

## WARRANTIES ON CONSTRUCTION

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### REGISTRAR OF CONTRACTORS

1. The **Registrar of Contractors imposes a two-year period** from completion of the work in which it can order corrective work.

**Completion** is defined as “the earlier of close of escrow or actual occupancy for a new home or other new building construction” or completion of a specific project.

2. Under a new statute (§32-1155.01) the **ROC may order the parties to attend arbitration** if the cost of repairs is \$5,000 or less (cost to be determined by ROC inspector).

3. The ROC can impose the two-year corrective work order even if your contract specifies a one-year warranty period.

### CONTRACT ACTIONS

1. In Arizona a party may bring a **claim for breach of contract within six years** of a breach on a written contract or three years on breach of an oral contract.

2. This means that even if the construction work was done five years ago and is outside the ROC two-year period, an owner can bring an action for breach of contract or breach of implied warranty.

An **express warranty** is in writing and says “We will warrant the work for X number of years.” An implied warranty is one imposed by law and requires the contractor to stand by its work for a reasonable amount of time. What is reasonable depends on the expected life of the product installed.

## **IMPLIED WARRANTIES**

1. Under an **implied warranty** an owner could potentially have a claim for 10, 15 or 20 years, especially on a feature that is supposed to last a long, such as a roof. Some roofing materials are advertised as being able to last 20 years – that would apply to the materials themselves, but what about the labor? An argument can be made that the installation and materials on a roof should last longer than the six-year limitation period on breach of contract.

2. Under an implied warranty an **owner can bring an action** for construction defects or workmanship **even after the six-year limitation period** has run on a breach of contract claim.

## **THE STATUTE OF REPOSE**

1. In order to limit a contractor's liability for implied warranty claims (which could potentially run for decades) the Arizona legislature passed a **Statute of Repose** which **limits an action against contractor to eight years** from completion of the work.

(An action can be brought in the 9<sup>th</sup> year after completion if the defect is discovered in the 8<sup>th</sup> year; this gives the owner a one year period after discovery to bring the claim)

2. So unless you have given the owner an express warranty longer than eight years, the law cuts off an owner's ability to bring a claim after eight years.

## **NEGLIGENCE CLAIMS**

1. However, there are exceptions to every rule. **Negligence claims** (which means a contractor performed work below the standard of care in the industry) can be brought at any time **within two years of discovery the defect**.

HOWEVER, **negligence claims can only be brought** after the eight-year Statute of Repose **IF there is also personal injury or injury to personal property in addition to the construction defect.**

2. Here's an example of how this works: If a fireplace collapses ten years after a house is built, the owner has no claim against the contractor for repairs to the fireplace. However, if a vase or other personal property is damaged as a result of the collapsing fireplace, then the owner can bring an action for the cost to repair the fireplace and the vase.