



# NEW YORK STATE DEPARTMENT OF STATE

## Division of Code Enforcement and Administration

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## TECHNICAL BULLETIN

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**Effective Date:** January 1, 2003

**Source Document:** 19 NYCRR Parts 1220 through 1226 and 1240

**Topic:** Construction Without a Building Permit

This document is provided as general information for code enforcement officials, regarding construction work performed on buildings without the benefit of a building permit. The responsibility for compliance with applicable codes is that of the building owner. Universally, regardless of the local regulations for administration and enforcement, it is the owners responsibility to ensure the construction is in compliance with the applicable codes in effect at the time of construction. The following are questions and answers to illustrate the requirements and methods to “legalize” such construction.

When building construction without a building permit, is discovered, it is the responsibility of the code enforcement official to pursue the process of determining the compliance of the structure in accordance with the code in effect at the time of the construction. There should be a reasonable effort to determine the time of construction and the compliance of the building to the code in effect at that time. The owner should be able to provide construction drawings, dated contracts, receipts and similar documents, or other records indicating when the construction took place to establish the time of construction and the level of compliance. If the time of construction cannot be demonstrated to the satisfaction of the code enforcement official, it is reasonable to require compliance with the code in effect at the time of the “legalization” of the building construction, as it is presumed that a building permit will be required. Again, the owner has the right to request a variance.

***A Certificate of Occupancy (CO) dated 2003, for a building permit issued under the previous code and completed after January 1, 2003; or for a building permit issued in 2003 for a building constructed at an earlier date without a permit; where the CO implies conformance with the new code in effect January 1, 2003.***

The CO could provide the date on the building permit, if that date indicates the code under which the permit was issued. The CO could also clearly state the date of construction. Furthermore, a CO should not be issued unless the building substantially conforms to the code in effect at the time of construction.

***An in-ground pool built in 1983, without a building permit.***

Since the pool was installed before the January 1, 1984, the effective date of the Uniform Code, section 302.7.2.1 of the *Property Maintenance Code of New York State* (PMCNYS) is applicable. Although it may be prudent for the owner to install a pool enclosure which complies with the requirements of the *Residential Code of New York State* (RCNYS), Appendix G; PMCNYS section 302.7.2.1 states that “An approved enclosure, at least 4 feet in height, shall be provided around outdoor swimming pools, so that such pools are inaccessible to children. The enclosure may surround either the pool area or the property.”

***A residential building built without a permit in 1996, has a walkout basement with a wood-frame wall on the low side, instead of masonry as required. The code changed a few months later to permit the wood frame wall.***

At the time of construction, the requirement was “masonry construction extending the full height of the basement or cellar walls.” The building as constructed does not comply with the code requirements in effect at the time of construction. In general, if compliance after the fact is unreasonable, the owner could apply for a variance to allow the existing construction to remain.

You ask regarding the availability of all the old versions of the codes. The Department of State Office of Administrative Rules is designated by the Secretary of State to maintain the historic records of official compilations of the series of the New York State Codes Rules and Regulations (NYCRR). Administrative Rules can provide certified copies for evidence in court. For your information, the Codes Division also maintains copies or can easily obtain copies of the following code documents:

- 1952 through 1981 State Building Construction Codes (SBCC)
- 1984 through 2002 (old) Uniform Fire Prevention and Building Code (9NYCRR)
- 2003 and amendments to (new) Uniform Fire Prevention and Building Code (19NYCRR)

Furthermore, the copies of various sections of the reference standard documents are retained in this office and copies of updated and outdated versions can be readily acquired.

You ask regarding the use of Appendix K of the building code and Appendix J of the residential code for these buildings constructed without a permit and which “do not legally exist.” Appendix K and Appendix J cannot be used to legalize these non-conforming buildings. *Building Code of New York State* (BCNYS) Appendix K, section K101.2, entitled “ Intent”, states that the intent of these provisions is to encourage the continued use and reuse of legally existing buildings and structures ... Similarly, *Residential Code of New York State* (RCNYS) Appendix J, section J101.1, entitled “ General, states that the purpose of these provisions is to encourage the continued use or reuse of legally existing buildings and structures.

***Ronald E. Piester, R.A., Director***  
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