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The Secret About Standard One-Year Warranties In Construction Contracts

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Attorneys often have to correct common misunderstandings that clients have about certain legal principles. For example, whether attorney fees are recoverable in litigation and what is and is not covered by insurance. In the area of construction law, a common misconception for both construction professionals (e.g. construction companies, homebuilders, etc.) and non-construction professionals (e.g. property owners, homeowners, etc.) is the concept that exposure for all construction-related claims ends after the one-year warranty often found in construction contracts. The false sense of security that a construction company may have after such one-year warranty expires can lead to problems in defending and handling a post-warranty claim correctly. Similarly, the false sense of impotence that a property owner may have after such one-year warranty can lead to waiving or abandoning the right to prosecute a post-warranty claim. A written warranty is like any other contractual clause – it is an agreement between the parties with a certain scope that is defined by its terms. The belief that exposure to all construction-related claims ends after a year is the fiction of the one-year warranty.

Contractor warranties are typical clauses included in typical construction contracts. For example, the standard warranty included in the American Institute of Architect's General Conditions of the Contract for Construction, namely, AIA A201, generally states that the contractor warrants that the materials that it furnishes will be of good quality and new, will conform to the requirements of the contract documents, and will be free from defects. AIA A201 § 3.5. AIA A201 further states that, during the one-year period for correction of the work, if the owner fails to notify and give the contractor an opportunity to make the correction during the one-year period for correction, the owner waives the right to require correction by the contractor and to make a claim for breach of warranty. AIA A201 § 12.2.2.1. It is easy

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to see why this type of one-year warranty is misconstrued as a bar for all claims related to issues that arise from the work. However, rather than limiting an owner's right to seek recovery for defective work after the warranty expires, this type of warranty is referred to as a "call-back" warranty and only establishes the way to handle issues arising during the first year following substantial completion of the work.

The secret regarding standard one-year warranties is that basic claims for breach of contract alleging defects in the work will remain for the duration of a state's statute of limitations period after the one-year warranty expires. The establishment of a one-year period for correction of work in a call-back warranty relates only to the specific obligation of the contractor to correct the work (or the specific entitlement of the owner to have the work corrected by the contractor). The period of time for the call-back warranty has no relationship to the time within which the obligation of the contractor to comply with the contract documents (or the obligation of the owner to compel the contractor to comply with the contract documents) may be enforced nor to the time within which legal proceedings may be commenced to establish the contractor's liability with respect to the contractor's obligation to complete the work without defects.

In fact, AIA A201 confirms that nothing contained in the standard one-year warranty shall be construed to establish a period of limitation with respect to other obligations that the contractor has under the contract documents. AIA A201 § 12.2.5. The duties and obligations imposed by the parties' construction contract and the specific rights and remedies available under that contract are in addition to and not a limitation of duties and obligations and rights and remedies otherwise available by common law. In other words, if a contractor can bring a lawsuit for breach of contract due to defective work for six years, unless specific language is included in a warranty, a one-year call back warranty will not limit that six-year statute of limitations.

Now, can the parties contract to limit all claims to one year? The answer is yes since parties are free to include virtually any terms in their contract as long as they have a meeting of the minds with respect to those terms. Parties can limit contract claims if their contract clearly states that the intent of the parties is to limit their remedies or the time frame in which to seek those remedies.

Please contact the author of this alert or any of the attorneys in Butzel Long's Construction Law Practice Group to answer any of your construction-related questions and assist you with any of your construction-related needs and issues.

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