



Chris Griswold, P.C.

News From the Firm

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Message From Chris....

I've been asked to be involved in a number of larger, residential home sales and purchases during this, low-interest-rate, home-buying/refinancing window. A few things have caught my eyes regarding the warranties that certain sellers or builders afford their buyers in the process and I wanted to address them for everyone's benefit. From the questions I normally receive, I wanted to share these with everyone (and for the benefit of everyone). This is good stuff for everybody to know... (don't forget to click on my link above to also see my short video on this material).

Residential Home Sale/Purchase/Lease Warranties Discussion

**Warranty of habitability.** This warranty is one that does not apply to commercial property, but it does apply to residential property. In commercial property, there is no reasonable expectation a buyer or tenant can have that the property they are buying or leasing is suitable, intended, fit and designed to be lived in. However, in residential home leases or purchases, there is a warranty of habitability available for a buyer or tenant to rely upon when entering into the transaction.

In fact, in a residential lease or purchase, this warranty of habitability is *implied*, even if it is not addressed (i.e., written out) within the lease or purchase contract.

Accordingly, whether you're a realtor representing buyers or a homebuyer, don't gloss over giving up your right (or your clients' rights) to insist that, especially when buying a new home from a home builder, such home come with a warranty of habitability. *Why?* You (or your clients) might later rely upon this written or unwritten warranty when pursuing a remedy for some sort of defective, usually latent (i.e., hidden) condition in such new home.

This warranty, since it applies to dwellings, is a consumer remedy, not a commercial business one.

**Warranty of Fitness for a Particular Purpose.** This warranty, while I've seen it used in real estate (i.e., real property) sale or purchase deals and leases, is really more aimed at consumer, personal property purchases or leases – not real property purchases or leases.

The warranty says that a certain good or product is intended and suitable to be used in connection with a certain purpose or activity. There are situations and circumstances whereby this warranty can be relevant to a real property transaction, however, if it's a residential home deal, the purpose usually goes back to a warranty of habitability.

In other words, the purpose of the real property being leased or purchased *is to live in it...*, not to address that some other specific kind of purpose or activity. So, oftentimes, this warranty is not a relevant or important aspect of the transaction.

Like habitability, it is also implied, and protects a consumer purchaser or lessee.

**Warranty of Merchantability.** This warranty, without getting into too much legalese, is very much like the warranty of fitness for a particular purpose directly above. Accordingly, this warranty applies more to personal property purchases and leases – not real property ones.

Like the other two warranties above, this warranty is also implied, and protects a consumer purchaser or lessee.

**So why are all 3 warranties so often seen and included within residential real estate deals?** Because home leasing and buying is a *consumer event*.

However, the warranty most relevant to a real property transaction, and the one you (as the realtor or the homebuyer or tenant) **don't want to waive and give up is the warranty of habitability.** *Why?*

You or your client may eventually need it should problems later arise relating to a defectively constructed property....

### What My Clients Are Saying

“Chris Griswold is a good business attorney whom I’ve used often and much through the years, for both my business and personal needs, and whom I’d gladly refer to anyone. He’s creative, prompt, eager to help and very competent. He’s good at what he does, he has fun doing it, and it shows up in his work through his good problem solving skills. I look forward to a long and continued relationship with Chris and his firm for a long time to come.”  
**Edward F. Wells / President, Wells Nelson & Associates / Oklahoma City, Oklahoma**

***The information presented within this article is of a general nature and is not intended to be relied upon as legal advice in any particular matter without first consulting qualified counsel.***

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