

SAMPLE CONTRACT PROVISIONS: MOLD AND LIMITED WARRANTY

One of the best ways to protect your business and make yourself attractive to insurers is to include provisions in your contract that limit your liability. A good warranty provision will not scare away potential homebuyers, but it will limit your exposure to mold claims and other unknown defects that may turn up long after construction is completed. At BIAW's request, Larry Linville, long-time BIAW instructor and preeminent construction law attorney, drafted sample warranty limitations.

MOLD

According to Larry, the best way to handle liability associated with mold (today it's mold, yesterday it was formaldehyde in the MDF) claims is to make it part of the basic contract that sets out the rights and responsibilities of the parties. Contractors can protect themselves against ensuing claims or other problems that subsequently show up on a project by providing limitations in their contract and warranty. Larry recommends the following language:

The contractor shall be responsible for all construction means, methods and sequences. The contractor will install materials specified in the contract. Where the contract does not call for a specific grade or specification, the contractor will install materials that are new and conform to industry practice. The contractor is not responsible for the suitability or function of materials specified by the customer. Contractor is not responsible for the safeness or function of design(s) furnished by the customer. The contractor is not responsible for property damage, or the consequences thereof, or personal injury, or the consequences thereof caused by chemical, biological or toxic agents or elements that may be part of any building material utilized in construction. The contractor will not utilize any building material known to the contractor to be directly toxic or harmful to persons or the environment.

LIMITED WARRANTY

A contractor can also limit his long-term construction liability by placing a good warranty clause in his or her contract. Suggested language is as follows:

- A. The Contractor warrants that all labor, materials and taxes will be paid for, and there will be no potential lien claimants upon the completion of the work and final payment by the Customer. All work will be performed in a commercially reasonable manner and will be performed to industry standards or better. The Contractor will promptly return to the project and repair or replace, as necessary, any defect in workmanship at the Contractor's sole expense. The Contractor's warranty is for a period of _____ months from the date of this Agreement and thereafter expires. Any warranty claim of the Customer shall accrue only during this _____ month period. Any

warranty claim or any other cause of action arising under the terms of this Agreement, including the warranty, must be filed in a court of competent jurisdiction within four (4) months of the expiration of the warranty. Any unresolved, unasserted or undiscovered claim or cause of action that is not filed within (4) months from the expiration of this warranty is waived. Warranty work performed by the Contractor does not extend the warranty. The warranty is void if a person or firm other than this Contractor performs or re-performs any work within the scope of this Agreement. The Contractor is not responsible for consequential damages. This warranty is not transferable. THIS WARRANTY IS GIVEN IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTY OTHERWISE PROVIDED UNDER THE LAWS OF WASHINGTON, INCLUDING THE WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY.

- B. Manufactured or consumer products such as roofing materials, appliances, hardware, windows, heating and mechanical systems, fixtures, etc. are not separately warranted by the Contractor. In the event that the Customer encounters a defect in a manufactured or supplied product, the Contractor shall assist the Customer in securing the repair or replacement of these products pursuant to the particular manufacturer's or distributor's warranty.

As with any other revision to your contract, you should consult your attorney to tailor these sample provisions to your specific business needs and to avoid conflicts between these provisions and your current contract.