

**NEW HOME WARRANTY ACT:  
What Every Builder Should Know**

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**Presented to:**

**North Mississippi Home Builders Association**

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## NEW HOME WARRANTY ACT

### § What is the New Home Warranty Act?

The New Home Warranty Act can be found at Miss. Code Ann. ' 83-58-1 et seq. and is effective from July 1, 2004. The Act requires that the builder of a new home warrants the following to the owner:

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

AND

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

Miss. Code Ann. ' 83-58-5(1).

### § Are there exclusions to the builder=s warranty?

Yes. The Act provides that, **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 cause 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.

Miss. Code Ann. ' 83-58-5(2).

See Little v. Miller, 909 So. 2d 1256 (Miss. App. 2005) (holding that New Home Warranty Act did not prevent owners from bringing suit for breach of contract for faulty landscaping even though landscaping is specifically excluded from Act, where builder made separate contractual agreement on landscaping).

## § **What is required of a builder under the Act?**

The Act provides that the builder shall give to the owner a one **(1) year warranty** that the home will be free from **any** defect that does not comply with the

building standard, and a **six (6) year warranty** that the home will be free from any **major structural defect** that does not comply with the building standard. Miss. Code Ann. ' 83-58-5(1).

The Act further provides that the builder shall give the owner **written notice** of the requirements of the Act **at the time of closing**. If the builder does not provide such notice, the warranties provided in the Act shall be extended for a period of time equal to the time between the warranty commencement date and date notice was given. Miss. Code Ann. ' 83-58-7.

§ **What is required of an owner under the Act?**

The Act provides that an owner shall give the builder **written notice within ninety (90) days** after **knowledge** of the defect by **registered or certified mail**, advising the builder of the defects and **giving the builder a reasonable opportunity to repair the defect**, before:

- (1) undertaking any **repair** himself, except repair to minimize loss or damage as provided in Section 83-58-5(2)(d);

OR

- (2) instituting any **action** under Section 83-58-17.

Miss. Code Ann. ' 83-58-7. But see DiMa Homes, Inc. v. Stuart, 873 So. 2d 140 (Miss. App. 2004) (holding that homeowners complied with notice requirements of New Home Warranty Act when they pointed out cosmetic defects during walk-through of home and provided written engineer=s report of all defects to builder prior to filing lawsuit).

The Act further provides that an owner must report in writing any defect **prior to expiration of the period of coverage of that defect plus thirty (30) days** or else the defect will be **excluded** from the warranty. Miss. Code Ann. ' 83-58-5(m).

§ **What are the consequences of a builder failing to perform as required by the warranties under the Act?**

If a builder violates any of the provisions of the Act by failing to perform as required by the warranties under the Act, that is, if a builder fails to respond once notified of any defect covered by the warranties under the Act or fails to repair such defect so that the home is free of any such defect as warranted, the owner shall have a cause of action against the builder under the Act for **actual damages, plus attorney=s fees and court costs**, arising out of the violations. Miss. Code Ann. ' 83-58-17(1).

Actual damages recoverable by an owner 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. Miss. Code Ann. ' 83-58-15.

See DiMa Homes, Inc. v. Stuart, 873 So. 2d 140 (Miss. App. 2004) (discussing cost rule of damages versus diminished-value rule of damages in New Home Warranty Act case).

§ **When can an owner file a lawsuit to enforce the warranties provided by the Act?**

An owner can file a lawsuit under the Act **after** the owner has given the builder **written notice** of the defect and a reasonable opportunity to **repair** the defect. Suit must be filed within **thirty (30) days** of expiration of the applicable warranty period. Miss. Code Ann. ' 83-58-7 and 83-58-9.

If an owner files a civil action without first complying with the notice requirements of the Act, 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 the Act. Miss. Code Ann. ' 83-58-17 (3).

§ **Can the parties agree to arbitration?**

Yes. The Act provides that the parties may provide for arbitration of any claim in dispute.

§ **Who is a Builder under the Act?**

A builder is defined as 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. Miss. Code Ann. ' 83-58-3(a).

§ **Who is an Owner under the Act?**

An owner is defined as the initial purchaser of a home and any of his successors in title to a home during the time the warranties provided under the Act are in effect. Miss. Code Ann. ' 83-58-3(f).

§ **Who is an Initial purchaser under the Act?**

The initial purchaser under the Act is any person for whom a home is built or the first person to whom a home is sold upon completion of construction. Miss. Code Ann. ' 83-58-3(d).

§ **What is a Home under the Act?**

A home is defined as any new structure designed and used only for **residential use**. Miss. Code Ann. ' 83-58-3(c).

§ **What are the Building standards referenced in the warranties required under the Act?**

Building standards are defined as 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. Miss. Code Ann. ' 83-58-3(b).

§ **What is a major structural defect@ referenced in the warranty required under the Act?**

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:

- (i) Foundation systems and footings;
- (ii) Beams;
- (iii) Girders
- (iv) Lintels;
- (v) Columns;
- (vi) Walls and partitions;
- (vii) Floor systems;
- (viii) Roof framing systems.

Miss. Code Ann. ' 83-58-3(e).

§ **What is the warranty commencement date@ (when does the warranty begin) under the Act?**

The warranty commencement date is defined as 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. Miss. Code Ann. ' 83-58-3(g).

§ **Can a builder purchase insurance to cover his obligations under the Act?**

Yes. All or part of the builder=s obligation under any warranty required in the Act may be insured by the builder for the benefit of the purchaser through an insurance company authorized to transact business in Mississippi. Miss. Code Ann. ' 83-58-11.

§ **Can the parties contract around the New Home Warranty Act?**

No. The Act provides that the warranties provided by the Act are the **minimum** required warranties and **cannot be waived by the owner or reduced by the builder**. However, a builder may provide additional warranties and/or contractual promises (including those items otherwise excluded by 83-58-5(2)) for which the builder may be liable in a breach of contract action, in addition to the remedies provided by the Act. Miss. Code Ann. ' 83-58-5(3) & 83-58-17(2); See Little v. Miller, 909 So. 2d 1256 (Miss. App. 2005) (holding that builder liable for faulty landscaping even though exempted from Act because builder contractually agreed to repair landscaping).

§ **Can a builder be liable for breach of contract even if there is no violation of the Act?**

Yes. The Act provides that nothing in the Act shall prevent an owner from filing a cause of action for breach of contract and all remedies attendant to such cause of action. Miss. Code Ann. ' 83-58-17(2).

§ **Are the warranties imposed by the Act transferrable?**

Yes. Any warranty imposed by the Act and any insurance benefit shall **automatically transfer**, without charge, to a subsequent owner who acquires title to a home. However, any transfer of the home shall **not extend the duration** of any warranty or insurance coverage. Miss. Code Ann. ' 83-58-13.

## **NEW HOME WARRANTY ACT CHECKLIST**

- § Was the owner given written notice of her rights under the Act closing?
- § Was written notice of the defect given by the owner prior to filing suit?
- § Did the owner give written notice of the defect within 30 days after the expiration of the warranty period?
- § Is the defect covered by the Act? (1 yr warranty = any defect; 6 yr warranty = major structural defect)
- § Is the defect subject to an exclusion by the Act?
- § Was a reasonable opportunity to repair given?
- § Did the parties agree to arbitrate their claims?
- § Is there a separate contractual obligation by the builder to the owner?