**Construction and Design Law: Managing the Network of Interdependent Relationships**

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**Lesson 10: Warranty against Defects**

Those who perform construction work, supply materials and equipment, and perform construction services routinely assume responsibility for the quality of their work through express warranties. Moreover, even in the absence of an express warranty, courts read implied warranties into construction contracts, and the Uniform Commercial Code implies warranties into contracts for the sale of goods. Issues often arise, however, concerning such matters as the extent of a warranty, who has a valid claim for breach of warranty, the duration of warranty protection, remedies for breach of warranty, and the enforceability of contractual disclaimers and limitations.

Read the following materials on these and other issues relating to construction warranties:

* Sections 3.5 and 12,2 of the AIA’s A201 (2017), “General Conditions of the Contract for Construction.”

Note that section 3.5’s express warranty extends to the owner’s architect as well as to the owner. The contractor’s obligations under section 12.2 to correct defective work are in addition to the owner’s remedies for breach of the warranty (commonly damages), but those additional obligations apply only during the times provided for in section 12.2. The time during which the owner may assert a breach of warranty claim will generally depend on the applicable statute of limitations.

* *Construction Warranties and Guarantees: A Primer*, 23 Constr. Law. 17 (Winter 2003), by David A. Senter.

This article covers the fundamentals of express warranties under construction contracts. It also explains the special functions that performance guarantees and correction of work provisions serve in construction contracting practices. While the article refers to older versions of certain industry documents, the author’s central observations and conclusions remain valid today.

* Read these cases concerning implied warranties for residential construction*: Wawak v. Stewart*, 449 S.W.2d 922 (Ark. 1970); *Wingfield v. Page*, 644 S.W.2d 940 (Ark. 1983); *Bullington v. Palangio*, 45 S.W.3d 834 (Ark. 2001).

Many years ago, courts throughout the United States began implying warranties into contracts for residential construction. Despite jurisdictional differences, this series of Arkansas cases provides a good illustration of how courts have established, expanded, and restrained implied warranties for residential construction.

For Review and Discussion

1. Why might the owner’s architect or other design professional wish to be named as a beneficiary of the contractor’s express warranty?
2. How can a provision obligating the contractor to correct defective construction for a limited time serve the interests of both the contractor and the owner?
3. Because many reputable homebuilders promote their commitment to quality work as a marketing tool, they happily offer an express warranty. If you represented such a homebuilder in a jurisdiction that follows the principles the Arkansas cases articulate, what language might you propose to include in your client’s contracts to limit the client’s warranty liability while also preserving the marketing value of the warranty?