# Limiting Implied Warranties

by Quenda Behler Story

An implied warranty is a legal obligation that affects virtually every contractor and client. The idea behind it is that the work being done and the materials provided meet minimum standards of good workmanship, and usability and habitability.

Most contractors agree that when a project is finished, the client should be able to use the space for its intended purpose. And few object to promising good workmanship, especially once they understand that the implied warranty of good workmanship doesn't mean great or wonderful workmanship, it just means work that meets the standards of the trades.

## Statute of Limitations

But there are some legal pitfalls here, even for the most honest contractors. Legally, it can be hard to define just how long these implied warranties are to last. A couple of years? The life of the building? Some states limit the time period to a year or two. *The Uniform Commercial Code* uses a four-year statute of limitations.

Another problem is defining exactly what the builder is supposed to do when there's a breach of the implied warranty and something needs to be fixed. Is the contractor required to pay someone else to fix it, or reimburse the property owner if they have paid someone else? In some cases, you may even be asked to pay for every economic consequence of the breach. For example, if the electricity failed due to an installation problem, you may be asked to replace all the refrigerated and frozen foods.

## Call-Back Clause

It may be tempting to refuse to give your clients any implied warranty whatsoever, and it is possible to do that. But you would need to be specific and clear while explaining to your client that you're not making any promises that the finished job will meet the trades standards of good workmanship or be usable. Putting things like that into contracts and proposals, however, can make it very hard to get the business in the first place.

A better alternative, and one preferred by many contractors, is to require the client to simply call the contractor when a problem first arises, and let the contractor fix the problem himself. A clause like this puts you the contractor in control of the issue and allows you to keep the problem from growing worse.

Wording such a clause so it is enforceable requires you to review and incorporate the applicable consumer protection laws in your state. The language should require the client to call you first to fix any problems, and should also require them to do so in a timely manner. You don't want them to ignore a window leak for six months before calling, and then expect you to fix the leak and the damage to the sill and the drywall below. The clause should also limit the right to callbacks to no more than one year after the work is completed. A sample clause might read something like this:

"If the work is not in accordance with the requirements of the contract, the contractor shall correct it promptly after receipt of written notice from the owner, unless the problem has been previously corrected and accepted by the owner. All implied warranties are limited to no more than one year after substantial completion of the work."

This defines the client's remedy for problems with the work to calling the contractor back to fix it. In legal jargon, it is called a limitation on warranties. The client still has implied warranties, but the contract limits how the client can deal with breaches of these implied warranties, which prevents them from taking things into their own hands. Most of us would much rather commit to going back to a job and trying to fix a problem, instead of leaving the client to their own devices, which may involve hiring someone else to fix it at an unknown cost and with unknown consequences.

## Other Obligations

The clause above takes care of many implied warranty issues, but not all. There are two things it doesn't address: contractor incompetence, or problems with the materials or manufactured products used in the construction.

***Contractor incompetence.*** Regardless of what's in your contract, the client does not have to give you unlimited opportunities to fix what you didn't do right in the first place. As a general rule, the law says the client must give you a "reasonable" opportunity to get the problem fixed. But unless your state dictates or your client separately agreed to a specific time period or specific number of callbacks, "reasonable" does not mean the client has to wait indefinitely for your return. Nor does the client have to give you an unlimited number of attempts to fix the callback problem.

***Warranty on materials or products.*** Unless the client bought all of the materials, there is an implied warranty of merchantability for all of the materials purchased and installed by the contractor. In other words, the contractor automatically gives the client a warranty stating that materials supplied and installed by him are usable and fit for their purpose. This is fair, to some extent. You're supposed to read the manufacturer's directions so that

when you install that window flashing it is right side up, the way the manufacturer intended. But how can you promise the client that the product has been manufactured correctly? As anyone who has had to deal with a manufacturer's defect can attest, enforcing some of those manufacturer's warranties can be a huge hassle, if not downright impossible.

***Limiting your liability to installation.*** That's why I also like to include this language in the warranty clause of the contract:

"The contractor hereby warrants that the products and materials used in this project conform to the contract requirements, are new materials, and meet the standards of the trade. The contractor warrants that he will take all the necessary steps to maintain the manufacturers' warranties on the products and materials. The contractor makes no other implied or express warranties."

Fine-tuned by your attorney to conform to local consumer laws, these two clauses should go a long way toward limiting your liability after you have completed your projects, as well as defining to your clients how problems need to be dealt with. It puts you in control, but then you need to hold up your end of the bargain. 

---

***Quenda Behler Story*** *has practiced and taught law for over 25 years. She and her husband are partners in a remodeling company in Okemos, Mich.*