

Home Warranties

The Wilmington-Cape Fear Home Builders Association receives frequent requests for information on North Carolina new home warranty requirements. In response to these inquiries, the following is offered as a brief summary of home builder warranty obligations, with respect to both express warranties and the implied warranty of workmanlike construction. As with any circumstance involving a legal issue or claim, builders and buyers should rely on the advice of their own legal counsel to make decisions appropriate for their own individual situations.

Express Warranties

An **Express Warranty** arises by written or verbal promise between the builder and owner. North Carolina does not have any statutory requirement that a home builder provide an express warranty to its purchasers. Because an express warranty arises by agreement and not by statute, there is no required warranty form, period of time, or scope of coverage for express warranties on new home construction. Any warranties that may pass from builder to owner, when reduced to writing, are governed by the written document under which the sale or construction took place. Certain express warranties may also arise as a result of oral promises made by the builder to the buyer either prior to or during negotiation for the written agreement or after execution of the agreement.

In order to limit the possibility that any oral promises made prior to or during the negotiation for the written agreement will ultimately be considered express warranties, contracts for construction should include language which expressly excludes all warranties not set forth in writing in the contract and should also include a merger clause, stating that the entire agreement between the builder and buyer is incorporated into the written contract. North Carolina's Courts have interpreted merger clauses to render representations made before or during contract execution inadmissible as evidence to prove the existence of representations other than those contained in the contract.

In light of the above, it is recommended that all home builders include a clear, easy to understand, written warranty in their construction agreements and sales contracts entered into with new home buyers. The warranty should provide detailed descriptions of those components which are included or excluded from warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. As mentioned above, these warranty provisions should also expressly exclude all warranties not set forth therein and should clearly state the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provision to become applicable.

Implied Warranties of Workmanlike Construction

In addition to express warranties included in the agreement of the parties, North Carolina has recognized the **Implied Warranty of Workmanlike Construction** as a matter of law. This implied warranty, first recognized by North Carolina Courts in 1974, holds that in every contract by a builder for the sale of a recently completed dwelling, and in every contract for the sale of a dwelling then under construction, the builder shall be held to impliedly warrant to the initial purchaser that at the time of passing the deed or delivering possession to the initial purchaser (whichever occurs first), the dwelling, together with all its fixtures, is sufficiently free from major structural defects, and has been constructed in a workmanlike manner, so as to meet the standard of workmanlike quality then prevailing at the time and place of construction. **This implied warranty is not an absolute guaranty by the builder but requires that the builder build a home which meets the prevailing standards of the region.**

Likewise, the implied warranty only applies to latent defects, i.e. not to visible defects or those which should have been visible and could have been found by reasonable inspection at the time of closing. **If an owner takes delivery of the home without objection to obvious, visible defects, this implied warranty will not apply to a subsequent claim based on such deficiencies.**

Claims under this implied warranty of workmanlike construction may be brought in court by an owner for a period of three years after discovery of the (latent) defect. However, the statute of repose will bar a suit on any defect not initiated within six years after the date of closing, unless the defect was caused by gross negligence. As such, a builder is at risk of being asked to perform repair work on a newly constructed home, or any fixture of the home, for up to six years after the home is constructed, if the home is occupied by the first purchaser **and if the defect could reasonably be classified as latent.** It may be possible through careful drafting to limit the time for notice of a defect and suit based on an implied warranty claim, and members should consult their attorneys for guidance in this area.

Home Builder Warranty continued

Since the law regarding warranties is rather complex, especially with respect to the scope of the implied warranty of workmanlike construction, it is important that these issues be clearly addressed in the written agreement prior to execution rather than after a dispute has arisen. All builders should include a clearly written and legally binding warranty as part of every transaction. The warranty provisions of the agreement should be reviewed by an attorney and, once the provision is in place and in force, the builder should diligently perform all obligations under the express warranties.

Material contained is representative of the state of the law at that time. This information is intended to give general guidance and should not be used for any other purpose. Builders should consult legal counsel and prepare a warranty based on their own operation and the state of the law at the time.