

HOUSING INSPECTION EXEMPTIONS



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If you have managed or lived in a community association long enough, you have probably heard about the dreaded, “5 Year Housing Inspection” (cue dastardly music). This article will help explain what that is and how you may be able to get an exemption from it (cue happy music).

New Jersey’s Hotel and Multiple Dwelling Law (N.J. Stat. § 55:13A-1) is intended to protect the health and welfare of residents, particularly tenants, of multi-family housing in the state, by helping to ensure that their residences are maintained in safe and healthy conditions, by the building owner. This law applies to not just hotels and apartment buildings, but also to condominiums, and may apply to individual units in Homeowner’s Associations (HOA). The regulations consider, a condominium association or cooperative, for the most part, to have the responsibilities of the “owner” as described in the law, and is therefore responsible for compliance with the regulations, and for the correction of all cited violations.

The Department of Community Affairs’ (DCA) Bureau of Housing Inspections is responsible for performing inspections of multiple dwellings for compliance with the Hotel and Multiple Dwelling Law. In the past these were known as “DCA Five Year Inspections” and should have taken place at five-year intervals. Recent changes to the law have revised the frequency of these inspections, which now can vary from every two years, to every seven years (The determination of the frequency of inspection could be the subject of an entire article of its own, so we won’t go down that road at this time). Regardless of the frequency, these inspections incur significant costs, and require a large time and resource commitment on the part of the property owner (condominium association, cooperative or HOA).

The policy of the Bureau of Housing Inspections, as it applies to HOAs, is that homes in fee simple ownership are not subject to the Hotel and Multiple Dwelling Law, as long as the association has no maintenance responsibility for any por-

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tion of the residential buildings on the site. For example, if the association is responsible for maintenance of the roofs on the homes, these regulations may apply. Consult with your association's attorney for clarification on this matter.

In recognition of the fact that most condominium or coop units are occupied by the unit owner, as opposed to a tenant, the law provides for an exemption from the inspection requirement for owner-occupied units in condominium or cooperative buildings, if the units meet certain standards. An application for this exemption must be filed with the Bureau of Housing Inspection. This article will focus on the standards required

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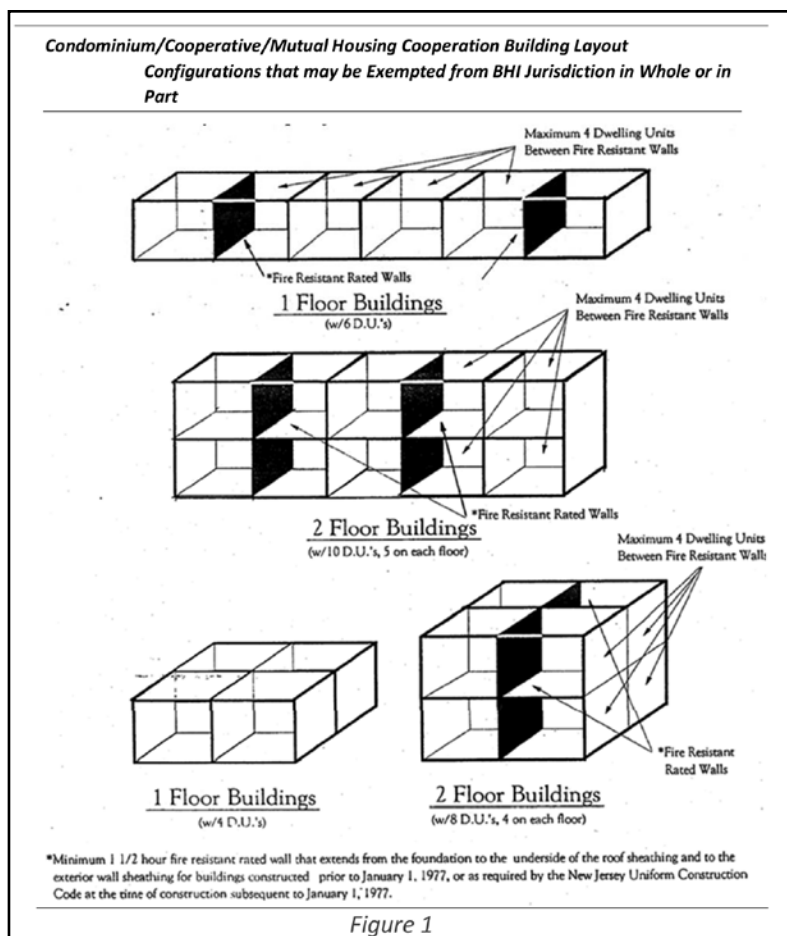
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to qualify for an exemption from the Bureau's inspections and how to apply for that exemption.

The following is required to qualify for an exemption from Bureau of Housing Inspections:

See Figure-1 sketch provided by the DCA, that shows graphic examples of building layouts that could qualify for exemption.

- The association must have a current valid certificate of registration with the DCA. If your association is not registered, the application for exemption will be denied.
- Buildings are considered in "Sections" consisting of no more than four (4) individual dwelling units.
- All dwelling units in each Section must be owner occupied. However, if the Section includes a combination of owner-occupied and non-owner-occupied units, only the owner-occupied units can be exempted.



Excerpt from State of New Jersey Department of Community Affairs document "Bureau of Housing Inspection Memorandum," page 2.

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- Each Section must have at least two (2) exterior walls which are not attached to any adjoining Sections.
- Where two Sections join, the wall separating the two adjacent Sections must be fire-resistant rated.
 - For buildings built before January 1, 1977, the walls separating Sections must provide a fire resistance rating of 1½ hours and must extend from the foundation to the roof sheathing, and to the inside of the exterior wall sheathing.
 - For buildings built after January 1, 1977, the walls separating Sections must provide a fire resistance rating in accordance with the New Jersey Uniform Construction Code at the time that the building was built.
 - For more on firewalls, please refer to Robert Roop's article 'X-Rated' on page 36.

To receive an exemption the association must submit an application to the DCA, which includes:

- A certified list identifying all owner-occupied units, along with a map graphically identifying all non-owner-occupied units. This list is typically prepared by the property

manager. The map can be prepared by the manager or the Association's Engineer/Architect.

- A Certificate In Lieu of an Affidavit form is available through the DCA website <https://www.nj.gov/dca/divisions/codes/offices/housinginspection.html#6>, certifying the list of owner-occupied units.
- It should be noted that the DCA requires notification of changes to the list of owner-occupied units.
- A report prepared by a New Jersey Professional Engineer or Registered Architect confirming:
 - That each building Section contains no more than four dwelling units, and that each Section includes at least two exterior walls unattached to any other building Section. The DCA requires a drawing showing the typical layout of the subject building Sections. If there are multiple layouts, multiple drawings should be provided
 - That each building Section is attached to adjoining building Sections exclusively by fire-rated walls, either having 1½ hour rating (buildings built before 1977) or the code required rating at the time of original construction.

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For an engineer/architect to prepare the above information, it will be necessary to investigate the buildings in the community. This investigation starts with determining the year that the buildings were built and applicable code requirements at that time. It is extremely helpful to the engineer/architect to have the original plans for the buildings. These plans should identify the intended locations of fire-rated walls.

Whether or not building plans are available, inspections of the buildings should be performed to confirm the existing condition of walls separating building Sections. However, if an engineer/architect is already familiar with

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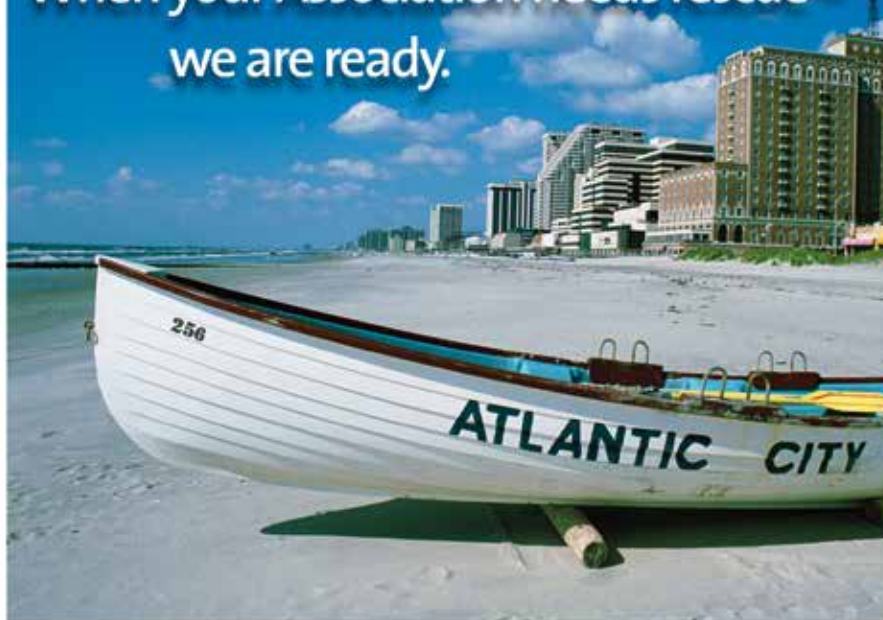
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the site, further inspections may not be necessary. An engineer/architect will typically want to inspect a representative sample of each type of building. If the site was built in phases, buildings from each phase should be inspected.

An engineer/architect will determine the appropriate inspection requirements, but typically inspections would include interior observation of units abutting a wall separating building Sections (separation wall). If attics are accessible, they will be inspected to see if the separation

"...it is necessary to perform an adequate investigation to provide such a certification."

walls extend to, and may include, the roof sheathing. At interiors of units, it may be necessary to inspect the separation walls. This may include just visual inspections, or minimally invasive inspections (removal of electric outlet covers) could be required. In the worst case, it may be necessary to open walls to inspect the as-built construction of the separation walls.

In the end, an engineer/architect has a significant responsibility and takes on liability in providing a certification regarding fire-rating of separation walls, as these walls are critical to the life-safety of residents of the buildings. Therefore, it is necessary to

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perform an adequate investigation to provide such a certification.

While the above seems like an onerous and expensive process, it can often offset the costs and burden on association resources needed to comply with Bureau of Housing inspections and follow up reporting. If an association thinks it may be eligible for exemption from Bureau of Housing inspections, it should talk to an engineer or architect and get a preliminary opinion as to the likelihood that the association would qualify. Often a quick visual inspection of the site and/or review of plans will provide enough information to determine if it is worth pursuing the matter. ■



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