

## Enforcing Statutory Warranty Rights In Maryland

By Nicholas D. Cowie, Esq.

During the 1970s and 1980s, the Maryland Legislature enacted statutory warranties to protect consumers from construction defects in newly constructed homes and residential communities. Today, four separate statutory warranties apply to the sale of condominiums. One is an express warranty and the other three are implied warranties. Express warranties are based on a developer's written representations about the quality of construction. Implied warranties are imposed by law in the sale of a condominium regardless of whether the developer made any written representation or even otherwise intended to create a warranty.

Generally, the implied warranties given by a developer under Maryland law provide that the common elements and/or units, are:

1. "free from faulty materials"
2. "constructed according to sound engineering standards"
3. "constructed in a workmanlike manner"
4. that the developer is responsible for correcting defects in materials and workmanship
5. that construction is "within acceptable industry standards in effect when the building was constructed".

The time for enforcing these warranties can be as short as two years and as long as four years. The enforcement time periods can commence at different times depending on the facts of each individual case. Some warranties require that notice of the defect be given to the developer within a certain time period. The time for enforcing warranties can also be extended during developer negotiations by a private "tolling agreement".

Most developers do not understand how the statutory warranties work and often incorrectly inform unit owners that their construction defect-related problems (such as leaks around windows) are "out of warranty". The association should not rely on a developer's interpretation since the law, not the developer, determines when statutory warranties expire.

Construction defects, with few exceptions, occur during construction and exist at the time of sale to a unit owner. However, these defects may be concealed within exterior walls or otherwise "latent" (i.e., not obvious) to the average person until they later manifest themselves in the form of leaks or otherwise. In such cases, the statutory warranties are breached at the time of sale by the Developer, well within the warranty period, however, the unit owner is unaware of the breach. It is up to the unit owners or their association to identify these defects and address them with the developer within the applicable time period for warranty enforcement, known as the "statute of limitations".

In today's world it is customary and prudent for condominium associations to obtain deficiency or transition studies to identify potential construction defects before warranty rights expire. Left unattended, even minor construction deficiencies can, over time, result in extensive and costly property damage. Experienced property managers know that construction defects may not be obvious to the average homeowners and may not manifest themselves in the form of property damage (e.g., roof leaks or window leaks) for many years. An architectural or engineering firm can identify any such problems at an early stage so that they can be brought to the developer's attention while warranties are still enforceable and before serious property damage occurs.

The application of warranties is an area of much confusion and newly formed, unit owner-controlled condominium associations should contact legal counsel versed in this area for free consultation as to

how the various statutory warranties apply to their particular case so that they can protect their statutory right to have a condominium free from construction defects.

**NOTE REGARDING AUTHOR:**

**Nicholas D. Cowie, Esq. is a partner in the law firm Cowie & Mott, P.A. and a member of the Washington Metro Chapter of the Community Association Institute. Mr. Cowie established the construction law course at the University of Baltimore where he serves as an adjunct professor of construction law. Mr. Cowie has been practicing construction defect law for over 20 years and his legal work in the courts and legislature has greatly strengthened the rights of condominium associations and their members in construction defect claims.**