

When a one-year warranty lasts longer

One of the most common misconceptions among construction project owners, contractors, subcontractors, suppliers and – dare I say – lawyers concerns the phrase “one-year warranty.”

For example, I have often heard contractors say, “We are beyond the one-year warranty period, so we don’t have anything to worry about.” Or, occasionally, a project owner will ask, “Who is responsible for the problems with my building after the one-year warranty has expired?”

Although in certain circumstances these statements are correct, usually they’re not.

The reason these statements are often incorrect is that the phrase “one-year warranty” is commonly used in reference to the “one-year correction period” provided for under many construction contracts.

These are two different but interrelated contract terms: The first involves a contractor’s warranty, while the second involves a contractor’s performance obligation.

An assertion of truth

What is a warranty?

A warranty is a promise that relates to a fact concerning the

subject matter of a contract. Usually, warranties take the



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form of express or implied promises that certain statements are or will be true.

A typical construction contract warranty states that the contractor warrants the work will be performed in a “good and workmanlike manner.” Under this warranty, the contractor promises that the work will be done in an ordinarily skillful manner by skilled workers. If the project owner later determines that the contractor’s work was not done as promised, the owner may sue the contractor for damages.

Although it is not entirely settled, in Oregon the statute of limitations for breach of warranty claims is six years, unless otherwise shortened or extended by the terms of the contract.

A promise to act (or not)

And how does a warranty differ from a performance

obligation?

Contrast the concept of a warranty with that of a performance obligation. Whereas a warranty is a promise that certain statements are or will be true, a performance obligation is a promise to do or refrain from doing something.

Many construction contracts include a provision requiring that if, within one year after substantial completion, the work is found to be defective, the contractor must return and correct it after notice from the owner. This is the obligation to perform corrective work during the one-year correction period.

If the contractor does not perform the corrective work as promised, the owner may, among other remedies, correct the work at its own expense and assert a breach of contract claim against the contractor.

The terms of the contract, not the statute of limitations, govern the time period within which the contractor must perform the corrective work.

All just semantics?

The distinction between a contractor’s warranty and the obligation to perform corrective work is not just semantics. Contractors that believe

their responsibility for defects ends after one year will be surprised to learn that only the obligation to return and correct the defective work ends at that time – and that their warranty lasts much longer.

And owners who mistakenly believe there is no recourse for defects discovered more than one year after substantial completion of the work may inadvertently lose their right to assert claims based on defective work.

As a result, a clear understanding of the differences between the contractor’s warranty and obligation to perform corrective work will help avoid misunderstandings about the rights of the parties both before and after the one-year correction period has expired.

So, when does the “one-year warranty” last longer than one year? When the person using that phrase is erroneously referring to the “one-year correction period” instead of the actual warranty period.

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