing. The Commission may, without notice to the claimant, close the claim file whenever the claimant fails to comply with the requirements of this section. A claim file closed as set forth in this section shall not be reopened.
- (2) The Commission may, under the authority of 5-65-12(b) discontinue processing a claim and dispose the claim file, whenever it is determined that either party has submitted the case to a court, arbitration, or other entity authorized by law to effect a resolution.

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- (3) The Commission may resume processing a claim which has been previously discontinued due to the fact that it was submitted to a court, arbitrator or other entity if:
  - (a) The claimant submits copies of all final decisions or judgments rendered by the court or other entity together with the complaint or other pleadings used in the case. Said data must be submitted within 30 days of the final action. The Board may then act on the contractors registration after having provided notice and opportunity for a hearing. The claimant or respondent shall provide the Commission with a copy of the filed civil complaint.
- (4) To resume processing the claim, the Commission shall accept a judgment of a court of competent jurisdiction or a decision of another entity as the final determination of the merits of the claim.
- (5) If at any time during the processing of the claim, prior to issuance of an order, the Commission finds that the issues involved in the claim have been submitted to a court for determination, (excepting a petition to enforce a lien pursuant to G.L. 34-28-10) or to arbitration, or to any entity authorized by law or the parties to effect a resolution, it may discontinue processing the claim.
- (6) Whenever the Commission determines that the value of the damages due the claimant is less than that owed the registrant under the terms of the contract, the Commission may dismiss the claim.
- (7) If at any time during the processing of the claim, the claimant accepts a valid promissory note from the registrant as settlement of the claim, the Commission will dismiss the claim. The Commission will consider that the claimant, by accepting a valid promissory note, has chosen another forum for resolution of the claim. Dismissal of the claim will be final, and the claim will not be reopened.
- (8) If at any time during the processing of the claim the Commission finds that the nature or complexity of the issues are such that a court would be a more appropriate forum for adjudication, it may discontinue processing the claim.
- (9) If either party refuses to sign a waiver to give up their right to a trial by jury at the Administrative Hearing, no monetary damages will be awarded. Fines and action on a contractors registration may be imposed.
- (10) The Commission reserves the right to escrow funds for either party, and hold until it is determined, to the Boards satisfaction, that there is a resolution to the claim in dispute. The Commission may refuse to accept a claim if the facts and issues of the claim are the same as those in a claim previously filed and subsequently disposed.

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### **4.6 CONTRACTS WITH ARBITRATION AGREEMENTS**

- (1) If a claim is received which is based upon a contract that contains an agreement by the parties to arbitrate disputes arising out of the contract, the specific terms of the arbitration agreement supersede Commission regulations. The Commission will take the following action:
  - (a) Inform the claimant that the Commission will accept the claim for processing only if both parties agree to waive arbitration. The necessary waiver must be written, signed, and received by the Commission within 30 days (or within the time period specified in the contract for the commencement of arbitration, whichever is later) of the date the commission notifies the parties that a waiver is required. Such notice shall be made by mail.
  - (b) If the Commission receives no waiver from the claimant, the claim will be closed and will not be reopened.
  - (c) If the contractor does not waive arbitration as set forth in the contract, the Commission will allow the contractor the remaining time to commence arbitration. If the contractor fails to submit evidence to the Commission that arbitration has been commenced within the 30 days or the time period specified by the contract (which ever is later), the Commission will resume processing the claim.
  - (d) If arbitration is commenced, in accordance with the Rhode Island Public Works Arbitration Act, RI G.L. 37-161-1 et seq., then it shall be binding upon the participants. The contractor shall submit evidence substantiating this within the period referred to in subsection (1)(c) of this regulation and the Commission will discontinue processing the claim until the arbitration is completed. Neither party can file a claim for damages with the Board after going through arbitration. A claim may be filed to act on the contractors registration status within 30 days of the date of final action by the arbitrator, delivers to the Commission a copy of the arbitration award or decision.

### **4.7 COURT JUDGMENTS**

- (1) A court judgment may constitute the basis for action on a registration in the following situations:
  - (a) A claimant initiated litigation against the contractor, and the litigation resulted in a judgment in favor of the claimant;
  - (b) A claimant has filed a claim which the Commission ceased processing because of its nature and complexity, the claimant pursued the matter

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through the courts, and the litigation resulted in a judgment in favor of the claimant.

- (2) Upon receipt of a timely filed judgment, the Commission will take the following actions:
  - (a) Issue a notice of hearing and schedule an Administrative hearing.

#### **4.8 MECHANICS LIEN CLAIMS**

- (1) Upon acceptance of a claim, the Commission shall send a copy of the claim to the contractor and shall initiate an investigation to determine the validity of the claim.
  - (a) Investigation by the Commission will include:
    - A. A determination of whether the claimant paid the contractor for work performed or materials supplied or equipment rented subject to Chapter 565 and whether the contractor failed to pay the subcontractor, or material or equipment supplier, thereby causing a lien to be filed against the claimants property; and
    - B. A determination of whether the lienor filed the lien with the recording officer of the city or town.
  - (b) If the contractor contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the registrants account, the contractor may subpoena the lienor and pertinent records to any hearing held by the Commission.
  - (c) If at any time prior to the issuance of a final order the Commission determines that the lien is unenforceable or invalid, the Commission may proceed with the determination of the claim.
- (2) Claims may include attorney fees, court costs, interest and/or service charges if these items are included as part of the mechanics lien or incurred as costs in discharging the lien. Awards to owners for costs in discharging the lien shall not exceed the amount of the lien.
- (3) The Commission may reduce the amount awarded to the claimant by:
  - (a) Any amount the claimant owes the contractor,
  - (b) Any amount included for tools or equipment not fabricated into the structure.



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- (4) If a claimant files two or more claims against a contractor relating to work performed under the same contract(s) and if the claimant has not paid the contractor the full amount of the contract, the amount awarded on each claim will be reduced on a pro rated basis. No proposed or final order shall be issued on any claim until all claims involving the two parties filed within the same 90 day period are ready for such order.
- (5) If a suit is filed to enforce a lien that is the subject of a claim, the Commission shall send notice to the claimant that:
  - (a) The claimant has the right to request a stay of the proceedings until the Commission's processing of the claim is complete.
  - (b) The Commission will hold the claim open for 60 days from the date of the notice to allow the claimant to obtain a stay.
  - (c) The Commission will close the claim if evidence is not received within 60 days from the date of the notice that a stay has been obtained.
  - (d) Upon timely receipt of evidence that a stay has been obtained, the Commission will resume processing the claim.
- (6) If a mechanics lien claim involves the same facts and issues as any other open claim, the Commission shall process the claims together.
- (7) If the Commission awards monetary damages to the owner to discharge a lien, the Commission may reduce the amount awarded related claims by the amount of the award in the mechanic lien claim.

#### **4.9 EXCEPTIONS TO COMMISSION ORDERS**

- (1) Claimant or contractor may file written exceptions if they believe that the Commission has made a procedural error or that the proposed order is not supported by evidence received at the hearing or for any other reason. To be considered, exceptions must be received by the Commission within 20 days of the date of mailing of the proposed order, accompanied by a non-refundable \$20.00 processing fee. If written exceptions are not timely received, the Commission may issue a final order.
- (2) If exceptions are timely received, the matter will be set for consideration by the members of the Board at their next regular meeting for which agenda space is available. Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to the Board meeting date if the original exceptions were timely received.

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- (3) Claimant and registrant, and/or their attorney(s), may appear before the members of the Board to argue for or against the proposed order. Oral argument will be permitted only if the original exceptions were timely received.
- (4) At the meeting of the members of the Board, the Board will consider evidence received at the hearing and exceptions and written or oral argument for or against the proposed order, but the Board will not consider new or additional evidence. Time allowed for oral argument before the members of the Board may be limited to ten minutes for each side.
- (5) The members of the Board may affirm the proposed order and findings of fact, modify either or both, or send the case back to a new hearing. Unless the case is sent back to a new hearing, the Commission will issue a final order after the Board meeting.
- (6) Final orders, which have been appealed, are subject to judicial review as set forth in the Administrative Procedures Act, Chapter 42-35 of the General Laws.
- (7) The Board will also hear motions to vacate or other motions as long as relative to RI General Law 5-65 et el.

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**5 DIVISION 5 - - - CIVIL PENALTIES**

**5.0 CIVIL PENALTIES**

- 5.1 (1) (a) If the Commission proposes to assess a civil penalty, it shall issue and serve on the respondent a proposed order, giving the opportunity for a hearing.
- (b) If the Commission issues a proposed order and no written request for a hearing is received by the Commission within 20 days of the date of mailing the proposed order, the Commission may issue a final order as proposed.
- (c) If the Commission issues a proposed order and a written request for a hearing is timely received, the Commission will set an Administrative hearing to determine whether the respondent has violated any provision of Chapter 5-65 or of these rules, and if so, the amount of the civil penalty to be assessed.
- (d) A notice of hearing shall contain the amount of the civil penalty proposed by the Commission. The Commission shall not issue a final civil penalty order in an amount greater than that shown in the notice of hearing unless multiple violations or fines from claim(s).
- (2) Administrative hearings may be held before a hearing officer of the Commission. The Commission's evidence may be entered into the record by the hearing officer, or by another representative of the Commission. If the respondent fails to appear at the hearing, nevertheless, the Commission must present a prima facie case.
- (3) Based on evidence received at the hearing, the hearing officer will prepare findings of fact and conclusions and make recommendations to the Commission for disposition of the case. The Commission, after review of the findings of fact and conclusions, will issue a proposed order assessing a civil penalty in a specified amount or dismiss the matter.
- (4) The respondent may file written exceptions, if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the Commission within 20 days of the date of mailing of the proposed order. If written exceptions are not timely received, the Commission may issue a final order as proposed.
- (5) If exceptions are timely received, the matter will be set for consideration by the members of the Board at their next regular meeting, for which

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agenda space is available. Written argument in opposition to the proposed order will be accepted before the Board meeting date if the original exceptions were timely received.

- (6) The respondent, and/or the respondents attorney, may appear before the members of the Board to argue against the proposed order, if the Commission receives written notice of intent to do so before the Board meeting date. Oral argument will be permitted if the original exceptions were timely received.
- (7) At the meeting members of the Board will consider evidence received at the hearing and exceptions and written or oral argument relative to the proposed order, but the Board will not consider new or additional evidence.
- (8) The members of the Board may affirm the proposed order and finding of fact, modify either or both, or send the case back to a new hearing. Unless the case is sent back to a new hearing, the Commission will issue a final order after the Board meeting.
- (9) Time allowed for oral argument, before members of the Board, may be limited to 10 minutes.
- (10)
  - (a) A civil penalty order is due and payable on the date of the final order.
  - (b) The Commission may initiate its own collection proceedings as allowed by law.
  - (c) Interest will accrue in assessed penalties. Interest will accrue from the date of the final order, but will not be added to the civil penalty amount until 70 days after the final order date, unless appealed.
- (11) The Commission may revoke the registration of any contractor who fails to pay on demand a civil penalty, which has become due and payable.

#### **5.1 SCHEDULE OF FINES**

##### **5.1.1 The Commission may assess fines according to the following schedule:**

- (1) \$500.00 for the first offense for advertising or submitting a bid to do work as a contractor or subcontractor in violation of Section 5 65 3(1) and Regulation 3.0(7), may be reduced at the Commissions discretion, if the respondent registers, or to \$100.00 if the advertisement or bid is withdrawn immediately upon notification from the Commission that a

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violation has occurred and no work was accepted as a result of the advertisement or bid; and

- (2) \$500.00 for the first offense without possibility of reduction for advertising or submitting a bid to do work as a contractor or subcontractor in violation of Section 5-65-3(a) and Regulation 3.0 (7), when one or more previous violations have occurred; and
- (3) \$500.00 for the first offense for performing work as a contractor or subcontractor in violation of Section 5-65-3 which may be reduced at the Commissions discretion if the respondent registers within a specified time; and
- (4) \$500.00 for the first offense for performing work as a contractor or subcontractor in violation of Section 5-65-3(1), when an owner has filed a complaint for damages caused by performance of that work which may be reduced, at the Commissions discretion, to not less than \$100.00, if the contractor registers within a specified time and settles or makes reasonable attempts to settle with the owner; and
- (5) \$500.00 for the first offense for performing work as a contractor or subcontractor in violation of Section 5-65-3(1), when one or more violations have occurred; and
- (6) \$25.00 for the first offense for failure to respond to the Commissions request for the list of subcontractors required in Section 5-65-3(h); and
- (7) \$500.00 for the first offense for hiring a non-registered subcontractor; and
- (8) Failure to include registration number in advertising, in violation of Regulation 3.0(8): first offense, \$100.00; second offense, \$400.00; subsequent offenses, \$1,000.00.
- (9) Failure to list with the Board a business name, under which business as a contractor or subcontractor is conducted, in violation of Regulation 3.0(5): first offense, \$50.00; second offense, \$100.00, subsequent offenses, \$200.00.
- (10) Altering a registration card or using another contractor's registration number shall result in a \$1,000.00 fine, or working with a revoked, suspended or invalid registration.

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**6 DIVISION 6 - - - CONSTRUCTION STANDARDS**

**6.0 PERFORMANCE STANDARDS**

(a) The following performance standards set minimum standards that prescribe the level for quality of materials and performances in workmanship for the construction or alteration of residential structures from 1 through 4 dwelling units. This division shall establish the performance of levels of qualified workmanship in regard to the evaluation of "negligent work" or "improper work" as cited G.L. 5-65-11, types of allowable claims:

- 1) To the extent that detailed minimum performance standards for construction have not been enumerated in these Performance Standards, contractors shall construct homes in accordance with good industry practice, which assures quality of materials and workmanship. Likewise, the validity of any home buyer's claims for defects for which a standard has not been enumerated here, shall be determined on the basis of good industry practice which assures quality of materials and workmanship, and any conciliation or arbitration of such claims shall be conducted accordingly.
- 2) The Performance Standards list specific items with each separate area of coverage.

**Rules concerning site work are as follows:**

(1) GRADING

(a) Possible deficiency: Settling of ground around foundation, utility trenches, or other areas on the property where excavation and back fill have taken place that affect drainage away from the house.

- 1) Performance Standard: Settling of ground around foundations, walls, utility trenches, or other filled areas, which exceeds a maximum of six inches from the finished grade established by the contractor, is a deficiency.

(2) DRAINAGE

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(a) Possible deficiency: Improper grades and swales, which cause standing water and affect the drainage in the immediate area surrounding the home.

- 1) Performance Standard: Necessary grades and swales shall be established to provide proper drainage away from the house. Site drainage under this standard is limited to those immediate grades and swales surrounding the home. Standing or ponding water within the immediate surrounding area of the home shall not remain for a period longer than 24 hours after a rain. Where swales are draining from adjoining properties or where a sump pump discharges, an extended period of 48 hours is to be allowed for the water to dissipate. The possibility of standing water after an unusually heavy rainfall should be anticipated and it is not to be considered a deficiency. No grading determination is to be made while there is frost or snow or when the ground is saturated.
- 2) Exclusion: Standing or ponding water on the property which does not directly affect the immediate area surrounding the foundation of the home, caused by unusual grade conditions, retainage of treed areas, or sodding done by the homeowner is not considered a defect.
- 3) Owner Responsibility: The owner is responsible for maintaining such grades and swales once properly established by the contractor to prevent runoffs and erosion of the soil.
- 4) Exclusion: Soil erosion and runoff caused by failure of the owner to maintain the properly established grades, drainage structures and swales, stabilized soil, sodded, seeded, and landscaped areas.

(b) Possible Deficiency: Grassed or landscaped areas which are disturbed or damaged due to work on the property in correcting a deficiency.

- 1) Performance Standard: Landscaped areas, which are disturbed during repair work, is a defect.
- 2) Exclusion: Replacement of trees and large bushes, which existed at the time the house, was constructed or those, added by the owner after occupancy or those, which subsequently die, are excluded.

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Rules concerning concrete are as follows, provided that the control joints or expansion joints have been installed as per industry standards:

(1) CAST-IN PLACE CONCRETE:

(a) Possible Deficiency: Basement or foundation wall cracks other than expansion or control joints.

- 1) Performance Standard: Non-structural cracks are not unusual in concrete foundation walls. Cracks in excess of 1/8" in width are considered excessive.

(b) Possible Deficiency: Cracking of basement floor.

- 1) Performance Standard: Minor cracks in concrete basement floors are common, provided that the control joints or expansion joints have been installed as industry standards. Cracks exceeding 1/8" in width or 1/8" in vertical displacement is a deficiency.

(c) Possible Deficiency: Cracking of attached garage floor slab.

- 1) Performance Standard: Cracks in garage floor slabs in excess of 1/8" in width or 1/8" in vertical displacement is a deficiency.

(d) Possible Deficiency: Cracks in attached patio slab.

- 1) Performance Standard: Cracks in excess of 1/8" in width or 1/4" in vertical displacement are defects. An "attached patio" is defined as a concrete patio slab on grade which is an integral part of the home being structurally supported by footings, block walls, or reinforced concrete and connected to the foundation.
- 2) Exclusion: Patio slabs, which are poured separately, and abut the house, are excluded.

(e) Possible Deficiency: Cracks in concrete slab-on grade floors, with finish flooring.

- 1) Performance Standard: Cracks, which rupture or significantly impair the appearance or performance of the finish flooring material, is a deficiency.

(f) Possible Deficiency: Uneven concrete floor slabs.



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- 1) Performance Standard: Except for basement floors or where a floor or portion of a floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions or area of unevenness exceeding 1/4" in 32"s or slopes in excess of 1/240 of room width or length (i.e.: 10.0 wide room not to exceed 1/2" out of level).

(g) Possible Deficiency: Pitting scaling or spalling of concrete work.

- 1) Performance Standard: Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering use, unless determined by a certified testing agency provided by the claimant and/or respondent.
- 2) Exclusion: Deterioration caused by salt, chemicals, or implements used, and other factors beyond the contractors control.

(h) Possible Deficiency: Excessive powdering or chalking of concrete surfaces.

- 1) Performance Standard: Excessive powdering or chalking of concrete surfaces is a deficiency, but should not be confused with normal surface dust that may accumulate for a short period after the home is occupied.

(i) Possible Deficiency: Separation of brick or masonry edging from concrete slab and step.

- 1) Performance Standard: It is common for the joint to crack between concrete and masonry due to the dissimilarity of the materials. Cracks in excess of 1/4" are a deficiency.

(2) CONSTRUCTION AND CONTROL JOINTS:

(a) Separation or movement of concrete slabs within the structure at construction and control joints.

- 1) Performance Standard: None
- 2) Exclusion: Concrete slabs within the structure are designed to move at construction or control joints and is not a deficiency.
- 3) Homeowner Responsibility: Maintenance of joint material.

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Rules Concerning Masonry Are As Follows:

(1) UNIT MASONRY (BRICK, BLOCK, AND STONE):

(a) Possible Deficiency: Cracks in non-bearing or non-supporting walls.

- 1) Performance Standard: Small shrinkage cracks are not unusual running through masonry and mortar joints. Cracks in excess of 1/8" in width is a deficiency.
- 2) Homeowner Responsibility: Materials to be cleaned according to appropriate industry standards.

(b) Possible Deficiency: Cracks in bearing or supporting masonry walls.

- 1) Performance Standard: Vertical or diagonal cracks which do not affect the structural ability of masonry bearing walls, are not unusual. Cracks in excess of 1/8" in width are a deficiency.

(c) Possible Deficiency: Horizontal cracks in basement and foundation walls.

- 1) Performance Standard: Horizontal cracks in the joints of masonry walls are not common but may occur. Cracks 1/8" or more in width are deficiencies.

(d) Possible Deficiency: Cracks in masonry walls or veneer above grade.

- 1) Performance Standard: Small cracks are common in mortar joints or masonry construction. Cracks 1/8" or greater in width are deficiencies.

(e) Possible Deficiency: Cracking settling or heaving of stoops and steps.

- 1) Performance Standard: Stoops and steps are not to settle or heave in excess of 1" in relation to the house structure. Cracks, except hairline cracks less than 1/8", are not acceptable in concrete stoops. A separation of up to 1/2" is permitted where the stoop or steps abut the house or where an expansion strip has been installed.

(f) Possible Deficiency: Standing water on stoop, steps, porches, and attached concrete patios.

- 1) Performance Standard: Standing water is a deficiency if it is a hazard to individuals and/or causes damage to the home, or in

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cases where standing water exists due to settlement or heaving as defined under paragraph (d) 1.e above.

#### (2) STUCCO AND CEMENT PLASTER

(a) Possible Deficiency: Cracking or spalling of stucco and cement plaster.

- 1) Performance Standard: Hairline cracks in stucco or cement plaster are common especially if applied directly to masonry back-up. Cracks greater than 1/8" in width or spalling of the finish surface is a deficiency. NOTE: Contractor not responsible for failure to match color or texture, due to nature of material.

#### Rules concerning carpentry are as follows:

#### (1) ROUGH CARPENTRY

(a) Possible Deficiency: Floors squeak, due to improper installation or loose sub floors.

- 1) Performance Standard: A large area of floor squeak which is noticeable, loud, and objectionable is a defect.
- 2) Exclusion: Squeak proof floors cannot be guaranteed, an isolated floor squeak is not a defect.

(b) Possible Deficiency: Uneven wood framed floors.

- 1) Performance Standard: Floors which are more than 1/4" out of level within any 32" measurement is a deficiency. Floor slope within any room which exceeds one-two hundreds fortieths of the room width or length is a deficiency (that is, 10' - 0" wide room - not to exceed 1/2" out of level).
- 2) Contractor Responsibility: Correct or repair to meet the allowances of the above standard.

(c) Possible Deficiency: Bowed stud walls or ceilings.

- 1) Performance Standard: All interior and exterior frame walls or ceilings have slight variations on the finish surfaces. Bowing should not be visible so as to detract from the finished surface. Walls or ceilings, which are, bowed more than 1/4" within a 48" horizontal or vertical measurements are a deficiency.

(d) Possible Deficiency: Wood frame walls out of plumb.

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- 1) Performance Standard: Wood frame walls which are out of plumb more than 1/2" in an 8' vertical measurement is a deficiency.
- (e) Possible Deficiency: Minor warping, checking or splitting or wood framing is common as the wood dries out, and its not considered a deficiency. A condition, which affects the integrity of the member or any applied surface material, is a deficiency.
- (f) Possible Deficiency: Exterior sheathing and subflooring which delaminates or swells.
  - 1) Performance Standard: Sheathing and subflooring when properly installed for its intended use and delaminates or swells on the side a finish material has been applied, is a deficiency.
- (g) Condition: Ridging of roof plywood:
  - 1) Performance Standard: Roof plywood may ridge due to normal contraction and expansion. If ridging occurs, it may be noticeable through the roof shingles.
  - 2) Responsibility: None.
- (2) FINISH CARPENTRY:
  - (a) Possible Deficiency: Unsatisfactory quality of finished exterior trim and workmanship.
    - 1) Performance Standard: Joints between exterior trim elements, and siding, or masonry, which are in excess of 3/16", is a deficiency. In all cases, the exterior trim abutting masonry and siding shall be capable of performing its function to exclude the elements.
  - (b) Possible Deficiency: Unsatisfactory quality of finished interior trim and workmanship.
    - 1) Performance Standard: Joints between moldings and adjacent surfaces, which exceed 1/8" or greater in width, is a defect.
    - 2) Contractor Responsibility: Repair defective joints and touch up finish coating, where required, to match as close as possible.

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(c) Possible Deficiency: Surface defects in finished woodwork and millwork such as checks, splits, and hammer marks.

1) Performance Standard: Finished woodwork and millwork is to be smooth without surface marks. Finished surfaces which fall beyond the limits of the Quality Standards of the Architectural Woodwork Institute is a deficiency.

(d) Possible Deficiency: Exposed nail heads in woodwork.

1) Performance Standard: Material used to fill nail holes has a tendency to shrink and dry up after a period of time and is not considered a deficiency. Nail holes which have not been filled on finished painted woodwork is a deficiency.

2) Exclusion: Nail holes do not have to be filled where the surface finish is not conducive or so designed to have nail holes filled because of the product.

(e) Cabinet Deficiency:

1) Gaps greater than 1/16" between cabinets or gaps greater than 1/8" joints at wall junctions are deficiencies.

#### Rules concerning thermal and moisture protection are as follows:

(1) WATERPROOFING:

(a) Possible Deficiency: Leaks in basement or in foundation/crawlspace.

1) Performance Standard: Leaks resulting in actual trickling of water through the walls or seeping through the floor are deficiencies.

2) Exclusion: Leaks caused by landscaping improperly installed by the owner, or failures by owner to maintain proper grades are excluded. Dampness in basement and foundation walls or in concrete basement and crawlspace floors is often common to new construction and is not a deficiency.

(b) Condition: Sump pump malfunction.

1) Performance Standard: In the case of sump pump installation, sump water will be ejected by an approved method to on-site grades and swales.

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- 2) Responsibility: The contractor will correct malfunctions only during the one (1) year period. The contractor shall not be liable for any damage to persons or property resulting from or as a consequence to any flooding or accumulation of water in the basement due to a malfunction of the sump pump, a power outage, or any other cause. The homeowner must follow the normal maintenance requirements of the system for the warranty to be valid.

SUGGESTION: If your sump pump will not start, shake the pipe to rid the system of foreign debris before contacting the contractor.

#### (2) INSULATION

(a) Possible Deficiency: Insufficient insulation.

- 1) Performance Standard: Insulation which is not installed around all habitable areas in accordance with established codes is a deficiency.

#### (3) LOUVERS AND VENTS

(a) Possible Deficiency: Insufficient attic and crawlspace ventilation.

- 1) Performance Standard: Attics and crawlspaces which are not properly vented causing moisture to accumulate resulting in damage to supporting members or insulation is a deficiency.

(b) Possible Deficiency: Leaks due to snow or driven rain through louvers and vents.

- 1) Performance Standard: Improperly installed louvers and vents that permit penetration of the elements under normal conditions is a deficiency.
- 2) Exclusion: Properly installed louvers or vents may at times allow penetration of rain or snow under strong wind conditions and is not a deficiency.

#### (4) EXTERIOR SIDING

(a) Possible Deficiency: Delamination, splitting, joint separation or deterioration of exterior siding.

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- 1) Performance Standard: Exterior siding with joint separations in excess of mfg installation instructions or which delaminates, splits, or deteriorates is a deficiency.

(b) Possible Deficiency: Loose or fallen siding.

- 1) Performance Standard: All siding which is not installed properly so as not to come loose or fall off is a deficiency.

(c) Condition: Expansion, contraction, and fading (vinyl and aluminum).

- 1) Performance Standard: The siding on your new home has been installed according to accepted building practices and meets all quality requirements established by the siding industry. Siding will expand and contract during climate changes. The accepted tolerance level for expansion/contraction is 1/2" in a 12' distance. This siding shall be hung in accordance to industry standards to allow for proper expansion and contraction in order to reduce possibility of oil canning. Panels should be properly overlapped in order to avoid seams from opening (1/2" to 1 1/4"). Vinyl siding should never be faced nailed. Fading may occur due to the variety of light and elements. High gloss siding may reflect ripples.
- 2) Responsibility: The contractor is responsible for siding application only. Contractor will repair or replace siding that has exceeded the tolerance level only during the one (1) year period.

NOTE: Repaired areas may not match in color and texture. The homeowner should contact the manufacturer directly for any other problems as the manufacturer warrant the product directly to the homeowner.

## (5) ROOFING

(a) Possible Deficiency: Roof or flashing leaks.

- 1) Performance Standard: Roof or flashing leaks that occur under normal weather conditions is a deficiency.
- 2) Exclusion: Where cause is determined to result from severe weather conditions such as ice and snow build-up, high winds and driven rains.

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(b) Possible Deficiency: Lifted, curled or torn roof shingles.

1) Performance Standard: Roof shingles which lift or curl during the first year of occupancy or tear loose during normal weather conditions is a deficiency.

(c) Possible Deficiency: Standing water on built-up roofs.

1) Performance Standard: A properly pitched built-up roof is to drain water except for minor ponding. Dead flat roofs will retain a certain amount of water. Excessive ponding of water which causes leaking of the built-up roof is a deficiency.

2) Exclusion: Standing or ponding water is not considered a deficiency.

#### (6) SEALANTS

(a) Possible Deficiency: Water or air leaks in exterior walls due to inadequate caulking.

1) Performance Standard: Joints and cracks in exterior wall surfaces and around openings which are not properly caulked to exclude the entry of water or excessive drafts is a deficiency.

2) Owner Responsibility: Maintain caulking once the condition is corrected.

#### (7) SHEET METAL

(a) Possible Deficiency: Gutters and downspouts leak.

1) Performance Standard: Gutters and downspouts which leak is a deficiency. Gutters, which are improperly pitched to drain water, is a deficiency.

2) Exclusion: Standing water in gutters is acceptable if it does not exceed 1" in depth.

3) Owner Responsibility: Responsible to keep gutters and downspouts free from leaves and debris to prevent overflow.

Rules concerning doors and windows are as follows:



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(1) DOORS: INTERIOR AND EXTERIOR

(a) Possible Deficiency: Warpage of interior or exterior doors.

- 1) Performance Standard: Interior and exterior doors that warp so as to prevent normal closing and fit is a deficiency. The maximum allowable warpage of an interior door is 1/4" when measured from top to bottom vertically or diagonally.

(b) Possible Deficiency: Door binds against jam or head of doorframe.  
Does not lock

- 1) Performance Standard: Passage doors that do not open and close freely without binding against the doorframe is a deficiency. Lock bolt is to fit the keeper to maintain a closed position.

(c) Possible Deficiency: Door panels shrink and expose bare wood.

- 1) Performance Standard: None.
- 2) Exclusion: Door panels will shrink due to the nature of the material, exposing bare wood at the edges and is not a deficiency, when door is properly sealed.

(d) Possible Deficiency: Door panels split.

- 1) Performance Standard: Door panels that have split to allow light to be visible through the door is a deficiency.

(e) Possible Deficiency: Bottom of doors rub on carpet surface.

- 1) Performance Standard: Where it is understood by the contractor and homeowner that carpet is planned to be installed as a floor finish, whether by the contractor or homeowner, the bottom of the doors which rub or disturb the carpet is a deficiency.
- 2) Exclusion: Where the carpet is selected by the homeowner having excessive high pile, the homeowner is responsible for any additional door undercutting.

(f) Possible Deficiency: Excessive opening at the bottom of interior doors.

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- 1) Performance Standard: Passage doors from room to room that have an opening between the bottom of the door and the floor finish material in excess of 1 1/2" is a deficiency. Closet doors having an opening in excess of 1 1/2" is a deficiency.

#### (2) GARAGE DOORS (ATTACHED GARAGE)

(a) Possible Deficiency: Garage door fails to operate or fit properly.

- 1) Performance Standard: Garage doors that do not operate and fit the door opening within the manufacturer's installation tolerances is a deficiency. Some entrance of the elements can be expected under heavy weather conditions and is not considered a deficiency.
- 2) Exclusion: No adjustment is required when cause is determined to result from the owner's installation of an electric door opener.

#### (3) WOOD, PLASTIC AND METAL WINDOWS

(a) Possible Deficiency: Malfunction of windows.

- 1) Performance Standard: Windows which do not operate in conformance with manufacturers' design and installation standards is a deficiency.

(b) Possible Deficiency: Double hung windows do not stay in place when open.

- 1) Performance Standard: Double hung windows are permitted to move within 2" tolerance, up or down when put in an open position. Any excessive movement exceeding the tolerance is a deficiency.

(c) Possible Deficiency: Condensation or frost on window frames and glass.

- 1) Performance Standard: None.
- 2) Exclusion: Window glass and frames will collect condensation on the frame and glass surface when humidity and temperature differences are present. Condensation is usually the result of temperature/humidity conditions in the home.

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(d) Condition: Air infiltration (windows and doors).

- 1) Performance Standard: Some air infiltration is normal and may be noticed especially during high wind conditions.
- 2) Responsibility: The contractor will correct this condition only if it is caused by ill-fitting windows, doors, and weather-stripping, and only during the one (1) year period. The homeowner may elect to install storm windows and doors to further alleviate this condition. The homeowner should consult with the manufacturers for proper material and installation.

#### (4) **HARDWARE**

(a) Possible Deficiency: Hardware does not work properly, fails to lock, or perform its intended purpose.

- 1) Performance Standard: All hardware installed on doors and windows, which does not operate properly, is a deficiency.

#### (5) **STORM DOORS, WINDOWS AND SCREENS**

(a) Possible Deficiency: Storm doors and windows do not operate or fit properly.

- 1) Performance Standard: Storm doors and windows when installed and do not operate or fit properly to provide the protection for which they are intended is considered a deficiency.

(b) Possible Deficiency: Screen panels do not fit properly. Screen mesh is torn or damaged.

- 1) Performance Standard: Rips or gouges in the screen mesh reported on a pre-closing walk through inspection report or openings between the screen panel and frame are deficiencies.
- 2) Owner Responsibility: The owner shall be responsible to notify the contractor of the deficiency upon occupancy or within thirty (30) days if there was no pre-closing inspection.

#### (6) **WEATHER-STRIPPING AND SEALS:**

(a) Possible Deficiency: Drafts around doors and windows.

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- 1) Performance Standard: Weather-stripping is required on all doors leading directly to the outside from a habitable area. Some infiltration is normally noticeable around doors and windows, especially during high winds. Excessive infiltration resulting from opening in poorly fitted doors or windows, or poorly fitted weather-stripping is a deficiency.

#### (7) GLASS AND GLAZING

##### (a) Possible Deficiency: Broken glass.

- 1) Performance Standard: Broken glass is a deficiency if it is reported on a pre-closing walk through inspection report.
- 2) Owner responsibility: Owner shall notify the contractor in writing within thirty (30) days from occupancy if no pre-closing walk through inspection report exists.

##### (b) Possible Deficiency: Clouding and condensation on inside surfaces of insulated glass.

- 1) Performance Standard: Insulated glass which clouds up or has condensation on the inside surfaces of the glass is a deficiency.

##### (c) Condition: Condensation on glass (windows).

- 1) Performance Standard: None.
- 2) Responsibility: None.

COMMENT: Condensation may appear on the room side surface of the glass. This type of condition is directly due to the home or room addition containing too high a humidity level. New homes and room additions can contain hundreds of gallons of excess water from foundations, sheetrock, paints, and other finishes. During the first heating season, this excess moisture will gradually flow out into the air in the home and collect on the window glass. Today, new homes and room additions are designed to be tighter and more energy efficient. Because of this, moisture in the air tends to stay in the home longer and collect on window glass during the heating season. The homeowner should try to open windows and doors as often as weather permits to allow this excess moisture to escape. The condensation condition may improve over time.

Rules concerning finishes are as follows:

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(1) LATH, PLASTER, AND GYPSUM WALLBOARD

(a) Possible Deficiency: Cracks in plaster wall and ceiling surfaces.

1) Performance Standard: Noticeable cracks exceeding 1/8" is a deficiency.

(b) Possible Deficiency: Excessive alligator or spider cracks when occurring in plaster is a deficiency.

(c) Possible Deficiency: Defects caused by poor workmanship such as cracks over door and window frames, over archways, blistering tape, excess material in joints, exposed corner beads, nail pops, or trowel marks.

1) Performance Standard: Slight defects such as occasional nail pops, seam lines and cracks are common in installations. Blisters in tape, excess material joints, and trowel marks, nail popping, and exposed corner beads are deficiencies. Nail pops are a defect only when there are signs of material cracking or falling away.

2) Responsibility: The contractor will, one time only, during the one-year period repair any cracks that exceed 1/8" in width.

3) Exclusion: Depressions or slight mounds at nail heads are not considered deficiencies.

(2) HARD SURFACE FLOORING (FLAGSTONE, MARBLE, QUARRY TILE, SLATE, CERAMIC TILE, ETC.)

(a) Possible Deficiency: Flooring cracks or becomes loose.

1) Performance Standard: Ceramic tile, flagstone or similar hard surfaced sanitary flooring which crack or become loose is a defect. Subfloor and wallboard are required to be structurally sound, rigid, and suitable to receive finish.

2) Exclusion: Cracking and loosening of flooring caused by the owner's negligence is not a deficiency.

3) Exclusion: The contractor is not responsible for slight color and pattern variations or discontinued patterns of the manufacturer.

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It shall not be required to replace the entire finish when the new material consists of less than 20% of the finish area.

- 4) Responsibility: Contractor responsible to assure proper underlayment on wood is installed to manufacturer's specifications. Tile to be installed to manufacturer's specifications and industry standards.

(b) Possible Deficiency: Cracks appear in grouting of tile joints or at junctions with other material such as a bathtub or shower.

- 1) Performance Standard: Cracks in grouting of tile joints are deficiencies. Regrouting of these cracks is a deficiency.
- 2) Responsibility: Contractor will, one time only, during the one year period repair any such cracks.
- 3) Exclusion: Open cracks or loose grouting, where the wall surface abuts the flashing lip at a tub or shower basin, are considered owner's maintenance and any resultant damage to other finish surfaces due to leaks, etc. are not considered a deficiency.

### (3) RESILIENT FLOORING

(a) Possible Deficiency: Nail pops appear on the surface of resilient flooring.

- 1) Performance Standard: Readily apparent nail pops are a deficiency.
- 2) Exclusion: Contractor is not responsible for discontinued patterns or color variations.

(b) Possible Deficiency: Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

- 1) Performance Standard: Readily apparent depressions or ridges exceeding 1/8" is a deficiency. The ridge or depression measurement is taken as the gap created at one end of a 6" straight edge placed over the depression or ridge with 3" on one side of the defect held tightly to the floor.

(c) Possible Deficiency: Resilient flooring or base loses adhesion.

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- 1) Performance Standard: Resilient flooring or base that lifts, bubbles, or becomes unglued is a deficiency.

(d) Possible Deficiency: Seams or shrinkage gaps show at resilient flooring joints.

- 1) Performance Standard: Gaps in excess of 1/8" or greater in width in resilient floor covering joints is a deficiency. Where dissimilar materials abut, a gap in excess of 3/16" is a deficiency.
- 2) Exclusion: The contractor is not responsible for discontinued patterns or color variations of floor covering.

#### (4) PLYWOOD WALL COVERING

(a) Possible Deficiency: Variations in paneling color, scratches, or checks on the finished surface.

- 1) Performance Standard: Plywood paneling pattern and color will often vary and this is not a deficiency. Scratches on the paneling surface are deficiencies if reported on a pre-closing walk through inspection report.
- 2) Responsibility: If the damaged paneling cannot be replaced with new paneling to the owners satisfaction, the deficiency may be repaired within reasonable standards of good materials and workmanship.
- 3) Owner Responsibility: The owner shall notify the contractor in writing within thirty (30) days of occupancy if no pre-closing walk through inspection reports exists.

#### (5) FINISHED WOOD FLOORING

(a) Possible Deficiency: Dents, chips, knotpops, open joints, or cracks in wood flooring. Dents and chips are deficiencies if reported on a pre-closing walk through inspection report.

- 1) Performance Standard: Dents, chips, knotpops, open joints, or cracks in floor boards of finished wood flooring, which exceed the manufacturers quality standards of the wood flooring grade, are considered deficiencies. Manufacturers grade quality standards shall be as defined by; Wood and Synthetic Flooring Institute, National Oak Flooring Association, and Maple Flooring Manufacturer's Association.

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#### (b) Condition: Swelling, Shrinkage, Squeaks.

- 1) Performance Standard: The acceptable shrinkage tolerance is 1/8" width as per NFMA (National Flooring Manufacturer's Association, Inc.).
- 2) Responsibility: The contractor cannot avoid swelling, shrinkage, cracks, and/or squeaks. The contractor will take the following corrective action: Swelling; vertical movement no more than 1/4". Shrinkage Cracks; if cracks are in excess of the accepted tolerance width of 1/8" the contractor will repair.

COMMENT: The floors installed in your new home are manufactured from kiln dried wood which has been sanded and sealed. Wood is a hydroscopic material, when exposed to air it will dry or pick up moisture until it is in equilibrium with the humidity and temperature of the air. Moisture absorption causes wood to swell, moisture loss causes wood to shrink, swelling occurs as wood gains moisture (from 01% to 25-30% moisture content, the fiber saturation point). SHRINKAGE begins at 25-30% moisture content. SQUEAKS may occur during the additional drying process of the underlayment of floor joists below. WOOD does not dry well or shrink equally in all directions.

#### (c) Condition: Dull finish.

- 1) Performance Standard: None.
- 2) Responsibility: None.

SUGGESTIONS: The floors in your new home have been sanded and sealed with no wax polyurethane or pacific plus (a new finish designed for allergic individuals). In order to retain the beauty of your wood floors, you should ONLY damp mop with water. CAUTION: If your wood floors were not finished with the above no-wax polyurethane or pacific plus products, check with the installer and/or the manufacturer for proper maintenance. If after a few years, your finish begins to look dull, you need only buff and recoat to bring back to its original state. We recommend no soap or wax products be used.

NOTE: Soap will dull the finish and wax makes the finish impossible to recoat the floor.

#### (d) Condition: Punctures, Scratches, Indentations:



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- 1) Performance Standard: None.
- 2) Responsibility: The contractor will correct any punctures, scratches, and/or indentations in wood flooring, one time only and ONLY if noted on the final inspection, by utilizing an appropriate wood filler or in extreme conditions replacing board.

SUGGESTIONS: All flooring can be punctured or scratched by nails extruding from shoes, heavy cartons with staples, or by sliding a large object such as a stove or refrigerator over the surface without taking the proper precaution. Indentations will occur when heavy items are placed on wood flooring.

SPECIAL CAUTION: High-heeled shoes can dent all wood flooring! The homeowner should take care that proper furniture rests are applied to all chairs and tables to eliminate the possibility of indentations. The homeowner should take proper precautions when moving heavy objects on wood flooring.

SPECIAL NOTATION: Wood contracts and expands with weather conditions. Although it is impossible to completely alleviate this situation, keeping your home at an even and reasonable temperature is an excellent precautionary measure. Proper humidity levels must be maintained. If other woods are used for flooring, please consult with the installer and/or manufacturer for proper care and maintenance.

- 3) Owner Responsibility: The owner shall report such deficiencies to contractor in writing within thirty (30) days of occupancy, if there was no pre-closing walk through inspection.

#### (6) PAINTING:

(a) Possible Deficiency: Knot and wood stains appear through paint on exterior.

- 1) Performance Standard: Excessive knot and wood stains which bleed through the paint are considered deficiencies.

(b) Possible Deficiency: Exterior paint or stain peels, deteriorates, or fades.

- 1) Performance Standard: Exterior paints or stains that peel or deteriorate during the first year is a deficiency.

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- 2) Exclusion: Fading, however, is normal and subject to the orientation of painted surfaces to the climatic conditions which may prevail in the area. Fading is not a deficiency.
- 3) Exclusions: When the Contractor's Registration Board has determined that the contractor has repaired a peeling paint condition in strict accordance with the paint manufacturers specifications, the contractor will be exempt from performing any future repairs to that specific structure.

(c) Possible Deficiency: Painting required as corollary repair because of other work.

- 1) Performance Standard: Necessary repair of painted surface required under this warranty is to be refinished to match surrounding areas as closely as possible.

(d) Possible Deficiency: Mildew or fungus forms on painted or factory finished surfaces.

- 1) Performance Standard: None.
- 2) Exclusion: Mildew or fungus that forms on a painted or factory finished surface when the structure is subject to various exposures (ocean, lake, riverfront, heavily wooded areas, or mountains) is not a deficiency.
- 3) Contractor Responsibility: None.

(e) Possible Deficiency: Deterioration of varnish or lacquer finishes.

- 1) Performance Standard: Natural finishes on interior woodwork which deteriorate during the first year of ownership is a deficiency.
- 2) Exclusion: Varnish type finishes used on the exterior will deteriorate rapidly and are not covered.

(f) Possible Deficiency: Interior paint coverage.

- 1) Performance Standard: Interior paint not applied in a manner sufficient to visually cover wall, ceiling, and trim surfaces is a deficiency.

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(g) Possible Deficiency: Paint splatters and smears on finish surfaces.

- 1) Performance Standard: Paint stains on porous surface which are excessive, that detract from the finish, and which cannot be removed by normal cleaning methods and are reported on a pre-closing walk through inspection are considered deficiencies.
- 2) Owner Responsibility: The owner shall notify the contractor within thirty (30) days of the completion of construction if a pre-closing walk through inspection report was not completed.

(7) WALL COVERING:

(a) Possible Deficiency: Peeling of wall covering installed by contractor.

- 1) Performance Standard: Peeling of wall covering is a deficiency, unless it is due to owners abuse or negligence.

(b) Possible Deficiency: Mismatching in wallcover pattern.

- 1) Performance Standard: Mismatched wallcovering pattern over a large area that severely detracts from its intended purpose due to poor workmanship is a deficiency.

(c) Possible Deficiency: Lumps and ridges and nail pops in wall board which appear after owner has wallcovering installed by others.

- 1) Performance Standard: None.
- 2) Exclusion: Owner shall insure that the surface to receive wallcovering is suitable and assumes full responsibility should lumps, ridges, and nail pops occur at a later date.

(8) CARPETING:

(a) Possible Deficiency: Seams in carpet.

- 1) Performance Standard: Seams in carpeting that separate due to improper installation is a deficiency.
- 2) Contractor Responsibility: The contractor shall correct to eliminate the separation.

(b) Possible Deficiency: Carpeting comes loose or excessive stretching occurs.

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- 1) Performance Standard: Wall to wall carpeting that comes loose is a deficiency.
- 2) Exclusion: Stretching that may occur in the carpeting is subject to the quality surface over which it is laid and is not a deficiency.

(c) Possible Deficiency: Spots on carpet, minor fading.

- 1) Performance Standard: Spots or stains on the carpeting is a deficiency if reported on a pre-closing walk through inspection report.
- 2) Exclusion: Fading is not a contractor deficiency, and contractor has no responsibility.
- 3) Owner Responsibility: The owner shall notify the contractor within thirty (30) days after installation if no pre-closing walk through inspection report exists.

Rules concerning specialties are as follows:

(1) FIREPLACES:

(a) Possible Deficiency: Fireplace or chimney does not draw properly causing smoke to enter the house.

- 1) Performance Standard: A properly designed and constructed fireplace or chimney is to function as intended. It is normal to expect that high winds can cause temporary negative draft situations. Similarly, negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In addition, the geographic location of the fireplace or its relationship to adjoining walls and roof may be the cause of negative draft conditions.
- 2) Exclusion: Where it is determined that the fireplace is properly designed and constructed, but still malfunctions due to natural causes beyond the contractors control, the contractor is not responsible.

(2) FIREPLACES (CONVENTIONAL):

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- (a) Condition: Accumulation cracks or voids on flue liner, chimney fires, downdrafts, inserts, and separation.
- (b) Performance Standard: Unless otherwise noted when possession is turned over to the homeowner by the contractor, the fireplace is free from defects and structurally sound.
- (c) Responsibility:
  - 1) Accumulations of combustion by-product: By-product of combustion (including soot, unburned carbon, and creosote) will accumulate along the flue liner. Depending on use, this accumulation may build up quickly over a period of years and may ignite if it becomes hot enough. The contractor is not responsible for any accumulation of combustion by-products.
  - 2) Cracks, Voids: Cracks or voids in the flue liner may develop from natural causes or from misuse of the fireplace by the homeowner. Any such cracks or voids, especially if they penetrate the flue liner, may present, or increase, a danger of creating a chimney fire, especially if the liner has accumulations of combustion by-products. The contractor is not responsible for any cracks or voids in the flue liner not noted.
  - 3) Chimney Fires: Chimney fires may be caused by accumulation of combustion by-products along or in conjunction with other factors, including cracks or voids in the flue liner. The contractor is not responsible for any chimney fires or any damage to persons or property occurring as a consequence of such chimney fires.
  - 4) Downdrafts: Certain wind conditions may create a downdraft in the chimney flue while the fireplace is in use, prevent smoke and other combustion grease from going up the chimney. the contractor is not responsible for any such downdraft or any damage to person or property occurring as a consequence of any such downdraft.
  - 5) Separation of Chimney from House: In accordance with the building code, the chimney and house are to be built independent of each other. It is normal for slight separation to occur due to differential movement of the wood and masonry. The contractor is not responsible for any minor separation of the chimney from the house. Minor is 3/8" separation from the main

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structure in any 10' vertical measurement anything over is a deficiency.

- 6) Fireplace Insert: The installation of a fireplace insert by the homeowner or anyone else, including a professional, is considered an alteration to the fireplace, which voids the contractors warranty upon any such installation.

#### (3) FIREPLACES (PRE-FABRICATED):

(a) Smoking: Due to insufficient chimney draft.

- 1) Intermittent
- 2) Continuous

(b) Performance Standard: A properly installed fireplace and chimney functions properly. Wind conditions, atmospheric pressure, and humidity can cause temporary negative draft (situation 1); Environmental obstructions such as large nearby trees, building, or hills can cause continuous negative draft (situation 2).

(c) Responsibility:

- 1) Intermittent smoking: None.
- 2) Continuous smoking: Contractor will arrange for a determination of a cause of the condition and correct where possible only during the one (1) year period.

(d) Condition: Cracked/broken refractory (firebrick panels):

- 1) Performance Standard: None.
- 2) Responsibility: The contractor will replace damaged refractory panels only during the one (1) year warranty period. If refractory panels crack or break after the initial burning, the homeowner should contact the manufacturer for warranty information on the specific mode.

(e) Condition: Air infiltration into living area:

- 1) Performance Standard: None.

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- 2) Responsibility: None. Homeowner should contact the manufacturer for warranty information on the specific model.

COMMENT: Some air infiltration is normal and acceptable.

- (f) Condition: Paint finish of unit is scratched or damaged:

- 1) Performance Standard: None.
- 2) Responsibility: Paint finish of unit will be in good condition at time of final inspection before possession, and so noted on form executed by homeowner and contractor. The contractor will touch up finish as necessary, if touch up is agreed upon between homeowner and contractor at time of inspection.

- (g) Condition: Broken or inoperable glass doors or fan kits:

- 1) Performance Standard: None.
- 2) Responsibility: Glass doors and/or fan kits will be in good operating condition at the time of final inspection before possession and so noted on form, executed by homeowner and contractor. The contractor will adjust, repair, or replace the items, if items are agreed upon between the homeowner and the contractor at the time of the final inspection.

- (h) Built-in sauna and bath units:

- 1) Possible Deficiency: Refer to the pertinent section of these standards for deficiencies that may exist in construction, materials, finish, and equipment of a steam bath or sauna unit constructed on-site.
- 2) Performance Standard: Built-in equipment such as sauna and steam bath units are to be constructed and must operate properly under the same applicable standard for finishes and mechanical and electrical equipment involved.

Rules concerning asphalt are as follows:

- (4) Workmanship:

- (a) Possible Deficiency: Cracks appear in asphalt paving.

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- 1) Performance Standard: Cracks are not unusual in asphalt paving. Cracks in excess of 1/4" are a deficiency.

(b) Possible Deficiency: Puddling of water.

- 1) Performance Standard: A limited amount of puddling is common. Puddling in excess of 1/4" measured in a 18" diameter is considered a deficiency in critical areas only, 1/2" in 24" in other areas.

(c) Possible Deficiency: Improper pitch.

- 1) Performance Standard: Asphalt paving that pitches toward a house foundation, garage door, or any other critical area is a deficiency.

(d) Possible Deficiency: Roller marks.

- 1) Performance Standard: Roller marks in asphalt paving are common and not considered a deficiency.
- 2) EXCLUSION TO ABOVE STANDARDS: An asphalt "overlay" may be exempt from the above standards when condition of the base layer cannot be determined.

#### Rules concerning fencing are as follows:

(1) Fencing Installation:

(a) Possible Deficiency: Fence posts not properly installed.

- 1) Performance Standard: Fence posts are to be installed to manufacturers standards.

(b) Possible Deficiency: Improper or malfunctioning hardware.

- 1) Performance Standard: Hardware and fasteners that do not perform their intended function is a deficiency.
- 2) Responsibility: Fencing installed along property lines, unless contractually stated, contractor has no responsibility to establish property lines, (homeowners responsibility).

#### Rules concerning kitchen cabinets and vanities are as follows:



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- (a) Possible deficiency: Kitchen or vanity cabinet doors and drawers malfunction.
- 1) Performance standard: Cabinet doors, drawers and other operating parts that do not function as designed, are deficiencies if they are reported on a pre-closing walk through inspection.
  - 2) Owner Responsibility: The owner shall notify the contractor within thirty days after completion of construction if a pre-closing walk through inspection was not conducted.
- (b) Possible Deficiency: Surface cracks, delaminating and chips in high pressure laminates of vanity and kitchen cabinet countertops.
- 1) Performance Standard: Countertops fabricated with high pressure laminate coverings that delaminate, have chips, scratches, or surface cracks or joints between sheets that exceed one sixteenth inch 1/16" are considered deficiencies if reported on a pre-closing walk through inspection report.
  - 2) Owner responsibility: The owner shall notify the contractor within 30 days after completion of construction, if a pre-closing walk through inspection report does not exist.
- (c) Possible Deficiency: Warping of kitchen and vanity cabinet doors and drawer fronts.
- 1) Performance Standard: Warpage that exceeds one quarter inch 1/4" as measured from the face of the cabinet frame to the further most point of warpage on the drawer or door front in a closed position is a deficiency.
  - 2) Owner Responsibility: The owner shall notify the contractor within 30 days after completion of construction, if a pre-closing walk through inspection report does not exist.
- (d) Possible Deficiency: Gaps between cabinets, ceiling and walls.
- 1) Performance Standard: Countertop, splash, base and wall cabinets are to be securely mounted. Gaps in excess of one quarter inch, 1 /4" between wall and ceiling surfaces is a deficiency.

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Rules concerning mechanical systems are as follows:

(1) PLUMBING:

(a) Possible Deficiency: Plumbing pipes freeze.

- 1) Performance Standards: Drain, waste and water pipes are to be adequately protected to prevent freezing during normally anticipated cold weather.
- 2) Owner Responsibility: The owner is responsible to maintain suitable temperatures in the home to prevent pipes from freezing. Homes which are periodically occupied such as summer homes, or where there will be no occupancy for an extended period of time must be properly winterized or periodically checked to insure a reasonable temperature is maintained. Leaks occurring due to owners neglect and resultant damage are not the contractors responsibility.

(b) Possible Deficiency: Leakage from any piping.

- 1) Performance Standard: Leaks in any sanitary soil, waste vent and water piping are deficiencies and are covered during the first year.
- 2) Exclusion: Condensation on piping does not constitute leakage, and is not a deficiency, except where pipe insulation is required.

(c) Possible Deficiency: Faucet or valve leak.

- 1) Performance Standard: A valve or faucet leak due to material or workmanship is a deficiency and covered only during the first year.
- 2) Exclusion: Leakage caused by worn or defective washers or seal are a homeowner maintenance item.

(d) Possible Deficiency: Defective plumbing fixtures, appliances or trim fittings.

- 1) Performance Standard: Fixtures, appliances or fittings are to be judged according to the manufacturers standards as to use and operation and are covered only during the first year.

(e) Possible Deficiency: Stopped up sanitary sewers, fixtures and sanitary drains are deficiencies.

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- 1) Performance Standard: Sanitary sewer, fixtures and sanitary drains should operate and drain properly and are covered during the first year.
- 2) Exclusion: Sewers, fixtures, and drains, which are clogged through the owners negligence.

NOTE: A Contractor responsibility for defective sewer lines extends to the property line on which the home is constructed.

(f) Possible Deficiency: Chipped or damaged plumbing fixtures and appliances.

- 1) Performance Standard: Chips, cracks, or other such damage to plumbing fixtures and appliances are deficiencies if they are included in a pre-closing walk through inspection report.
- 2) Owner Responsibility: The owner shall notify the contractor within 30 days after completion of construction if no pre-closing walk through inspection was performed.
- 3) Exclusion: Where a fixture is built into surrounding wall areas such as a tub or shower basin, which requires repair, replacement is not covered except where the deficiency causes the fixture to be unusable.

(2) WATER SUPPLY:

(a) Possible Deficiency: Staining of plumbing fixtures due to high iron content in water.

- 1) Performance Standard: High iron content in the water supply system will cause staining of plumbing fixtures.
- 2) Contractor Responsibility: None. Maintenance and treatment of the water is the homeowners responsibility.

(b) Possible Deficiency: Drinking water supply potable.

- 1) Performance Standard: All water must be free from contamination that would affect its potability. Potable water is defined as water fit for human consumption. Water is considered potable when a certificate of compliance is issued by the local/county board of health. Any recommendation for

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treatment of water by the local/county board of health is contractual between owner and contractor and cannot be considered a deficiency.

2) Exclusion: Water that becomes nonpotable after certification by a source beyond the control of the contractor.

(c) Possible Deficiency: Water supply system fails to deliver water; or pressure is low.

1) Performance Standard: All service connections to municipal water main or private water supply are the contractor's responsibility when installed by him.

(d) Possible Deficiency: Noisy water pipes.

1) Performance Standard: Some noise can be expected from the water pipe system, due to the flow of water. Water hammer in the supply system is a deficiency and is covered only during the first year.

2) Exclusion: Noises due to water flow and pipe expansion are not considered deficiencies.

### (3) HEATING AND AIR CONDITIONING:

(a) Possible Deficiency: Inadequate heat.

1) Performance Standard: A heating system shall be capable of producing an inside temperature of 70 degrees Fahrenheit as is measured in the center of the room at a height of five feet above the floor, under local outdoor winter design conditions as specified in the latest edition of Rhode Island Energy Code and ASHRAE handbook in effect at the time the home was constructed.

NOTE: The outdoor design temperature established by ASHRAE varies geographically throughout the State of Rhode Island. There may be periods when the outdoor temperature falls below the design temperature, thereby lowering the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the heating system is controlled by a single thermostat for one or more floor levels.

(b) Possible Deficiency: Inadequate Cooling:

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- 1) Performance Standard: Where air conditioning is provided, the cooling system is to be capable of maintaining a temperature of 78 degrees Fahrenheit as measured in the center of each room at a height of five feet above the floor, under local outdoor summer design conditions as specified in the latest edition of the Rhode Island Energy Code and ASHRAE handbook in effect at the time the home was constructed.

NOTE: The cooling cycle outdoor design temperature established by ASHRAE provides for a maximum of 15 degree differential between the outdoor and the indoor temperature. There may be periods when the outdoor temperature rises above the design temperature, thereby raising the temperature in the home. Orientation of the home and location of the rooms will also provide a temperature differential, especially when the air conditioning system is controlled by a single thermostat for one or more floor levels.

- 2) Contractor Responsibility: Correct cooling system to meet the above temperature requirements during the first year.

(c) Possible Deficiency: Ductwork and heating piping not insulated in un-insulated areas.

- 1) Performance Standard: Ductwork and heating pipes that are run in uninsulated crawl spaces, garages, or attics are to be insulated. Basements are not "uninsulated areas" and no insulation is required.

- 2) Contractor Responsibility: The contractor shall install required insulation.

(d) Possible Deficiency: Refrigerant lines leak.

- 1) Performance Standard: Refrigerant lines that develop leaks during normal operation are deficiencies during the first year after construction is completed.

(e) Possible Deficiency: Condensate lines clog-up.

- 1) Performance Standards: Condensate lines will clog under normal conditions.
- 2) Owner Responsibility: Continued operation of drain line is homeowner maintenance item.

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(f) Possible Deficiency: Improper-mechanical operation of evaporative cooling system.

- 1) Performance Standard: Equipment that does not function properly at temperature standard set is a deficiency.

(g) Possible Deficiency: Ductwork noisy.

- 1) Performance Standard: Noise in ductwork may occur for a brief period when the heating or cooling begins to function and is not considered a deficiency. Continued noise in the ductwork during its normal operation is a deficiency.

(h) Possible Deficiency: Ductwork separates, becomes unattached.

- 1) Performance Standard: Ductwork that is not in tact or securely fastened is a deficiency.

#### Rules Concerning Electrical Systems are as follow:

##### (1) ELECTRICAL CONDUCTORS:

(a) Possible Deficiency: Failure of wiring to carry its designed circuit load to switches and receptacles.

- 1) Performance Standard: Wiring that is not capable of carrying the designed load, for normal residential use to switches and receptacles and equipment is a deficiency.

##### (2) SWITCHES AND RECEPTACLES

(a) Possible Deficiency: Fuses blow, or circuit breakers kick out.

- 1) Performance Standard: Fuses or circuit breakers that deactivate under normal usage, when reset or replaced is a deficiency during the first year.

(b) Possible Deficiency: Drafts from electrical outlets.

- 1) Performance Standard: The electrical junction box on exterior walls may produce a slight air flow whereby the cold air can be

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drawn through the outlet into a room. The problem is normal in new home construction.

(c) Possible Deficiency: Malfunction of electrical outlets, switches or fixtures.

1) Performance Standard: All switches, fixtures and outlets, which do not operate as intended, are considered deficiencies only during the first year after completion.

### **(3) SERVICE AND DISTRIBUTION**

(a) Possible Deficiency: Ground fault interrupter trips frequently.

1) Performance Standard: Ground fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These devices are sensitive and can be tripped very easily. Ground fault interrupters are required on outlets located in the kitchen, bath and powder rooms along with all exterior outlets. Ground fault outlets which do not operate as intended are considered deficiencies.

## **6.1 STRUCTURAL AND MECHANICAL SYSTEM STANDARDS**

(a) The structural and mechanical systems standards to be used in determining the adequacy of design, materials and workmanship for the structural components of the home and for the mechanical systems of the home including plumbing, electrical and heating and cooling systems shall be the provisions of the State Building Code in effect on the date that the construction permit under which the new home was constructed was issued. The standards of adequacy for plumbing systems shall be specified in R.I. Plumbing Code SBC-3; for heating and air conditioning systems shall be specified in R.I. Mechanical Code SBC-4 and for the electrical system capability shall be specified in R.I. Electrical Code SBC-5.

## **6.2 MAJOR STRUCTURAL DEFECTS**

(a) The load-bearing portion of a home is designed as the framing members and structural elements that transmit both dead and live loads of the home to the supporting ground. Examples of load bearing elements are: roof rafters and trusses; ceiling and floor joists; bearing partitions; supporting beams; columns; basement and foundation walls; and footings.

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- (b) A structural failure will not be considered a defect until it has been established by the State Building Commission or structural engineer under the State Building Code in effect on the date that the construction permit under which the home was constructed or altered was issued as an actual or pending structural failure of some part of the load bearing system as defined in (a) above. To be eligible, such defect does not have to render the residence uninhabitable, however, it must be of such a serious nature that it virtually affects the use of the residence for residential purposes and the official shall issue a notice to that effect under R.I. State Building Code 23-27.3-122.0 (unsafe structures).
- (c) The following are excluded as major structural defects:
- 1) Changes by the owner to the established grade lines affecting basement and foundation walls;
  - 2) Movement caused by flood or earthquake;
  - 3) Actual or resultant damage caused by lightning, tornado, unnatural high winds or hurricanes;
  - 4) Damage caused by other additions or alterations to the home;
  - 5) Improper loading over and above the design criteria for which that portion of the house was intended;
  - 6) Resultant structural damage due to fire;
  - 7) Changes in the water level which is caused by new development in the immediate area or can be directly traced to an act of nature;
  - 8) Water seepage in basement or crawl space after the first year.
- (d) In the case where a major structural defect exists and the home is rendered uninhabitable, the contractor shall be responsible to pay for reasonable shelter expenses of the owner until the home is made habitable, should the condition occur during the first year after completion of construction.

### **6.3 INTERPRETATION AND SEVERABILITY**

- a) The provisions of these regulations shall be liberally construed and shall be held to be in addition to, and not in substitution for, or a limitation of the provisions of any other regulation or law. If any provision or part thereof of these regulations or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remainder of these regulations and the application of such provisions to any other persons or circumstances other than those to which it is held invalid shall not be affected thereby.