



Limiting Implied Warranties

by Quenda Behler Story

The job is finished. The customer has accepted the work, and you've been paid. You never have to deal with those people again, unless you put in a bid when they decide they want to remodel their kitchen. Right?

Well, not necessarily. If defects turn up in the work later, the customer may have certain warranty rights — whether you expressly warranted anything or not. In fact, the persons claiming these warranty rights may not even be the people for whom you did the work. The claimants may have bought the property, or they might be guests or tenants or have some other relationship with your original customer.

Warranties (called “guarantees” in some places) are promises that may be either *express* or *implied*. Express warranties are those specific promises written into the contract or made verbally to the customer. Implied warranties are those that are considered to be an inherent part of the job — in the eyes of the law, implied warranties follow logically from the fact that you accepted the job, did the work, and

got paid for it.

Before we look at the most common implied warranties, let's start with warranties that are *not* implied. To begin with, there is no implied warranty or guarantee that your work is totally free from defects. There is no implied warranty that your work is superior to work that some other construction company in your community might have done. Nor is there an implied warranty that there is no hidden flaw in the materials you used.

Also, implied warranties are not intended to be a device for a dissatisfied customer who just wants to make trouble for you. Warranties are triggered by situations involving actual damages or substantial defects. In other words, no harm, no foul.

What Did You Promise?

So what are these implied warranties you don't remember making? The name of any particular warranty can vary from state to state, but the concepts are pretty consistent. For instance, an implied “fitness of purpose” warranty in one state might be

called an implied “fitness for habitation” warranty in another state; but both mean that the remodeled or new house should be fit to live in.

Now, let's deal with the implied warranties that most construction jobs automatically do carry.

The work will be done in a non-negligent manner. By taking on a job, you are guaranteeing that you will not create any hidden defects that could cause harm to someone. For example, you will not install the railing in the upstairs hall balcony by nailing in a few finish nails at each end. Any informed builder would recognize that if a person leans on that railing, there's a good chance the railing could tear loose and drop that person to the floor below.

The work will be done in a reasonably good and workmanlike manner. This vague phrase means that you promise your work is up to minimum trade standards. It doesn't mean it will be perfect work or even that it will be better work than somebody else might do. “Workmanlike” means you will do your work in accordance with good

usage and the trade's accepted practices. For example, you won't install the roof flashing upside down, or hang the door with screws so short that they won't reach the framing.

The completed work will be fit for its intended purpose. If you build a bathroom, the toilet will flush; if it's a deck, you can walk on it; if it's a door, it will open and close. This "fit for intended purpose" warranty extends to the larger usability of the house as well. For example, the language that is typically used to describe the warranty of fitness of purpose on a new house is that the house is "fit for human habitation." If you fail to connect the soil pipe to the sewer, the house will not be habitable and you will be responsible, even if that flaw is not detected on inspection and the problem becomes apparent only after the people have moved in and started flushing the toilet. It does not matter that it was your plumbing sub who didn't do it right. Although you do have rights against that sub, the homeowner doesn't have to look for the sub — the homeowner has a breach of implied warranty action against you.

Taking It Back

Is it possible to avoid making any of these implied warranties? Yes. Although certain warranties are implicit in a job, you can limit some of these warranties or even disclaim them altogether if you can talk the client into agreeing to it — but you must do so clearly and explicitly. (Some implied warranties, however, such as those regarding general fitness of use or workmanlike standards or matters of safety, cannot be voided.)

Keep in mind that when you write the contract, any confusing or vague language in it will be held against you. So just saying you disclaim all the warranties without further explanation will not protect you. You must be clear about exactly which implied warranties you are canceling. The more specific the exception, the better.

For instance, suppose your customer fancies himself handy with roofing shingles (God forbid), and talks you into building a house but leaving the roof unshingled so he can do it. You wouldn't want to note simply that

"the builder does not warrant this house to be fit for habitation," even though that would be the case. Rather, you should state explicitly that at the customer's request, the scope of work does not include the application of shingles to the roof, and that you therefore can not warrant the house to be habitable on

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completion of the contracted work, and that there are no warranties whatsoever associated with the roof.

Usually the situations calling for exceptions to implied warranties are more subtle. Sometimes, for instance, a customer's preference or product choice compels you to build or install something that may not work as well as you would like it to — as when a customer insists on having you install a fixture you don't have confidence in, such as a new-fangled self-cleaning waterless toilet. If you are in that situation, you should protect yourself by making your doubts clear to the customer verbally and also expressly disclaiming in writing all implied warranties related to that building system or product.

Do Implied Warranties Last Forever?

Fortunately, no. The law states that warranties apply for a reasonable period of time. Exactly how long "reasonable" is can be difficult to pin down, so it's a good idea to state in your contract exactly how long your express and implied warranties run. A year's warranty is common, and is a workable period for both parties. ■

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