

CONSTRUCTION WARRANTIES – A TRAP FOR THE UNWARY

“Attorney's fees for the review of a contract before it is signed are a fraction of the cost of their fees after the project has gone bad.”

I received two calls last week on warranties, one from a contractor and the other a homeowner. Without going into specifics, the scenario is something similar to this:

It has been about two years since you put that addition on your home, or if you are a contractor – have completed the project, and the roof starts leaking after that recent Nor'easter. Does the homeowner have recourse against the contractor? Is the contractor obligated to repair the roof? Well, that depends, among other things, on the warranty clause contained in the construction contract, if in fact, the contract contained a warranty clause.

Most construction contracts contain an express warranty that the contractor will correct deficiencies and failures associated with the work for a certain period of time after the work is completed. The custom in the construction industry is for a one-year warranty. The theory being that most defects will manifest themselves within one year and contractors do not want to be subject to claims, and rightly so, for an indefinite period of time.

But what if your contract does not contain a warranty clause, or if it does, the defect arises after the warranty period has expired? Construction contracts also contain implied warranties. An implied warranty is an obligation imposed by law and is independent of any promises between the homeowner and the contractor. The most common implied warranties are (1) the implied warranty of habitability, which generally only applies to new homes, and (2) the implied warranty of workmanlike construction, which imposes upon a contractor the duty to provide that the work is of good quality, free from defects, and in conformance with the contract documents. However, implied warranties may be modified or disclaimed by contract. Also, these warranties are subject to different statute of limitation periods, which is outside of the scope of this article.

So, even if your contract does not contain an express warranty you may be able to recover on a claim for breach of an implied warranty. And if you are a contractor and you think that your liability to correct any defects ceased after the contractual period ended, you may still be subject to claims. The moral of the story, if you are unsure of any of the terms of the contract, engage counsel before you sign it.

Nevertheless, the best assurance of long-term performance is a combination of quality materials and skillful workmanship. No warranty can adequately compensate for the lack of these key elements.

- Steven Striffler

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