



## **New Home Implied Warranty No Longer Waivable**

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Since 1966, Ohio courts have required builders to perform in a workmanlike manner when constructing new homes. Ohio interprets the term “workmanlike manner” as the use of ordinary care in performing work on, and selecting materials for, a home. Thus, the implied warranty puts a duty on contractors to work as a reasonable and competent contractor would in the same situation.

A construction contract for a new home need not contain a provision regarding this implied warranty for a court to apply it. However, more often than not, contracts have contained a provision waiving this implied warranty.

Until recently, Ohio courts had upheld these waivers. In *Jones v. Centex Homes*, the Ohio Supreme Court held that homebuyers cannot waive the home builder's duty to perform in a workmanlike manner. The Joneses purchased a new home from Centex Homes. After moving in, they discovered that their computers, cordless telephones, and televisions did not operate properly. The Joneses claimed that magnetized steel beams used in the construction of the homes caused these problems. The Joneses filed suit claiming that Centex breached its implied warranty to perform in a workmanlike manner. In response, Centex Homes argued that the Joneses signed a contract waiving this implied warranty. The Ohio Supreme Court ruled that this implied warranty is a duty imposed by law and cannot be waived by contract.

Consequently, Ohio builders now face new and unfamiliar obstacles. Builders of new homes are forbidden from eliminating their requirement to perform in a workmanlike manner. This duty does not require homebuilders to be perfect. But it does impose a standard of care under which homebuilders may not fall without liability. From this point forward, builders will need to take extra caution in the construction of new homes, and unfortunately prepare themselves for more frequent litigation.