

NEW CONSTRUCTION BUILDER WARRANTY PRIMER

New home construction builder warranties arise either by implication under Virginia law or by an express provision in the contract between the builder and the buyer.

Va. Code § 55-70.1 implies a warranty in most new home sales regardless whether the contract provides a warranty. Under this statute, a builder warrants for one year that its product is free of structural defects, is constructed in a workmanlike manner, and is fit for habitation. Foundations are warranted for five years.

Of course, the contract may state a better warranty. It also may waive the implied warranty if done in the manner prescribed by the statute. I would strongly caution an agent against being a party to a contract where a buyer waived all builder warranties.

Many builders provide a warranty that is secured by a third-party private company. The builder still warrants the house, but for a premium paid by the builder a private company acts as a surety or guarantor of the builder's warranty. So, if the builder does not perform or goes out of business then the warranty company will honor the builder's warranty instead. These warranties help builders market their house and allow them to skip the VA and FHA new home inspection process.

In our area Residential Warranty Corporation (RWC) is the most common such company. These warranties typically provide one-year coverage for most defects, two-year coverage for systems, and ten-year coverage for structural matters.

At least one recent court case has held that such warranties are in lieu of the implied warranty under Virginia law. This is particularly notable because most such warranties have very specific exclusions and tolerances – e.g. how wide must a driveway crack be before the builder has to fix it? – instead of the vague “workmanlike manner so as to pass without objection in the trade” standard from the statute.

Also, be on the lookout for a new RWC offering: a five year warranty that provides one year coverage for most defects, one year coverage for systems, and five year coverage for structural matters. The premium for this policy will be substantially less than the ten-year policy so you

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should see it frequently. It remains to be seen whether it will satisfy the VA and FHA inspection waiver provision though.

Reputable builders are likely a buyer's best hedge against problems, but Virginia law and guaranteed builder warranties are not to be overlooked by agents and buyers.

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