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IMPLIED WARRANTY OF HABITABILITY

In the sale of a new house or condominium by a builder to the first intended occupant, the law imposes an implied warranty that the dwelling is structurally safe for the purchaser's intended purpose of living in it. *House v. Thornton,* 76 Wn.2d 428 (1969); *Atherton Condominium Ass'n v. Blume Dev. Co.,* 115 Wn.2d 506 (1990). This "implied warranty of habitability" is based upon recognition by the courts that the rule of caveat emptor ("let the buyer beware"), which is premised on an arm's length transaction between a buyer and seller of comparable skill and experience and in equal bargaining positions, has little relevance in the modern marketplace.

Prerequisites of the Warranty. The implied warranty of habitability arises only where the structure is a new residential dwelling built by a commercial builder for resale purposes, rather than personal occupancy. *Klos v. Gockel,* 87 Wn.2d 567 (1976); *Frickel v. Sunnyside Enterprises,* 106 Wn.2d 714 (1986).

Scope of the Warranty. Only serious structural defects that severely restrict the habitability of the dwelling are covered by the implied warranty. It does not extend to mere defects in workmanship or obligate the builder to construct a perfect residential dwelling. *Stuart v. Coldwell Banker Comm'l Group, Inc.,* 109 Wn.2d 406 (1987). For example, builders have been held liable under the implied warranty of habitability for the following defects: soil problems affecting structural integrity; drainage problems affecting the stability of the foundation; inoperative septic systems; inadequate heating systems; roof leaks; and fire code violations. On the other hand, defects in decks, walkways, and railings, while dangerous, are not covered.

Length of the Warranty. The purchaser must discover the defect within six years of substantial completion, and commence a lawsuit within three years after discovering the defect. RCW 4.16.310.