

HOME WARRANTIES

Buying a new or used home this year? Be sure to read your contract thoroughly, and don't hesitate to bring it into the Legal Assistance Office if you do not **fully** understand what you are signing. Among other things to consider when buying a home, the warranty provisions are, perhaps, the most important contractual terms to understand.

What is a Warranty?

Almost any breach of contract relating to a quality of the goods (a home in this case) sold is a breach of warranty. Indeed, a warranty is any factual statement or description regarding the quality of the home that is made part of the parties' contractual agreement. Even an oral statement regarding the quality of the home, if not excluded from the contract, could be a warranty. For instance, if a contract between a buyer and a home builder or contractor calls for white paint in a home, but the home is painted blue, then a warranty has been breached.

Express Warranties

Express warranties are usually the easiest warranties to understand in a home contract because they are almost always in writing. These express warranties are usually under a heading, surprisingly, called something to the effect of "Warranties." However, an oral statement delivered by the contractor, real estate agent, or seller directly to the buyer could be an express warranty. For example, if the seller tells a buyer that, "The carpets in this home will not stain," then the seller has just expressly warranted that the carpets will not stain. That statement is offered by the seller as a statement of fact. It's important to distinguish statements of fact from statements of mere puffery. Mere puffery is not a warranty. As an example, suppose a seller tells a potential buyer that the home for sale is "the best house on the block" or "this home will last a long time." These are statements of puffery: statements that involve too much interpretation to nail down to a common understanding of what exactly it means to be the "best" or what is a "long time." If a seller or real estate agent is making what you believe to be express warranties before you have signed the contract, then ask the real estate agent to put it in writing.

Implied Warranty of Good Workmanship

All implied warranties are creatures of the common law. You will not find these warranties in any statute book. The Texas Supreme Court has specifically said that a home buyer expects to purchase a home that is structurally sound, habitable, and free of hidden defects. Hence, Texas common law protects the average home buyer who does not have the requisite expertise to inspect a home personally and discover hidden defects. The implied warranty of good workmanship focuses on the builder's conduct: the implied warranty holds a contractor accountable for his work by measuring it against similar workmanship done in the same area. For example, a contractor's failure to properly construct a roof would be a breach of the implied warranty of good workmanship. Note, however, when reading your home contract that a contractor can disclaim the implied warranty of good workmanship by specifically providing for the manner, performance, or quality of the construction of the home. Hence, the implied

warranty of good workmanship acts as a gap filler when there are no express standards of workmanship in the contract.

Implied Warranty of Habitability

The implied warranty of habitability should not be confused with good workmanship, although the two could overlap. Habitability issues deal specifically with whether a home is suitable for human habitation. A mold problem, for example, would be a breach of the implied warranty of habitability. Whereas, using subpar insulation would likely be a workmanship issue rather than a breach of implied warranty of habitability. Additionally, Texas law imposes a duty on the seller or contractor to specifically notify the buyer in a contract that the seller is disclaiming the implied warranty of habitability. In fact, the seller or contractor must prove to a court, if the issue arises, that the buyer knew what they were buying. As an example, if a seller were attempting to sell a home with a mold issue, then the seller would have to specifically delineate in the contract that the home had a mold problem and that the buyer understands the mold problem.

“As Is” Clauses

Be careful if you are buying an older home with an “As Is” clause. In many cases, Texas courts will approve these clauses. An “as is” clause is an agreement to buy a home as you found it. If you are interested in a home where the seller is attempting to sell “as is,” then it would be extremely prudent for you to hire an independent home inspector to conduct a thorough inspection of the home. Note, if there are habitability issues, these must still be conspicuously explained to the buyer despite the “as is” clause.

Remedies

If you run into trouble after having purchased a home, and you think a contractor is not complying with the contract, then there are several Texas laws that you could use to recover damages. Moreover, Texas is a consumer friendly state. However, the law should be a last resort. Usually, most contractors want to make their customers happy, so try talking with your contractor first to fix any problems that you may have. The bottom line is to know what you are signing. Don’t get rushed into signing a bunch of documents that you don’t understand. Take your time, read, and ask questions.

If you have questions, contact the Fort Bliss Legal Assistance Office at (915) 568-7141/7150 for an appointment to speak with an attorney.