

Chalkline  
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Legal Corner by Jay A. Goldstein  
Washington's Implied Warranty of Habitability

Since 1969 when Washington's Supreme Court so ordered, Washington has had an implied warranty of habitability for new home construction. The warranty extends to the first buyer of a home built by a commercial home builder.

The warranty of habitability is implied by the courts for all such new home construction. The warranty generally applies to major defects in the structure of the home or for multiple smaller defects. In other words one big defect or many smaller defects can trigger liability for the implied warrant of habitability.

The warranty generally applies only to habitation issues. For example, the warranty does not apply to sidewalks, patios, decks, and any non-habitable structures outside the home.

The practical consequence of the warranty as intended by our courts is that a builder is held to basic minimum standards in new home construction no matter how inexpensive the home: the home must be water tight, level, with a proper foundation, plumbing, heat, potable water, and the all around general basics of habitability.

As for how long the warranty lasts, Washington has a statute of repose, which requires that all claims or causes of action must accrue within six years after substantial completion of the construction or termination of the services provided by the builder. Any cause of action that accrues after the six year period is barred.

However, after the cause of action accrues in the first six years, the original homebuyer has an additional six years to bring a law suit. Therefore, the builder is actually on the hook for twelve years after substantial completion.

However, recent case law has altered this formula.

Accrual of the cause of action means that the original homebuyer must discover or reasonably should have discovered the defect(s) within the first six years.

In addition the homebuyer could potentially have additional remedies based on breach of contract: the buyer might argue that he failed to receive the benefit of the bargain.

The implied warranty is very real and active in the State of Washington and has been consistently affirmed and extended over the last thirty years. The trend is apparently to continue to provide homebuyers an implied warranty, and our courts are likely only to broaden the scope.