



As of July 1, 2004, **all** Mississippi builders will be operating under a much improved New Home Warranty Act. Your Home Builders Association of Mississippi was successful in lobbying the Mississippi Legislature to make some significant changes to the law. Most important, home buyers will now be required to give a home builder the right to repair a construction defect before they can sue a builder.

Builders will be required to give the new home owner written notice of the New Home Warranty Act at the closing. Not doing so will extend the builders warranty until such notice is given. (A model notice is enclosed.)

Other Key Changes to the New Home Warranty Law:

83-58-5 Section (2)(e) - Defect exclusion includes work done by employees, and subcontractors.

83-58-5 Section (2)(j) – Mold and mold damage exclusion added to protect builders against frivolous mold lawsuits.

83-58-7 - The homeowner must give the builder written notice within 90 days of discovering a construction defect, and give the builder a reasonable amount of time to repair the defect.

83-58-17 – If a lawsuit is filed against a builder without first giving the right to repair, the court has to dismiss the suit against the builder. This includes a lawsuit for breach of warranty. The new law also punishes a builder for not complying with this act including attorney's fees and court cost plus damages.

Notice to Home Buyer Of The New Home Warranty Act

83-58-1 This act shall be known and may be cited as the "New Home Warranty Act."

83-58-3 For purposes of this act the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

- (a) "Builder" means any person, corporation, partnership, or other entity which constructs a home or engages another to construct a home, including a home occupied initially by its builder as his residence, for the purpose of sale.
- (b) "Building standards" means the standards contained in the building code, mechanical-plumbing code, and electrical code in effect in the county, municipality, or other local political subdivision where a home is to be located, at the time construction of that home is commenced, or, if the county, city, or other local political subdivision has not adopted such codes, the Standard Building Code, together with any additional performance standards, if any, which the builder may undertake to be in compliance.
- (c) "Home" means any new structure designed and used only for residential use.
- (d) "Initial purchaser" means any person for whom a home is built or the first person to whom a home is sold upon completion of construction.
- (e) "Major structural defect" means any actual physical damage to the following designated load-bearing portions of a home caused by failure of the load-bearing portions which affects their load-bearing functions, as follows to wit:
 - (i) Foundation systems and footings;
 - (ii) Beams;
 - (iii) Girders;
 - (iv) Lintels;
 - (v) Columns;
 - (vi) Walls and partitions;
 - (vii) Floor systems;
 - (viii) Roof framing systems.
- (f) "Owner" means the initial purchaser of a home and any of his successors in title to a home during the time the warranties provided under this act are in effect.
- (g) "Warranty commencement date" means the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

83-58-5. (1) Subject to the exclusions provided in this section, every builder warrants the following to the owner:

(a) One (1) year following the warranty commencement date, the home will be free from any defect due to noncompliance with the building standards.

(b) Six (6) years following the warranty commencement date, the home will be free from major structural defects due to noncompliance with the building standards.

(2) Unless the parties otherwise agree in writing, the builder's warranty shall exclude the following items:

(a) 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; patios; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and planting; off-site improvements including streets, roads, drainage and utilities or any other improvements not a part of the home itself.

(b) 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.

(c) Any damage to the extent it is caused or made worse by any of the following:

(i) Negligence, improper maintenance or improper operation by anyone other than the builder or any employee, agent or subcontractor of the builder.

(ii) Failure by anyone other than the builder or any employee, agent or subcontractor of the builder to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures.

(iii) Any change, alteration or addition made to the home by anyone after the initial occupancy by the owner, except any change, alteration or addition performed by the builder, or any employee, agent, or subcontractor of the builder.

(iv) Dampness, condensation or other damage due to the failure of the owner to maintain adequate ventilation or drainage.

(d) Any loss or damage which the owner has not taken timely action to minimize.

(e) Any defect in, or any defect caused by, materials or work supplied by anyone other than the builder, or any employee, agent or subcontractor of the builder.

(f) Normal wear and tear or normal deterioration.

(g) Loss or damage which does not constitute a defect in the construction of the home by the builder, or any employee, agent or subcontractor of the builder.

(h) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mud slide, earthquake, volcanic eruption, wind driven water and changes in the level of the underground water table which are not reasonably foreseeable.

(i) Insect damage and rotting of any kind.

(j) Mold or mold damage, except in cases where the builder's negligence was a proximate or contributing cause of the mold or mold damage.

(k) Any condition which does not result in actual physical damage to the home.

(l) Failure of the builder to complete construction of the home.

(m) Any defect not reported in writing by registered or certified mail to the builder or insurance company, as appropriate, prior to the expiration of the period of coverage of that defect plus thirty (30) days.

(n) Consequential damages.

(o) Any loss or damage to a home caused by soil conditions or soil movement if the home is constructed on land owned by the initial purchaser and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement.

(p) Any defect in an electrical, plumbing, heating, air conditioning or similar fixture not manufactured by the builder for which the manufacturer provides a warranty regardless of duration.

(3) The provisions of this section establish minimum required warranties and shall not be waived by the owner or reduced by the builder, provided the home is a single family dwelling to be occupied by an owner as his home.

83-58-7 Before undertaking any repair himself, except repair to minimize loss or damage as provided in Section 83-58-5(2)(d), or instituting any action under Section 83-58-17, the owner shall give the builder written notice within ninety (90) days after knowledge of the defect by registered or certified mail, advising him of the defects and giving the builder a reasonable opportunity to repair the defect. The builder shall give the owner written notice of the requirements of this chapter at the time of closing. If the builder does not provide such notice, the warranties provided in this chapter shall be extended for a period of time equal to the time between the warranty commencement date and date notice was given.

83-58-9 Any action to enforce any warranty provided in this act shall commence thirty (30) days after the expiration of the appropriate time period provided.

83-58-11 All or part of the builder's obligation under any warranty required in this act may be insured by the builder for the benefit of the purchaser through an insurance company authorized to transact business in this state.

83-58-13 Any warranty imposed under the provisions of this act and any insurance benefit shall automatically transfer, without charge, to a subsequent owner who acquires title to a home. Any transfer of the home shall not extend the duration of any warranty or insurance coverage.

83-58-15 The damages with respect to a single defect shall not exceed the reasonable cost of repair or replacement necessary to cure the defect, and damages with respect to all defects in the home shall not exceed the original purchase price of the home.

The parties may provide for the arbitration of any claim in dispute. Any arbitration may be binding only to the extent provided by law.

83-58-17. (1) If a builder violates any of the provisions of this chapter by failing to perform as required by the warranties provided in this chapter, any affected owner shall have a cause of action against the builder for actual damages, including attorney fees and court cost, arising out of the violations.

(2) Nothing in this chapter shall prevent the owner from filing a cause of action based on breach of contract and remedies attendant to such cause of action.

(3) If the owner files a civil action without first complying with the provisions of this chapter, the court shall dismiss the action without prejudice, and the action may not be refiled until the claimant has complied with the notice requirements of this chapter.

83-58-19. This act shall take effect and be in force from and after July 1, 2004.

BY SIGNING BELOW BUYER(S) ACKNOWLEDGE THAT BUYER(S) HAVE RECEIVED WRITTEN NOTICE OF THE NEW HOME WARRANTY ACT AS REQUIRED IN 83-58-7 OF THE MISSISSIPPI CODE.

Buyer(s) Date

Buyer(s) Date

Seller Date

Witness Date

Sellers Address for Warranty Notice: _____

