

IC 32-27

ARTICLE 27. CONSTRUCTION WARRANTIES ON REAL PROPERTY

IC 32-27-1

Chapter 1. Statutory Home Improvement Warranties

IC 32-27-1-1

Application of chapter

Sec. 1. (a) This chapter applies only to a home improvement that is made under a home improvement contract.

(b) This chapter applies only to a home improvement contract entered into after June 30, 1992.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-2

Warranty effective date

Sec. 2. The warranties defined by this chapter become effective on the warranty date.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-3

"Home" defined

Sec. 3. (a) As used in this chapter, "home" means an attached or detached single family dwelling.

(b) The term includes an attached garage.

(c) The term does not include:

- (1) a driveway;
- (2) a walkway;
- (3) a patio;
- (4) a boundary wall;
- (5) a retaining wall not necessary for the structural stability of the home;
- (6) landscaping;
- (7) a fence;
- (8) an offsite improvement;
- (9) an appurtenant recreational facility; or
- (10) other similar item.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-4

"Home improvement" defined

Sec. 4. As used in this chapter, "home improvement" means any alteration, repair, or other modification of an existing home.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-5

"Home improvement contract" defined

Sec. 5. As used in this chapter, "home improvement contract" means a written agreement between a remodeler and an owner to

make a home improvement.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-6

"Load bearing parts of the home" defined

Sec. 6. As used in this chapter, "load bearing parts of the home" means the following:

- (1) Foundation systems and footings.
- (2) Beams.
- (3) Girders.
- (4) Lintels.
- (5) Columns.
- (6) Walls and partitions.
- (7) Floor systems.
- (8) Roof framing systems.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-7

"Major structural defect" defined

Sec. 7. As used in this chapter, "major structural defect" means actual physical damage to the load bearing functions of the load bearing parts of the home that:

- (1) were installed, altered, or repaired by the remodeler in the course of remodeling the home; or
- (2) although not installed, altered, or repaired by the remodeler, were directly damaged by the work of the remodeler;

to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-8

"Owner" defined

Sec. 8. As used in this chapter, "owner" means a person who:

- (1) owns the home; and
- (2) contracts with the remodeler to perform the home improvement work in the home improvement contract.

The term includes any of the owner's successors in title before the expiration of the warranties defined by this chapter.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-9

"Person" defined

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a business trust, an estate, a trust, a partnership, an association, a cooperative, or other legal entity.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-10

"Remodeler" defined

Sec. 10. As used in this chapter, "remodeler" means a person who contracts with an owner to alter, repair, or modify the owner's home. *As added by P.L.2-2002, SEC.12.*

IC 32-27-1-11

"Warranty date" defined

Sec. 11. As used in this chapter, "warranty date" means the date by which all home improvements and work under the home improvement contract have been substantially completed so the owner can occupy and use the improvement in the manner contemplated by the home improvement contract. *As added by P.L.2-2002, SEC.12.*

IC 32-27-1-12

Warranty coverage; warranties survive legal or equitable title

Sec. 12. (a) In performing home improvements and in contracting to perform home improvements, a remodeler may warrant to the owner the following:

- (1) During the two (2) year period beginning on the warranty date, the home improvement must be free from defects in workmanship or materials.
- (2) During the two (2) year period beginning on the warranty date, the home improvement must be free from defects caused by faulty installation of:
 - (A) new plumbing systems;
 - (B) new electrical systems;
 - (C) new heating, cooling, and ventilating systems; or
 - (D) extended parts of existing systems.

The warranty does not cover appliances, fixtures, or items of equipment that are installed under the home improvement contract.

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

(4) During the ten (10) year period beginning on the warranty date, the home improvement and affected load bearing parts of the home must be free from major structural defects.

(b) The warranties provided in this section survive the passing of legal or equitable title in the home to subsequent persons.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-13

Warranty disclaimers; conditions; acknowledgment; default

Sec. 13. (a) A remodeler 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 home improvement contract between a remodeler and an owner.
- (2) The performance of the warranty obligations is guaranteed

by an insurance policy in an amount equal to the contract price made under the home improvement contract.

(3) The remodeler carries completed operations products liability insurance covering the remodeler's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the remodeler.

(b) The disclaimer must be printed in a minimum size of 10 point boldface type setting forth that the warranties defined by this chapter replace the implied warranties that have been disclaimed by the remodeler. The owner must affirmatively acknowledge by complete signature that the owner has read, understands, and voluntarily agrees to the disclaimer.

(c) The owner must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the home improvement contract, a separate one (1) page notice attached to the home improvement contract that includes 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 provided in this home improvement 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 remodeling and home improvement of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis."

(d) If there is a default of the:

(1) insurance for the performance of the warranty obligations;
or

(2) completed operations products liability insurance;

the disclaimer by the remodeler is void.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-14

Breach of warranty; award of damages

Sec. 14. (a) If a remodeler breaches a warranty set forth in section 12 of this chapter, the owner may bring an action against the remodeler 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 12 of this chapter, the award may not be for more than:

(1) the actual damages that are:

(A) necessary to effect repair of the defect that is the cause of the breach; or

(B) the difference between the value of the home without the defect and the 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.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-15

Warranties in addition to contract rights; remedies

Sec. 15. (a) The warranties defined in this chapter are in addition to any other rights created by contract between the parties.

(b) The remedies provided in section 14 of this chapter do not limit any remedies available in an action that is not predicated on the breach of an express or implied warranty defined by this chapter.

As added by P.L.2-2002, SEC.12.