

BUILDER WARRANTY RESPONSIBILITIES IN MONTGOMERY COUNTY

The Montgomery County Council passed legislation in 1995 that changed the warranty requirements for homebuilders in Montgomery County. The legislation, which was signed into law by County Executive Douglas Duncan, took effect for all new home sales and construction contracts that were entered into starting April 1, 1995, and thereafter. The changes were as follows:

1. A builder is no longer required to provide an insured, third party warranty through either a private warranty plan or the County Warranty Fund. Instead, the builder is required to provide a written builder's warranty that provides for the following coverage:

a. For one year, the new home must be free from any defect in materials or workmanship as defined in the minimum performance standards. The minimum performance standards remain the same as under the previous law.

b. For two years, the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.

c. For five years, the new home must be free from any major structural defect.

2. The builder is required to disclose in writing, prior to entering into a new home sales or construction contract, whether there is any bond, insurance, or other financial security which guarantees the builders warranty performance, and provide proof of the bond, insurance, or other financial security on request. In addition, the builder has to make the disclosures required under state law as to whether the builder participates in a new home warranty security plan approved by the state.

3. The builder is required to include the following notice in the sales or construction contract:

NOTICE TO BUYER

Montgomery County law does not require this builder to furnish any bond, insurance, or other financial security to guarantee the builder's performance of its warranty obligations. If a builder has promised you any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond, insurance, or security must be listed here:

The buyer must acknowledge in writing that the buyer has read and understands this notice.

SAMPLE NEW HOME WARRANTY
MONTGOMERY COUNTY

The builder of this home, _____,, provides the following warranty on the new home covered by this contract:

Warranty Period

1. For one year, the new home is warranted to be free from any defect in materials or workmanship, subject to the performance standards, limitations and exclusions listed below.
2. For two years, the new home is warranted to be free from any defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems, subject to the performance standards, limitations, and exclusions listed below.
3. For five years, the new home is warranted to be free from any major structural defect, subject to the performance standards, limitations, and exclusions listed below.

Performance Standards and Limitations

This warranty starts on the date of settlement or occupancy, whichever occurs first.

For purposes of this warranty, the minimum performance standards are those established by Chapter 31C of the Montgomery Code, and any regulations enacted under its authority.

A major structural defect is actual physical damage to the following eight designated load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable by community standards:

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

This warranty provides you with specific legal rights. You may have other rights by contract or under state law.

Notice

You, the buyer, must provide written notice to the builder of any defects in the home within thirty days of the expiration of the applicable warranty period. For instance, for any defect covered by the one-year warranty, you have one year and thirty days to notify the builder in writing of the defect. If you fail to notify the builder within this timeframe, the defect is not covered by this warranty.

Transferability

Any remaining coverage under this warranty is transferable to any subsequent owner of the home, so long as that owner uses the home for residential occupation.

Exclusions from Warranty Coverage

1. Defects in outbuildings, including detached garages and detached carports, except outbuildings which contain the plumbing, electrical, heating, cooling, or ventilation systems serving the home; swimming pools and other recreational facilities; driveways; walkways; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and plantings; off-site improvement or any improvements not a part of the home itself.

2. Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home.

3. Any damage to the extent it is caused or made worse by:

a. Negligence, improper maintenance, or improper operations by anyone other than the builder or its employees, agents, or subcontractors.

b. Failure by the owner to give written notice to the builder of any defects within thirty days of the expiration of the warranty.

c. Changes, alterations, or additions made to the home by anyone before or after initial occupancy, except those performed by the builder, or its employee, agents, or subcontractors who are acting in their capacity as employees, agents, or subcontractors of the builder.

d. Changes of the grading of the ground by anyone other than the builder, its employees, agents, or subcontractors.

4. Any defect in, or caused by, materials or work, including but not limited to items shown on any "Addendum", supplied by anyone other than the builder, or its employees, agents or subcontractors. The builder however, will be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder.

5. Normal wear or tear or normal deterioration.

6. Accidental loss or damage from acts of nature such as, but not limited to, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, and changes in the level of underground water table which are not reasonable foreseeable except to the extent that such accidental loss or damage was caused by or aggravated by defects in construction or materials.

7. Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.

8. Insect damage. This exclusion does not apply to insect damage situations where the builder has failed to use proper materials or construction methods designed to prevent insect infestation.

9. Any loss or damage which arises while the home is being used primarily for non-residential purposes.

10. Body injury

11. Any loss or damage which the owner, wherever feasible has not taken timely action to minimize or provide timely notice to the builder.

12. Loss or damage due to abnormal loading of the floors by the owner which exceed code requirements.

13. Consequential damages to personal property are excluded. However, consequential damages to real property as a result of a defect or repair of a defect are covered.

14. Any condition that does not result in actual physical damage to the home.

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I, the buyer, acknowledge that I have read and understand the above notice.

Buyer

Co-buyer