

INDIANA NEW HOME CONSTRUCTION WARRANTIES

There are two types of warranties in new home construction: “*implied warranties*” and “*express warranties*.” Under Indiana law, “implied warranties” automatically apply to newly constructed homes. The implied warranty of fitness and habitability and the implied warranty of workmanship are warranties determined by caselaw and are not based in statute. “Express warranties” are separate warranties that are given by the builder to the consumer and are typically outlined in the builder’s construction agreement (or verbally made by the builder).

In 1987, the Indiana legislature enacted a statute to enable a builder to control this liability with some certainty, in exchange for the builder giving the express warranty as set forth in the Indiana New Home Construction Warranty Act (*see Indiana Code §32-27-2-1 et. seq.*) and following the requirements of the Act. Thus, at the builder’s option, he may choose to disclaim the implied warranties describe above and provide an insured express warranty to the consumer. This disclaimer is accomplished by the builder providing the specific express warranties that are detailed in Section 8 and complying with the additional provisions of the Act.

The warranties set forth in Indiana Code §32-27-2 are not automatic and are not part of a new home construction warranty unless the builder expressly chooses to include it as a warranty in his construction agreement. The specific text of the New Home Construction Warranty Act (Indiana Code §32-27-2) as of July 1, 2012, is as follows:

IC 32-27-2 NEW HOME CONSTRUCTION WARRANTIES

IC 32-27-2-1 Effective date of warranties

The warranties defined by this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) become effective on the warranty date attributed to a new home.

IC 32-27-2-2 "Initial home buyer" defined

As used in this chapter, "initial home buyer" means a person who executes a contract with a builder to buy a new home and who:

- (1) occupies the new home as its first occupant; and
- (2) occupies the new home as a residence.

IC 32-27-2-3 "Major structural defect" defined

As used in this chapter, "major structural defect" means actual damage to the load bearing part of a new home, including actual damage due to:

- (1) subsidence;
- (2) expansion; or
- (3) lateral movement;

of the soil affecting the load bearing function, unless the subsidence, expansion, or lateral movement of the soil is caused by flood, earthquake, or some other natural disaster.

IC 32-27-2-4 "New home" defined

(a) As used in this chapter, "new home" means a new dwelling occupied for the first time after construction.

(b) The term does not include:

- (1) a detached garage;
- (2) a driveway;

- (3) a walkway;
- (4) a patio;
- (5) a boundary wall;
- (6) a retaining wall not necessary for the structural stability of the new home;
- (7) landscaping;
- (8) a fence;
- (9) nonpermanent construction material;
- (10) an off-site improvement;
- (11) an appurtenant recreational facility; or
- (12) other similar item.

IC 32-27-2-5 "Home buyer" defined

- (a) As used in this chapter, "home buyer" means a purchaser of a new home.
- (b) The term includes any owner of the new home before the expiration of the warranties defined by this chapter.

IC 32-27-2-6 "Builder" defined

As used in this chapter, "builder" means a person who constructs new homes for sale, including the construction of new homes on land owned by home buyers.

IC 32-27-2-7 "Warranty date" defined

As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by one (1) of the following:

- (1) The builder.
- (2) An individual or individuals renting the home from the builder.
- (3) An individual or individuals living in the home at the request of the builder.
- (4) The initial home buyer.

IC 32-27-2-8 Warranties of builder; survival of warranties

(a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the initial home buyer the following:

- (1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.
- (2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of:
 - (A) plumbing;
 - (B) electrical;
 - (C) heating;
 - (D) cooling; or
 - (E) ventilating;

systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 or IC 32-15-7 before their repeal) survive the passing of legal or equitable title in the new home to a home buyer.

(c) An individual identified in section 7(1), 7(2), or 7(3) of this chapter who is selling a new home shall notify the purchaser of the home in writing on or before the date of closing or transfer of the new home of:

- (1) the warranty date (as defined in section 7 of this chapter); and
- (2) the amount of time remaining under the warranty.

IC 32-27-2-9 Disclaimer of implied warranties

(a) A builder may disclaim all implied warranties only if all of the following conditions are met:

- (1) The warranties defined in this chapter are expressly provided for in the written contract between a builder and an initial home buyer of a new home.
- (2) The performance of the warranty obligations is backed by an insurance policy in an amount at least equal to the purchase price of the new home.
- (3) The builder carries completed operations products liability insurance covering the builder's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the builder.

(b) The disclaimer must be printed in a minimum size of 10 point boldface type setting forth that the statutory warranties of this chapter are in lieu of the implied warranties that have been disclaimed by the builder, and the initial home buyer must affirmatively acknowledge by complete signature that the home buyer has read, understands, and voluntarily agrees to the disclaimer. Additionally, the initial home buyer must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the contract, a separate one (1) page notice, attached to the contract, that includes and begins with the following language:

"NOTICE OF WAIVER OF IMPLIED WARRANTIES

I recognize that by accepting the express warranties and the insurance covering those warranties for the periods of time provided in this contract, I am giving up the right to any claims for implied warranties, which may be greater than the express warranties. Implied warranties are unwritten warranties relating to the reasonable expectations of a homeowner with regard to the construction of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis."

(c) If there is a default of either:

- (1) the insurance for the performance of the warranty obligations; or
- (2) the completed operations products liability insurance;

the disclaimer by the builder is void from and after the default.

IC 32-27-2-10 Breach of warranty; actions against builder; damages; attorney's fees

(a) If a builder provides and breaches a warranty set forth in section 8 of this chapter (or IC 34-4-20.5-8 or IC 32-15-7-8 before their repeal), the home buyer may bring an action against the builder for:

- (1) damages arising from the breach; or
- (2) specific performance.

(b) If damages are awarded for a breach of a warranty set forth in section 8 of this chapter (or IC 34-4-20.5-8 or IC 32-15-7-8 before their repeal), the award may be for not more than:

- (1) the actual damages, which are either:
 - (A) the amount necessary to effect repair of the defect that is the cause of the breach; or
 - (B) the amount of the difference between the value of the new home without the defect and the value of the new home with the defect;
- (2) the reasonably foreseeable consequential damages arising from the defect covered by the warranty; and
- (3) attorney's fees, if those fees are provided for in the written contract between the parties.

IC 32-27-2-11 Warranties in addition to contract rights; other remedies

- (a) The warranties set forth in this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) are in addition to any rights created by contract between the parties.
- (b) The remedies provided in section 10 of this chapter (or IC 34-4-20.5-10 or IC 32-15-7-10 before their repeal) do not limit any remedies available in an action that is not predicated upon the breach of an express or implied warranty set forth in this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) or otherwise existing.