UNDERSTANDING WARRANTIES

Presented By:

Barker Martin, P.S.

Attorney Dean Martin

UNDERSTANDING WARRANTIES

- What is a warranty?
- Statutory and common law warranties
- Express warranties from the developer
- Express warranties from others
- What does your warranty cover?
- Is your warranty still valid?
- Breach of warranty
- The trouble with enforcing your warranty
- The ideal written warranty
- Q&A

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

WHAT IS A WARRANTY?

- A type of contract.
- "An express or implied promise that something in furtherance of the contract is guaranteed."
- Typically a promise of performance:
  - That the product will perform, and/or
  - They will fix the problem if the product fails to perform.
- Similar to an insurance policy.

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

STATUTORY AND COMMON LAW WARRANTIES

- Condo Act
  - Implied Warranties
  - Express Warranties
  - Conversion Condominiums
- Warranty of Habitability
  - New Construction
- UCC Warranties
  - Fit for its ordinary purpose

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

EXPRESS WARRANTIES FROM THE DEVELOPER

- Public Offering Statement
  - Usually provide less coverage than implied warranties.
- Other Written Materials Signed by the Declarant (RCW 64.34.443(2))
  - Words such as "warranty" or "guarantee" are not required.

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

EXPRESS WARRANTIES FROM OTHERS

- Product Warranties
  - Declarant should pass these on to first purchasers and/or the association.
- Vendors
- Subcontractors
- Homebuyer Warranty (2-10)

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

WHAT DOES YOUR WARRANTY COVER?

- Beware the fine print!
  - Understand the exclusions.
  - Repair, replace, or pay damages?
- Labor, materials or both?
- Beware the "lifetime" or "unconditional" warranty.
- Defects in installation - the devil's in the details.

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

IS YOUR WARRANTY STILL VALID?

- How long does the warranty last?
- What are the notice requirements?
- Have you voided your warranty?
- Your warranty is only as viable as the company behind it.

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

BREACH OF WARRANTY

- What to do when they don't perform?
  - Breach of Warranty aka 'breach of contract'.
  - Review warranty documents.
  - Get professional advice.
  - Dispute resolution

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

THE TROUBLE WITH ENFORCING YOUR WARRANTY

- The original contract increased profit, but the warranty only increases costs.
- Creates incentive for company to:
  - Claim the problem is not covered under the warranty;
  - Strictly read and enforce the warranty and notice provisions;
  - Delay response; and
  - Provide lowest cost solution.

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

THE IDEAL *WRITTEN* WARRANTY:

- Clear standards for original work and warranty performance.
- Applies to both performance and the product;
- Covers labor and material;
- Covers consequential damage;
- Is transferable; and
- Is issued by a company that will be around for the life of the warranty.

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

Q&A

For more information please contact:

Barker Martin, P.S.
Dean Martin, 206-381-9806 ext. 101

deanmartin@barkermartin.com

www.barkermartin.com

BARKER·MARTIN
CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS