



Are home builders required to provide a one-year warranty on new construction?

Release Date: 04/12/2018

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QUESTION: I represent a builder who recently completed construction of a spec home on a lot owned by the builder. I listed the home in the MLS and received an offer to purchase from a local agent. In the offer, the buyer's agent attached her firm's "Supplemental Provisions Addendum" which included a paragraph relating to new construction. That paragraph stated that the seller shall provide the buyer with a one-year warranty from the builder "as provided by applicable North Carolina law." Does North Carolina law obligate home builders to provide a one-year builder's warranty?

ANSWER: It does not. This is a common misperception. While builders may offer a written (or express) warranty, there is no legal obligation to do so.

Agents involved in the purchase and sale of new construction are encouraged to review the New Construction Addendum (Standard Form 2A3-T) and the Offer to Purchase and Contract - New Construction (Standard Form 800-T), both of which are jointly approved by the North Carolina Bar Association and the North Carolina Association of REALTORS®. In the situation presented, the proper form would be 2A3-T (as an addendum to Form 2-T) because the improvements have been completed. However, forms 2A3-T and 800-T both include a "Limited Warranty of Construction." If either of those forms is used, the seller-builder warrants that, for a period of one year, the seller will make all necessary repairs and corrections to the home that shall become necessary by reason of faulty construction, labor, or materials. In lieu of this express warranty, the builder can use its own form of written warranty. However, no express or written warranty is required by law.

Agents should recognize that another form of warranty, called an implied warranty, may exist whether or not the builder has provided an express warranty. In 1974, the North Carolina Supreme Court recognized the existence of an implied warranty of workmanlike construction and no major structural defects subject to the following requirements: (1) the contract must be for the sale of a recently completed dwelling or a dwelling under construction; (2) the seller must be in the business of residential construction; and (3) the warranty is only for the benefit of the original buyer(s) of the dwelling. This implied warranty is limited to latent defects - defects that are not visible or apparent to a reasonable person upon inspection of a dwelling.

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