



# Fitness-of-Purpose Warranties

by Quenda Behler Story

All manufactured products are warranted as fit for their stated purpose. A buyer who purchases a laminate labeled for use as a countertop, for example, is entitled to expect that the laminate can actually be used in kitchens and bathrooms and other places where countertops are usually installed. Even when the manufacturer does not explicitly offer a fitness-of-purpose warranty, the law implies one.

A fitness-of-purpose warranty can, however, be limited. In fact, manufacturers usually do limit this warranty in two ways:

- The product must be used as intended.
- The product must be installed according to the manufacturer's written instructions.

If the product is not used as intended or not installed according to the written instructions, all warranties are void. If the product fails, the manufacturer does not have to do anything about it.

**Do it their way.** Whether they realize it or not, when builders and remodelers install products, they also give their customers an implied warranty of fitness. Most builders and remodelers don't worry much about implied warranties, because even though they are liable to their customers for damages if the product fails, the manufacturer is liable to reimburse those damages — unless the manufacturer's warranties have been voided.

I recently learned of a builder who, while installing a new metal roof system, used one less screw than instructed on each 2x12-foot panel. When a strong wind blew the panels off, the builder had to replace the roofing, but he could not recover his costs from the manufacturer. The manufacturer had provided specific installation directions, and the builder did not follow those directions. There was nothing wrong with the product, just the way it was installed.

That's fair. Why should the manufacturer be liable because an installer

did not read the printed directions carefully? But suppose the builder did not actually install the product incorrectly, just in a way that differed from what the directions said. Does the manufacturer have any responsibility if its product fails?

The answer is still "No." As a general rule, if the manufacturer's instructions are not followed exactly, the manufacturer has no further responsibility. The same is generally true even when the product's failure is not related to the way the product is installed. For example, I know of a remodeler who installed a deck with a tongue-and-groove floor to match an existing deck on a customer's house. To seal the deck floor, he used a new water sealant recommended by the lumber company. The sealant failed within a week, and the deck floor became discolored and cupped by water damage. When the remodeler contacted the sealant manufacturer and asked what it intended to do about it, the answer was, "Nothing." The printed directions on the can stated that the product should be applied to wood that was installed "bark side up." The builder hadn't noticed this instruction, and had installed the deck flooring in his usual manner, without paying attention to which side was up.

**A "better" way is no defense.** It may be that you know a "better" way to install a product than what's printed in the manufacturer's instructions. Many roofers, for example, prefer to install asphalt shingles so that butt joints do not align more than every seventh course; following the installation instructions on some asphalt shingle packaging, however, results in butt joints that align every other course. The roofers' method may provide better protection from leaks, but if they use that better way, they will void the warranty on the shingles. If something goes wrong with those shingles — even if they dissolve in the

rain — the manufacturer is not responsible.

Sometimes the problem is that the installer's building practices have not kept up with modern technology. The original product would have worked with the way you learned to use it when you were an apprentice, but the product has changed. For example, you might be accustomed to a tight nailing pattern on floor underlayments. A new "improved" version of the underlayment, however, may lose its tensile strength when the fasteners are too close together. If there's a problem with the ceramic floor laid over the underlayment, you won't be entitled to help from the manufacturer.

**Read directions carefully.** Don't assume that because you've been successfully installing familiar products the same way for years that there's nothing new to learn. If the way you want to use a product requires that you use it in a way that differs from directions, contact the manufacturer's rep and ask for written permission specifically allowing you to use a different procedure. Or look for another manufacturer, one who doesn't exclude warranties when you do it your way. If you can't find a manufacturer who will warrant the product in the way you intend to use or install it, maybe you ought to review your procedures, or rethink your use of that product in that situation. The manufacturers might be trying to tell you something. ■

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