

**NEW HOME BUYERS BEWARE!**

By

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Many new home buyers receive a written warranty on the home that is either provided by the seller directly or purchased by the seller from a new home warranty company. The written warranty issued by sellers to many new home buyers is ordinarily "limited" in the sense that there are only a few defects that are covered, and for each of those defects there are strict written requirements that must be met. Most new home buyers assume that their rights with regard to the correction of defects found in their home are limited by the warranty documents issued to them. This is a mistaken assumption because Section 55-70.1 of the Virginia Code contains an implied warranty for new homes (not including condominiums) that is often much broader than the limited written warranty issued by the seller. Unfortunately, it is possible to lose the protection of the Virginia Code warranty on new homes by agreeing to a written waiver. However, if the contract for sale and/or the limited warranty issued by the seller do not include an express waiver of the Virginia Code warranty on new homes or state that the home is being sold "as is", as required by Section 55-70.1, then the Virginia Code warranty remains in effect. The Virginia Code warranty is often superior to the seller's limited warranty for construction defects in the home. In many cases, the differences between the two warranties are alarming.

For example, with regard to structural defects, many new home limited warranties provide coverage only if the defect involves a load bearing wall and renders the house unsafe, unsanitary or otherwise unlivable. In addition, there is ordinarily an exclusion of coverage if the structural defect amounts to a municipal or state construction code violation. Exterior brick is often not included within the limited warranty definition of a "load bearing wall". By comparison, the Virginia Code warranty for new homes is much more comprehensive and requires that "the dwelling with all its fixtures be free from structural defects, so as to pass without objection within the trade". A structural defect is defined as one that "reduces the stability or safety of the structure below accepted standards" or that restricts the normal use of the structure. The

Virginia Code structural warranty is in effect for five years from the date the buyer obtains title or takes possession of the property, whichever date is earlier.

Another example of the differences between the two warranties involves the overall quality of construction. The limited written warranty often provides coverage for the exterior of the dwelling, but only under certain circumstances. Many times, interior cracks in the walls and exterior cracks in the brickwork due to excessive settlement or otherwise will be covered only if the crack itself reaches a certain large size gap. This may well leave unsightly cracks excluded. On the other hand, the Virginia Code warranty requires that the house be constructed “in a workmanlike manner, so as to pass without objection within the trade”. That warranty lasts for one year from the date the buyer obtains title or takes possession of the property, whichever date is earlier. This is what is generally known as the new home buyers’ “punch list” warranty.

Pursuant to the Virginia Code implied warranty, once a defect is discovered, the buyer must give the seller of the new home written notice of the defect by registered or certified mail at the seller’s last known address. After the notice is given, the seller must cure the defect within a reasonable period of time, not to exceed six months. Any action for breach of the Virginia Code warranty must be brought within two years after the breach of warranty occurs.

There may be instances where the limited warranty issued by the seller will provide more coverage for the buyer, such as to remedy defects in mechanical systems in the new home. The important thing for new home buyers to remember is that the Virginia Code provides a warranty on new homes that should be compared to any limited warranty offered by the seller. Before signing the purchase agreement for a new home, the potential buyer should carefully review any limited warranty offered by the seller. New home buyers should not wait until the day of closing on the purchase of the new home, or some time thereafter, to review the seller’s limited warranty for the first time. The new home buyer should determine what construction defects are covered or excluded and look for any waivers contained in the limited warranty document and the purchase agreement. If there is a waiver or “as is” provision, the buyer should consult with an attorney to determine if the language of the waiver effectively eliminates the Virginia Code warranty on new homes. The legal options available to the buyer to remedy

construction defects will vary depending upon the particular facts and circumstances involved with each new home purchase and the new home buyer may or may not wish to accept the limited warranty offered by the seller.

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Mr. Winslow's eminent domain experience includes representation of the Commonwealth of Virginia Department of Transportation for right of way acquisitions, as well as representation of private individuals in land disputes with governmental and public utility takers. His product liability experience includes asbestos defense litigation in state and federal courts, as well as representation of homeowners with defective building materials and construction claims. His construction related experience includes litigation of both commercial and residential building issues throughout the Hampton Roads Area.

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