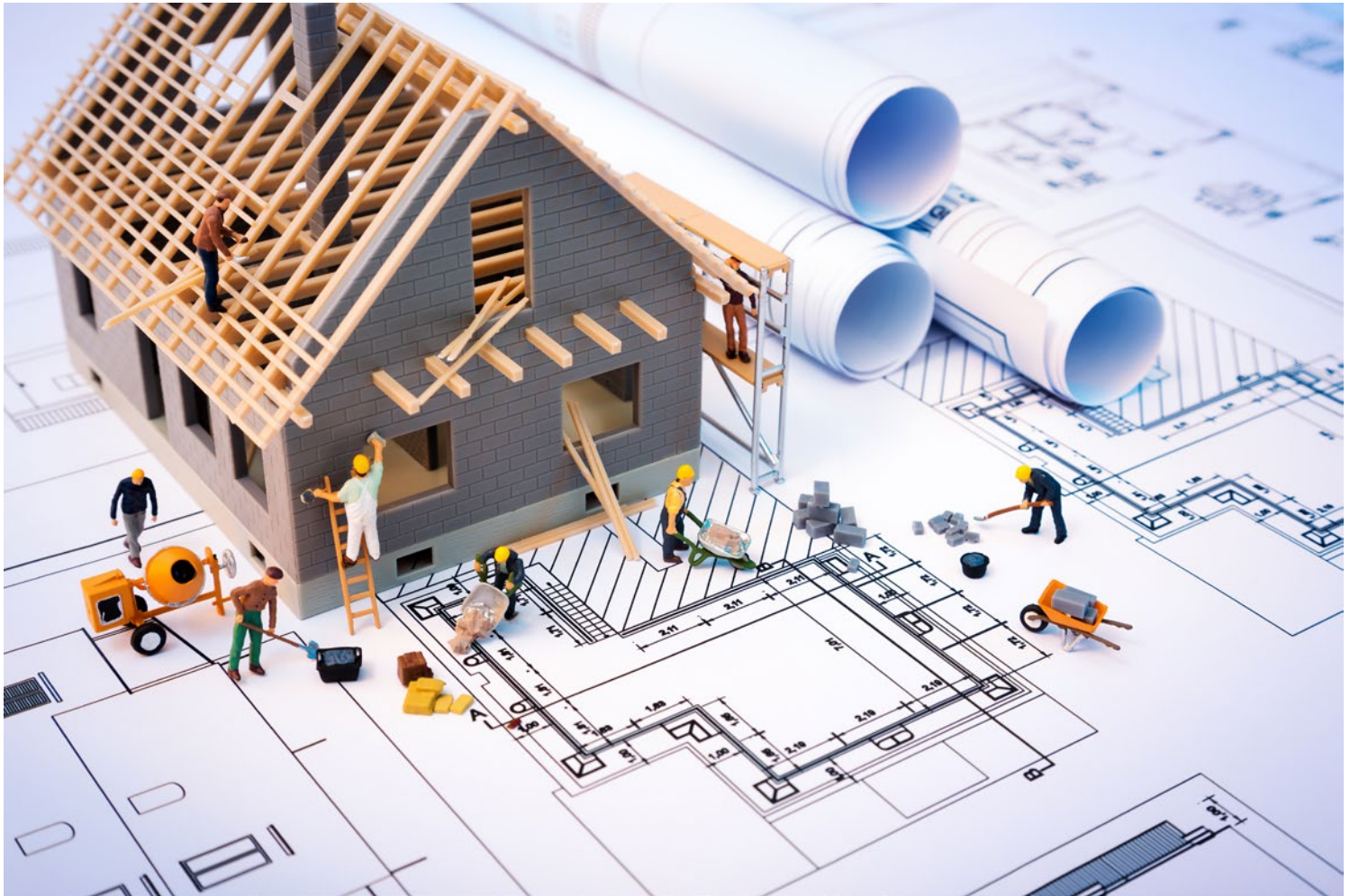


DIMENSIONS

Newsletter of the New Jersey Builders Association



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Dimensions newsletter is produced by the New Jersey Builders Association (NJBA). NJBA is a housing industry trade association of builders, developers, remodelers, subcontractors, suppliers, engineers, architects, consultants and other professionals dedicated to meeting the housing needs of all New Jersey residents and facilitating their realization of the American Dream. NJBA serves as a resource for its members through continuing education and advocacy. The NJBA and its members strive for a better, greener, more affordable New Jersey. Additional information is available at www.njba.org.

NJBA recognizes and appreciates the expertise of its members. In this spirit **we invite and encourage our members to submit articles for publication in *Dimensions***. NJBA reserves the right to make the determination on which articles will be published, the timing of the publication and, if need be, the right to edit articles after consultation with the author. Questions or comments may be sent to Grant Lucking at grant@njba.org.

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AN INTERVIEW WITH NJBA PRESIDENT DWIGHT WESLEY PITTENGER, ESQ.



Dwight Wesley Pittenger, Esq.
NJBA President

NJBA President Dwight Wesley Pittenger, Esq. recently sat down with NJBA CEO Carol Ann Short, Esq. to speak about the effect the Millennial generation is having on the building industry.

Short: We have all heard the adage that millennials want “live-work-play” environments. Do you think this trend will continue as the millennial generation ages?

Pittenger: That’s a good question. It remains to be seen whether or not millennials are going to seek that environment throughout their lives. As Millennials age and have children, their lifestyle and living needs may change. Regardless of whether millennials continue the live-work-play lifestyle, that does not negate the concept because I see the model as age driven and not necessarily a product of the Millennial generation. I don’t see anything to suggest the generation following Millennials won’t want that same environment.

After World War II, urban flight began as cities were perceived as being tired, congested and polluted, while suburbia was perceived as being new, clean and desirable. The quality of life in most cities has drastically improved during the past 15 years and the negative perception is diminishing. I think as long as urban centers remain economic powers and we continue to produce attractive housing opportunities in them, younger workers, regardless of their generation, will be drawn to such communities.

What is holding so many young people back from purchasing homes?

No one knows for certain and there are numerous theories: student debt, the lack of access to financing, less savings, uncertainty as a result of the housing collapse, delayed household formation, etc. One theory suggests that low interest rates have persisted for so long that people haven’t yet felt the pressure to purchase a home. However, the theory I suspect is at the core of the issue is job security. Millennials are facing less job security than any other prior generation. Companies are coming and going and job skills and requirements are morphing quickly due to technology and globalization. I suspect that until potential homebuyers feel secure working in a geographic area they will lean towards renting versus owning.

How do you see builders changing their business strategies to address the changing home buying marketplace?

I think there will be a continuation of the building trends we are witnessing now, with more mixed use, rental and condos over storefronts. It’s a footprint that was very prominent in older urban centers and now it’s returning because it is economically efficient. Globalization has driven efficiency to the forefront of every business model, including housing.

Millennials are now the largest generation in the workforce. Is the industry adequately prepared for succession?

No. There are not enough Gen Xers in the building industry to fill the roles that Boomers will be vacating. Therefore, millennials will need to fill positions further up the ladder quicker than in a normal succession process. I don’t think we have

prepared enough Millennial workers for that transition.

The shortage of Gen X workers is attributable to both demographics and the recession. On the demographic side, there are simply more Boomers than Gen Xers, a.k.a. the baby bust generation. On the business cycle side, the recession took a large toll on Gen X. If you go back to the beginning of the recession, Gen Xers were in their 20’s and 30’s when workers were flying out of the building industry. Consequently, the Gen X field left the industry in the beginning of their careers and many of them have not returned.

If not for the Great Recession, Gen Xers would have been learning from the Boomers and the Millennials would be learning from Gen Xers. Now we need to train Millennials who will need to learn quickly and fill leadership positions as Boomers retire.

What about NJBA, is there a plan to groom future talent?

NAHB and two of our four locals now have young professional councils. Rich Robinson of Shore Builders serves on the NAHB Young Professionals Committee and recently asked to spearhead a young professionals group at the state level. I’m pleased to announce it’s something I have endorsed and that a state level council will be launched shortly.

How important is it for young professionals in NJBA to begin preparing for future leadership roles in the industry?

Obviously, very important. Too many of our current leadership is 60 years or older and nearing retirement. That’s why it is up to the Boomer generation to mentor our young professionals and prepare them to lead this Association in the 21st century. I think we are on the right track but our young professionals need to be ready.

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OUTLOOK FOR NEW JERSEY'S ECONOMY AND HOMEBUILDING SECTOR: 2016 AND BEYOND

By: Kevin C. Gillen, Ph.D.

"Jersey: We Go Hard" reads a popular t-shirt seen throughout the Garden State. And it certainly has been a hard and challenging economic recovery.

In addition to an economic growth rate that has been about half of the national average, New Jersey is saddled with a number of other obstacles that inhibit housing's recovery as well: High property taxes. Decreasing land supply. High construction costs. A long foreclosure process. Extensive regulations. "Brain drain" of college graduates. Aging infrastructure. Municipal bankruptcy. The list goes on.

The consequences of all this for homebuilding have been significant: House prices in most of New Jersey have recovered only about half of the value they lost in the post-bubble crash. While existing home sales have largely recovered in many other metro markets across the country, both existing and new home sales in Jersey are still running well below their historic average levels. And the current high levels of foreclosures and housing inventories only add to the problem.

Although the prices of new homes have largely recovered (the median in most of New Jersey is currently over \$400,000), this is largely driven by higher construction costs that have pushed builders to produce a higher-end product, rather than general appreciation in house values. But for thousands of households who purchased a home during the boom years of the previous decade, the current value of their home remains well below its original purchase price. As such, they are unable to sell their home at a sufficiently high price to

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pay off their mortgage, and thus remain trapped as virtual prisoners in their current dwellings. Until prices of existing homes fully recover, these potential move-up buyers are the proverbial dominoes that refuse to tip, thus preventing both themselves and households upstream from them from upgrading to a new home.

But, amidst these challenges, there is still some good news. After lagging the national growth rate ever since the recovery began, employment increases over the year have picked up the pace, rising from 1% to 1.5-2%, just behind the national rate of 2%. And while the U.S. unemployment rate remains stuck at 5.0%, New Jersey's has fallen dramatically over the past year, from 5.6% to 4.7%, placing it below the national average. Lastly, total payrolls are close to being back to their pre-recession peak, and with job creation being distributed across a relatively wide variety of industries, and with attendant wage growth picking up as well. So, at long last, New Jersey appears to have largely closed the gap between its economic recovery and that of the Nation's as a whole.

So what does this all mean to you and what should you be doing about it? In the short term, statewide economic growth should remain higher than in recent years, within striking distance of the 2% national average, and maybe even a bit higher. There are already signs of accelerating house price increases, and every step forward in the general level of house prices liberates more households from negative equity and enables them to move up to a better home.

However, with growth comes inflation, and with inflation comes interest rate increases. When inflation hits the Fed's target of 2%, you can expect it to result in rate increases, which will definitely put another headwind on both the economy's and housing's recovery. Finally, this has been one of the longest (if anemic) postwar economic recoveries in U.S. history. Rising rates plus reversion to the mean imply we are much closer to the next recession than we are from the previous one.

So, expect the remainder of 2016 to be relatively favorable to business, at least compared to the last few years. Take advantage of an improved revenue stream to get your firm well-capitalized and your balance sheet strong. Going into 2017, begin preparing for the next recession by reducing inventories and securing financing that can help you make payroll and pay your vendors during the next downturn. Shift your product mix in order to specifically target your product carefully towards the growing employment sectors of health care and education and the growing populations of immigrants and aging boomers.

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About the Author:

Kevin C. Gillen, Ph.D., Chief Economist with Meyers Research LLC, heads up the east coast office of Meyers Research in Philadelphia, from where he publishes and speaks regularly on the state of both the national and regional housing markets. Dr. Gillen can be reached at kgillen@meyersllc.com or 215-880-6630.

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WHAT IS YOUR AFFORDABLE HOUSING STRATEGY?

By: Craig Gianetti, Esq.

There have been many articles over the past year discussing the status of the affordable housing litigation throughout the state. The courts have yet to rule on what the municipal obligations are and many towns have been unwilling to agree to certain development proposals until those numbers are decided. Most of the court orders in the various cases, however, provide that once an affordable housing obligation is set by the court, a town will have 45 or 60 days to prepare a compliance plan, depending upon the county. That means decisions on projects may move quickly once the obligations are set and towns will likely be looking for actual credits (as opposed to a development fee).

Many of the questions that I currently get from developers are:

- “How should I address the affordable housing component of my project?”
- “What is the percentage of units I need to set-aside for affordable housing?”
- “What are the rents and sale prices for those units?”

This article will focus on the first of those questions.

Below are some of the strategies I have dealt with in working with developers:

1. Inclusionary Project

Inclusionary development is the typical project residential developers deal with when they are required to provide affordable housing. A majority of the residential units are market-rate where a smaller percentage (generally 15% to 20%) are set-aside for affordable housing.

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Towns do not necessarily like inclusionary projects as a means of addressing their affordable housing obligation because of all the additional market-rate development needed to capture the affordable housing. For instance, to capture 40 affordable units, the project would have to consist of 200 total units (assuming a 20% set-aside).

2. 100% Affordable Housing

100% affordable housing developments are all rental, affordable apartments. The projects work financially because there are multiple public funding sources involved, most notably the federal Low Income Housing Tax Credit program. A lengthier article could discuss the mechanics of these types of transactions, which involve 9% and 4% tax credits. In the past six months, Day Pitney has closed three of these types of tax credit transactions in New Jersey involving approximately 450 affordable units.

Towns like to include these projects in their affordable housing plans because they can address large portions of their affordable housing obligation in one project with no additional market-rate units.

However, most of these projects use 9% tax credits, which are limited and awarded on a competitive point-scale basis. Thus, if a town has several

100% affordable housing projects in their affordable housing plan, it is unlikely they will all get funded and built.

3. A Hybrid Between #1 and #2

Some developers, trying to find a balance between the pros and cons of both inclusionary and 100% affordable housing developments, do a hybrid approach. In essence it is an inclusionary development, however, the affordable housing set-aside can be as high as 50% or 60%. In this case a developer proposes a market-rate development and there is a separate building(s) for a 100% affordable housing development. Normally, towns and COAH do not like when the affordable units are separated from market-rate units, but it is typically approved in this instance because the affordable units have to be separate in order to be financed. This allows for the town to get a significant amount of affordable housing as part of a single development, however, the project is not viewed as consisting of all affordable units.

4. Group Homes

Over the past several years, New Jersey has been aggressive in offering funding for special needs housing, i.e., housing and services for those with developmental disabilities. Towns like this type of housing because there are no school kids generated from the unit and the affordable credit is by the bedroom as opposed to the unit. So a single four-bedroom group home counts as four credits. Developers of smaller projects that have small affordable housing obligations (e.g., 6 to 8 affordable units) can agree to

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About the Author:

Craig Gianetti, Esq. is a partner in Day Pitney's Real Estate, Environmental and Land Use department. His practice focuses on residential and commercial real estate development, including land use and zoning, affordable housing, redevelopment law, real estate transactions and litigation. He can be contacted at (973) 966 8053 or cgianetti@daypitney.com.

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BUILDER (OR BUYER) BEWARE

By: Jorge H. Berkowitz, Ph.D., LSRP

The Site Remediation Reform Act (SRRRA), was enacted in 2009 in order to streamline the overall process for the assessment and remediation of contaminated sites. With a backlog of over 20,000 cases, and in the face of a case which placed children in a building loaded with toxic mercury, the NJ Legislature created the Licensed Site Remediation Professional (LSRP), which empowered these individuals to assess and remediate sites with little or no New Jersey Department of Environmental Protection (NJDEP) involvement or oversight. The SRRRA included the issuance of a Response Action Outcome (RAO), through which the LSRP could declare a site had been remediated to the point that it was protective of "public health, safety and the environment" thusly, closing out the case.

A common misunderstanding of the law is that it only applies to the LSRPs working on contaminated sites or the Person Responsible for Conducting the Remediation (PRCR). In fact, SRRRA may be applied to "any person" who violates its provisions. "Any person" covers a wide array of individuals, institutions, governments and agencies. In general terms, nearly any entity which violates the provisions of SRRRA is subject to the respective penalties in the law. By way of example, any person who interferes with the LSRP's ability to comply with their code of conduct would be subject to specified penalties in SRRRA. A less obvious example would be if a PRCR (who could be a property owner, a builder, or a developer) does not meet regulatory or mandatory timeframes for specific activities specified in SRRRA and the Administrative Requirements for Remediating Contaminated Sites

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(ARRCS), they are also subject to penalties. In the most extreme case, missing a **mandatory** timeframe means that the violating party will be subject to "direct oversight," which then requires that the case revert back to the traditional oversight remediation paradigm with NJDEP dictating the path and implementation of environmental assessment and remediation.

Recently, the Site Remediation Professional Licensing Board (SRPLB), the group responsible for overseeing LSRPs, promulgated its regulations for governing the performance of LSRPs as well as investigating others who have not allowed the LSRP to meet their legislative mandates. The LSRP is responsible for making their client aware of any timeframe that applies to the client's site and for which they are considered a PRCR. These timeframes include statutory, mandatory, and regulatory timeframes. If, in the opinion of the LSRP, a **regulatory** timeframe will not be met, they are required to inform their **client**. If, in the opinion of the LSRP, a **mandatory** timeframe is not likely to be met, they need to inform their **client AND the NJDEP**.

Informing the client who may be a prospective purchaser of a regulated site is an item that most probably should be included in an assessment of environmental liabilities during the performance of an environmental due

diligence. This is NOT a regulatory or legislative requirement for performing due diligence Preliminary Assessments, nor is it addressed in ASTM Phase 1 tasks. Nevertheless, it is of the utmost importance to a prospective purchaser as the time associated with these timeframes **DO NOT reset** upon the transfer of the property with **the original timeframe remaining in effect**.

Types of Timeframes

There are generally three types of timeframes: statutory, regulatory and mandatory:

STATUTORY: There is only one timeframe of this type and is only applied to a site for which a discharge of hazardous substances occurred prior to May 7, 1999.

Many readers are aware Remedial Investigations (RI) should have been completed by May 7 of this year. These are sites which were originally required to have a completed RI by May 7, 2014 but for which the legislature granted a 2 year extension.

REGULATORY: These timeframes are described in the Administrative Requirements for Remediating Contaminated Sites (ARRCS). These are timeframes which are prescribed in the Technical Requirement for Site Remediation, ARRCS, the Industrial Site Recovery Act rules and the Underground Storage Tanks rules.

MANDATORY: These timeframes generally apply to specific key documents identified in ARRCS such

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DIMENSIONS

ARBITRATION CLAUSES WITHOUT EXPRESS LITIGATION WAIVERS MAY BE UNENFORCEABLE IN NEW JERSEY

By: Edgar Alden Dunham, IV, Esq.

In *Atalese v. U.S. Legal Services*, 219 N.J. 430 (2014), the New Jersey Supreme Court held that an arbitration clause in a consumer contract is not enforceable if the clause does not contain express language providing that the consumer is waiving his or her statutory right to seek relief in a court of law. While *Atalese* involved a traditional type of “consumer” contract, its holding would clearly apply to construction contracts that involve “consumers.” A previous New Jersey Supreme Court case held an arbitration clause in a residential construction case unenforceable because the clause did not make clear that arbitration was the only remedy [*Marchak v. Claridge Commons, Inc.*, 134 N.J. 275 (1993)]. *Atalese* has since been cited in *Dispenziere v. Kushner Co.*, 438 N.J. Super. 11 (App. Div. 2014), which found an arbitration clause in a public offering statement for residential condominiums unenforceable.

Contracts for large, commercial construction projects are not typically considered “consumer contracts.” Such contracts are usually carefully negotiated by sophisticated parties. Nonetheless, such entities can be considered consumers when they are purchasing goods or services that are not for resale or fall outside of the

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entity’s area of expertise. For instance, a commercial entity that is a party to a construction contract for new facilities may be deemed a “consumer” for purposes of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, etc. It is not a leap to argue that under *Atalese*, any arbitration clause in a construction contract involving a commercial “consumer” must include an express waiver of litigation to be enforceable.

Interestingly, few of the standard form industry commercial construction contract arbitration clauses contain this type the litigation waiver language required by *Atalese*. For instance, the standard form AIA A201 does not.

Contracts between subcontractors and general contractors are not “consumer contracts” because the work being performed by the subcontractor is passed

on through re-sale. Nonetheless, there is an argument that one result of any flow-down clause in the subcontract (see ¶ 5.3 “Subcontractual Relations” in AIA A201-2007 for an example of a flow-down clause) would be to permit a party to a subcontract to render an arbitration clause unenforceable under the *Atalese* “consumer” requirement.

Of course, there are countervailing arguments that can be made against applying *Atalese* to construction contracts between sophisticated entities. But, at least in New Jersey, picking and choosing between contracts to decide whether to include an express waiver under *Atalese* is dangerous. The consequences of a wrong determination is the loss of the arbitration clause. The prudent solution is simple: include the requisite waiver in all arbitration clauses. Adding it where it is not required doesn’t harm anything. The waiver doesn’t need to be complicated. An adequate waiver could simply say, “By executing this agreement, the parties waive their rights to resolve their differences through litigation in a court of law.” Including the waiver language ensures that you will neither lose your carefully considered arbitration clause, nor will you have to engage in debate as to whether a waiver was required.

About the Author:

Ed Dunham is a lawyer with the Princeton, New Jersey office of Eckert Seamans. He practices in the area of commercial litigation, with an emphasis in construction law. Ed counsels contractors, subcontractors, and owners with the negotiation and administration of construction contracts and in dealing with the claims that often arise on major construction projects. He can be reached at 609.989.5021 or edunham@eckertseamans.com.

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GETTING STARTED WITH EMPLOYEE SECURITY AWARENESS TRAINING

By: Cathy Coloff

Cybercrime is at an all-time high. Hackers are setting their sights on small-to-medium businesses who are “low hanging fruit” ripe for attack. Don’t you wish you had a robot like in *Lost in Space* who would announce “Danger, Will Robinson, Danger!” whenever someone at work was about to open that phishing email, or click on that infected website or take some other unintentional but potentially dangerous action on their computer or your network? The #1 security threat to any business is...you!

Don’t be their next victim! Resolve to educate and train your team on IT security and raise their awareness of the dangers lurking on your network which, like Dr. Smith, can be on the inside. It’s critical that you educate all of your employees on how to spot an infected email or online scam. Cybercriminals are extremely clever and can dupe even sophisticated computer users. All it takes is one slip-up, so constantly reminding and educating your employees is critical.

Part of the awareness training is having an Acceptable Use Policy (AUP). An AUP outlines how users are permitted to use company-owned PCs, devices, software, Internet and email. For example, the policy should limit what the employees can access with work devices and Internet service. Having this type of policy is particularly important if employees are using personal devices and computers to access company email and data. If an employee is logging into critical company systems through an infected or unprotected or unmonitored device, it can be a gateway for a hacker



to enter your network.

If the data in your organization is highly sensitive, such as patient records, credit card information, financial information and the like, you may not be legally permitted to allow employees to access it on devices that are not secured. Sometimes the risk is a well-meaning employee innocently “taking work home” and exposing your company information via their own device.

It’s impossible to close off every exposure, so train your employees on your AUP and enforce it as much as possible through technology solutions. Your AUP should include policies requiring strong passwords and passcodes to lock mobile devices.

Your AUP should also document your access policy, specifically: what devices (company-owned vs. personal) and who can and cannot access your company information. New vulnerabilities are frequently found in common software programs, such as Adobe, Flash or QuickTime, making it critical that devices used to access company data are fully

patched and up to date. At work, if you have a managed IT plan, this can all be automated so you don’t have to worry about missing an important update. It’s not so easy if you’re relying on your team to do the same at home on their personal devices.

As a result, we recommend you consider not allowing employees to access company data with personal devices that aren’t monitored and secured by your IT department. If you decide to allow non-company-owned equipment to access your system, you need to ensure their network and devices are patched and up-to-date. Here’s the rub: Most employees won’t want you monitoring and policing their personal devices, nor will they like that you’ll wipe their device of all files if it’s lost or stolen. But that’s exactly what you’ll need to do to protect your company. Our suggestion is that you only allow employees to access work-related files, cloud applications and email via company-owned and monitored devices, and never allow employees to access these items on personal devices or public Wi-Fi.

IT Radix wants to help raise security awareness in your organization. While we have always alerted our clients about high-priority threats as needed, we’ve added biweekly email security tech tips to share one simple concept and a quick tip to keep security on the forefront. If you would like to receive these security tips, please email us at itsales@it-radix.com to be added to the email series.

About the Author:

Cathy Coloff is a Managing Member with IT Radix. Recognized as one of the 2015 Top 25 Leading Women Entrepreneurs in NJ, Cathy has 25+ years of experience in network systems. With extensive corporate experience at Exxon and Bear Stearns, Cathy works with IT Radix clients to develop their IT best practices without the big corporate price. She can be contacted at 973-298-6908 or itsales@it-radix.com.

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HOW TO REDUCE COSTS & LIABILITIES UNDER 2015 NJ ENERGY CODE

By: Matthew Kaplan

Many builders and design professionals are unfamiliar with all of the compliance pathways in the 2015 NJ Energy Code. While the most commonly utilized is the UA Tradeoff pathway (typically verified with REScheck software), the Performance pathway offers builders significantly more flexibility in meeting both design and inspection requirements. By utilizing complex energy modeling in REM/Rate software, this pathway allows tradeoffs between increased insulation values and other increased energy efficiency measures (e.g., reduced air leakage, mechanical ventilation, window performance values, duct system performance values, etc.). This is in stark contrast to REScheck, which is only capable of considering tradeoffs between insulation values. As a result of these tradeoffs, builders may not be required to redesign their homes to 2x6 walls in order to meet 2015 NJ Energy Code requirements — as long as they increase energy efficiency elsewhere (e.g., optimized glazing configuration, increased duct system performance, etc.). Furthermore, this pathway exempts homes from the Prescriptive 4% Total Duct Leakage requirement in the 2015 NJ Energy Code and instead allows homes to comply based on achieving a Duct Leakage to Outside value that is calculated by the REM/Rate energy model. This is a much easier requirement to satisfy because Duct Leakage to Outside is intrinsically only a fraction of Total Duct Leakage, and builders can tradeoff more Duct Leakage to Outside as long as they increase energy efficiency elsewhere.

The process of permitting through the Performance pathway is relatively similar to the process of permitting through the UA Tradeoff pathway with a REScheck report. Instead of an architect performing UA Tradeoff calculations in REScheck, the architect sends the preliminary plans to a Certified Home Energy Rating System (HERS) Rater. The HERS Rater performs the energy modeling of the home in REM/Rate and generates a Performance report, which is then submitted to the municipality in lieu of a REScheck report. Since REM/Rate can also perform UA Tradeoff calculations, the HERS Rater can actually compare the costs and benefits of either pathway and consult with the builder and architect as to the most cost-effective pathway to utilize. Then the HERS Rater can generate the permit document based on whichever option is chosen by the builder.

It is also worth noting that NJ has adopted the 2015 IECC with an amendment that allows for the Air-Sealing inspection to be performed visually instead of through a Blower Door test. However, we do not recommend that builders in NJ rely on this option. This is because the air-sealing code requirement of 3 Air Changes Per Hour (ACH) cannot credibly be verified through a visual inspection by a code official — despite NJ DCA's implied assertion to the contrary. As a result, we believe it is a liability for builders in NJ to have air-sealing requirements visually inspected by a code official under 2015 IECC, while not knowing if their homes would actually meet 3 ACH if tested.

This is because if a homeowner has an energy audit performed in the future, there will be no way to replicate the visual inspection performed by the code official. All there will be is a Blower Door test indicating the home in fact does not meet energy code requirements. We don't believe the code official or NJ DCA will assume any liability in such a scenario. That is why we recommend that builders satisfy the air-sealing inspection requirement through Blower Door testing for the quality assurance and risk reduction benefits it affords, regardless of compliance pathway. For those builders utilizing the Performance pathway, this is a moot point because the REM/Rate software requires a Blower Door value input.

For smaller and attached homes, especially multifamily apartments, it will be especially difficult to builders to satisfy the 3 ACH requirement. That is why New York and Delaware amended their respective newly adopted energy codes to have exceptions for such types of homes. But since NJ has no such exemption, in our opinion, the only safe way around the 3 ACH requirement in NJ is to enroll a home in the NJ Clean Energy Program for Residential New Construction. NJ DCA Bulletin 15-4 states that participation in the NJ Clean Energy Program for Residential New Construction (NJCEP RNC) satisfies all Energy Subcode requirements within the NJ Uniform Construction Code (UCC). The requirement to participate in the NJCEP RNC program is achievement of ENERGY STAR Homes Certification.

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About the Author:

Matthew Kaplan is CEO of ReVireo. ReVireo helps builders generate a return on investment in the energy and environmental performance of new construction projects. We provide customizable service packages to achieve target levels of building performance and leverage that achievement into increased customer demand and willingness to pay. For more information, call (888) 568-5459 or email info@revireo.com.

2015 ENERGY CODE

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The ENERGY STAR Homes program has no mandatory Blower Door ACH requirement; air leakage is instead a tradeoff item between the as built home and the ENERGY STAR Reference Design requirements.

Since NJ UCC references ENERGY STAR Homes Certification through NJCEP RNC as satisfying all requirements, there should be no liability if the Blower Door tests over 3 ACH as long as the home was certified under NJCEP RNC. Since ENERGY STAR Homes certification is achieved through REM/Rate energy modeling, builders using this pathway can still take advantage of all the same aforementioned design tradeoffs allowed in the Performance pathway (i.e., are not required to redesign to 2x6 walls). The Duct Leakage thresholds for ENERGY STAR Homes are 4% Leakage to Outside and 8% Total Leakage, which are much easier to achieve than the 4% Total Leakage under the Prescriptive and UA Tradeoff pathways (and probably similar to what the REM/Rate energy model would determine as the requirement under Performance pathway).

While a home must satisfy additional requirements to achieve ENERGY STAR Homes certification, the administrative requirements have recently been reduced and there are significant rebates available (currently ranging from \$875 to \$19,250 per home) to offset some of the incremental hard costs. The process of complying with 2015 NJ Energy Code through the Performance pathway, or through ENERGY STAR Homes certification, also has the side benefit of producing a HERS Index Rating for each home, which can be used for marketing purposes. Additionally, builders with better envelope designs may qualify for the \$2,000 Federal 45L Energy Efficient Home Builder's tax credit.

Ultimately, there is no one-size-fits-all

pathway in the 2015 NJ Energy Code that is best for all builders to use for all projects. However, builders would be wise to stop using REScheck software and instead work with a HERS Rater to determine the most cost-effective pathway for each project using REM/Rate software. By doing so, builders can explore all options and make an informed decision about the relative cost and benefits (including differences in specifications, inspection requirements, incentives, etc.). This will enable builders to minimize hard costs and construction delays from failed inspections, while maximizing available incentives.

OUTLOOK FOR NJ

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Finally, don't forget that many of New Jersey's structural problems were created locally, and hence can be influenced locally. When business is slow, it's an opportune time to get involved with your local HBA or BIA and "Go Hard" for the tax and regulatory reform that would improve New Jersey's homebuilding environment for the next housing cycle and beyond.

AFFORDABLE HOUSING STRATEGY?

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purchase a single-family home and convert it or dedicate it to a group home.

This is not an exhaustive list of options for addressing affordable housing requirements. Whether a developer wants inclusion in a town's affordable housing plan or a town is seeking affordable housing from a project, developers should be considering all scenarios for addressing affordable housing. In the end, developers can get imaginative on this issue instead of just taking 20% of the units in a project and restricting them for affordable housing.

BUILDER OR BUYER BEWARE

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as a Preliminary Assessment, Remedial Investigation, or Remedial Action Reports.

Generally, where both regulatory and mandatory timeframes apply, the regulatory timeframe precedes the mandatory timeframes by 2 years. However, this is not a hard and fast rule. If more information is needed, the reader should consult a comprehensive list of regulatory and mandatory timeframes which appear on the Site Remediation portion of the NJDEP website as "Summary of Regulatory and Mandatory Timeframes for Remediation." Further, it is advisable to search your Program Interest Number on the NJDEP Data Miner to see what timelines are identified for a subject site. If you do not know if your site is active in NJDEP's data base, you may search Data Miner by address, town and county. Also, NJDEP just released a document which is entitled, "LSRP Timeframe Communication Requirements Version 1.0," also available on their website.

Most importantly, **DEMAND** that your LSRP reviews with you all applicable timeframes. As the site remediation paradigm has changed the SRP, so has it changed the relationship between the consultant and their client. This change necessitates enhanced communication between the two parties. Miscommunication or no communication can have profoundly negative effects.

So, **BUILDER (BUYER) BEWARE.**