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Lapse of New Home Warranties Will Not Bar Claims for Construction Defects in New Mexico

New homeowners are often provided with a written warranty on their home. These warranties are usually part of the home purchase contract and differ from builder to builder.

New home warranties often provide for a relatively short warranty period of one or two years. However, construction defects are often not apparent until well after the expiration of the warranty period. When homeowners complain about problem with their homes after this period expires, builders often turn a cold shoulder, citing the warranty language. Many homeowners accept this response under the misperception that their only recourse against their builder is lost after the warranty period expires.

There may be some builders that innocently claim protection under the warranty. Of course, this would be a very inexperienced or poorly informed builder with whom it was ill-advised for the homeowner to do business in the first place. More often, the builder is fully aware that the warranty does not preclude claims for serious construction defects. Instead, the builder is simply attempting to escape liability for the defects and responsibility for the costs of repair.

These limited new home warranties do not provide a homeowner's only recourse for construction defects. First, they may or may not cover all structural components of a home. Some warranties are limited to such issues as appliances, heating and air, minor mechanical issues and the like. Regardless, the one year warranty does not protect a builder from claims for construction defects based on negligence or misrepresentation or even from certain other contract claims. Homeowners may still have viable claims for damages for problems such as water leakage, foundation issues, improper soil preparation, architectural or engineering defects, stucco or drywall defects or any other significant defect in construction, engineering or design.

Instead, the homeowner is limited only by the relevant statute of limitations. The statute of limitations for claims based on a contract are 6 years and the statute of limitations for negligence claims is 3 years. In addition, New Mexico has a

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10 year statute of repose relating to claims that are not discovered for several years after substantial completion of the home's construction.

Due to the latent nature of construction defects, it is important to take seriously any indication of construction problems. A seemingly minor construction problem may well indicate far more serious construction defects. In addition, minor problems may suggest a sloppy or negligent builder. For instance, a rainwater leak may indicate other more serious problems with the stucco, drywall, roofing or foundation. It may also hint at other construction, architectural, engineering and design issues. After all, a sloppy or negligent builder is typically sloppy through and through.

Address the signs of construction defects early. Ignoring the problem is certainly not in the homeowner's best interests. Delay in addressing signs of construction defects will raise failure to mitigate damages issues. Worse still, failure to address the problems within the statute of limitations period will bar the claims completely.

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