

Trade Standards

by Quenda Behler Story

In the construction business, perfection is hard to come by. And if the thing that's being built isn't perfect, then someone must decide whether it's "good enough."

Say you're looking at the kitchen you just installed and it looks good enough to you, but the homeowner is complaining about miters that aren't perfectly aligned, hinges that don't line up, shelves that aren't level, and he doesn't like the wood you chose.

How is good enough determined, especially when your customer is demanding better? Is there some kind of law about this?

Yes, there is, but your legislature didn't sit down and write it with you in mind. Sometime after the states

of-purpose and workmanlike quality.

What's good enough is also affected by a variety of consumer protection acts such as asbestos laws and financing regulations, and it's affected by express warranties in your contract. But, if you have conformed to all the consumer protection laws and have not made any express warranties about that kitchen you built, then the law of implied warranties will determine if the construction of that kitchen is good enough.

Fitness-of-Purpose

The implied warranty of fitness-of-purpose means that the building is free from major structural defects and can be used in the way it was

work has met the warranty of fitness-for-purpose (or warranty of habitability). What fitness-of-purpose means to you as a builder is that you aren't done until your project can be used in the way it was intended to be used. Fitness-of-purpose does not require that the building be perfect.

The ugly cabinet wood you chose is not a violation of your fitness-of-purpose warranty. Your customer cannot *successfully* complain about that unless the contract called for a particular type of wood.

Material choices are always a fertile ground for customer complaints, but if certain materials or brand models are not specified in the contract, implied warranties don't give the customer a legal basis for a complaint about your choices, so long as they will work for their purpose. If the customer wanted something else, he should have written that choice into the contract.

However, if, in that kitchen you built, the cupboard door hinges don't line up, that can be a breach of your warranty of fitness-of-purpose because that can make those cupboard doors gap open. If your shelves aren't level enough to keep the dishes from sliding, that's a breach of warranty, because fitness-of-purpose requires that the dishes be safe on the shelves.

Remember, though, that not every problem is a warranty problem. If those cabinets aren't in the right place, or there aren't enough of them, that has nothing to do with warranties; those are contract problems.

Workmanlike Manner

The second implied warranty states that the building or addition or remodeling project has been built in a workmanlike manner and is up to the community standard of quality. A

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adopted the *Uniform Commercial Code* to regulate transactions between retail sellers and their customers, the courts said, "Hey, selling a house or a remodeling project is kind of like selling a television or a pair of shoes, so let's apply the implied warranties in the *UCC* to construction projects."

So through a process of legal evolution, the implied warranties of the *UCC* became the standards for evaluating the work in construction projects when no higher standard is specified in the contract. Some states use different names for these implied warranties, but they all amount to the same two kinds of warranties: fitness-

intended to be used: It keeps the rain off. It will not collapse in the first windstorm. The electricity is hooked up and working so that people can do the things that people do in modern houses. It has adequate water and a waste supply that works so people don't have to use outdoor facilities. (Think I'm kidding here? I'm not. I'm remembering a particular lawsuit in which the plumbing stack hadn't been connected.)

This may all sound obvious, but these are the criteria that the building inspectors use to issue an occupancy permit. The occupancy permit is *prima facie* evidence that the builder's

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workmanlike manner is not necessarily your customer's standard of quality. It does not mean perfect or better than average, and sometimes it doesn't even mean as good as average.

It's what's considered good enough work in your community. That may not be what's considered good enough someplace else. Community means the surrounding geographic area.

So whether your miters are a breach of your implied warranty to build in a workmanlike manner depends on what's considered good enough work in your community. If most crew chiefs or site superintendents in your area would tell you to do it over, then the work isn't good enough. But if those crew chiefs or site supers would accept it, it is good enough, even if it's a long way from perfect.

This doesn't mean that there's only one standard of good miters in your community. What your local builders or crew chiefs would accept in a high-end house may not be what they would accept in a commercial establishment or a less expensive building.

If a dispute about a building's quality actually went to court, the builder's attorney would bring in local people with construction experience, such as builders or crew chiefs, to testify — not to how good the building in question is but to what the standards are for that kind of building in that community. Then the jury or judge would decide whether the building in question meets that standard.

Many customers want better than good enough. If they do, they should write that higher standard into the contract, because there is no implied warranty to do a better job than what's locally acceptable. 

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