

2019 Regular Session

SENATE BILL NO. 26

BY SENATOR MARTINY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WARRANTIES. Provides relative to the New Home Warranty Act. (8/1/19)

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AN ACT

To amend and reenact R.S. 9:3143(1) and (7), 3144(B), 3145, and 3150 and to enact R.S. 9:3143(8), relative to the New Home Warranty Act; to provide for definitions; to provide relative to warranty exclusions; to provide for written notice; to provide relative to remedies, warranties, and preemptive periods; to provide for terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:3143(1) and (7), 3144(B), 3145, and 3150 are hereby amended and reenacted and R.S. 9:3143(8) is hereby enacted to read as follows:

§3143. Definitions

For purposes of this Chapter the following words, phrases, and terms shall be defined and construed as follows:

(1) "Builder" means any person, corporation, partnership, limited liability company, joint venture, or other entity which constructs a home, ~~or addition thereto,~~ including a home occupied initially by its builder as his residence. A person, corporation, partnership, limited liability company, joint venture, or other entity which constructs a home, ~~or any addition thereto,~~ is a "builder", whether or not the

1 consumer purchased the underlying real estate with the home.

2 * * *

3 (7) "Punch list" means a written list, prepared by the owner and the
4 builder prior to the warranty commencement date, describing items that need
5 to be completed, repaired, or replaced by the builder.

6 ~~(7)~~ (8) "Warranty commencement date" means the date that legal title to a
7 home and immovable property is conveyed to its initial purchaser or the date the
8 home is first occupied, whichever occurs first. However, if the home is built on
9 immovable property belonging to the owner or a third party, the warranty
10 commencement date shall mean the date a certificate of occupancy is granted
11 by the governing authority or the date the home is first occupied, whichever
12 occurs first.

13 §3144. Warranties; exclusions

14 * * *

15 B. Unless the parties otherwise agree in writing, the builder's warranty shall
16 exclude the following items:

17 (1) ~~Fences;~~ New landscaping, including but not limited to sodding, seeding,
18 shrubs, ~~existing and new~~ trees, and plantings, as well as off-site improvements, all
19 driveways and walkways, or any other improvement not a part of the home itself.

20 ~~(2) After the first year, the concrete floor of a basement and the concrete floor~~
21 ~~of an attached or unattached garage that is built separate from a foundation wall or~~
22 ~~other structural element of the home.~~

23 ~~(3) Damage to real property which is not part of the home covered by the~~
24 ~~warranty and which is not included in the purchase price of the home.~~

25 ~~(4)~~ (2) Any damage to the extent it is caused or made worse by any of the
26 following:

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

29 (b) Failure by anyone other than the builder or any employee, agent, or

1 subcontractor of the builder to comply with the warranty requirements of
2 manufacturers of appliances, equipment, or fixtures.

3 (c) Failure by the owner to give written notice by registered or certified mail
4 to the builder of any defect within the time set forth in R.S. 9:3145. However, the
5 provisions of this Subparagraph shall not be construed to change either the warranty
6 periods enumerated in Subsection A of this Section or the notice requirements
7 provided by R.S. 9:3145.

8 (d) Any change of the grading of the ground by anyone other than the builder,
9 or any employee, agent, or subcontractor of the builder.

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

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

15 ~~(5)~~ **(3)** Any loss or damage which the owner has not taken timely action to
16 minimize.

17 ~~(6)~~ **(4)** Any defect in, or any defect caused by, materials or work supplied by
18 anyone other than the builder, or any employee, agent, or subcontractor of the
19 builder.

20 ~~(7)~~ **(5)** Normal wear and tear or normal deterioration.

21 ~~(8)~~ **(6)** Loss or damage which does not constitute a defect in the construction
22 of the home by the builder, or any employee, agent, or subcontractor of the builder.

23 ~~(9)~~ **(7)** Loss or damage resulting from war, ~~accident~~, riot and civil
24 commotion, ~~water escape~~, falling objects, aircraft, vehicles, acts of God, lightning,
25 windstorm, hail, flood, mudslide, earthquake, volcanic eruption, ~~wind-driven water~~,
26 and changes in the level of the underground water table which are not reasonably
27 foreseeable.

28 ~~(10)~~ **(8)** Any damage caused by soil movement which is covered by other
29 insurance.

limited liability company, joint venture, or other entity which constructs an addition to a home.

Present law defines "warranty commencement date" 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.

Proposed law provides that the "warranty commencement date" shall be the date that legal title to a home and immovable property is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

Proposed law provides that if the home is built on immovable property belonging to the owner or a third party, the warranty commencement date shall be the date a certificate of occupancy is granted by the governing authority or the date the home is first occupied, whichever occurs first.

Proposed law defines "punch list" as a written list, prepared by the owner and the builder prior to the warranty commencement date, describing items that need to be completed, repaired, or replaced by the builder.

Present law provides for warranty exclusions.

Proposed law removes several present law exclusions and modifies other exclusions.

Present law requires that before an owner can make any repair himself or institute any action for breach of warranty, the owner is required to give the builder written notice, by registered or certified mail, within one year after knowledge of the defect, advising the builder of all defects and giving the builder a reasonable opportunity to comply with the Act.

Proposed law provides that in addition to written notice by registered or certified mail, the owner may give notice to the builder by email, facsimile, or other electronic means, and specifies that the owner shall notify the builder of discovered defects instead of all defects.

Proposed law provides that proof of the builder's actual knowledge of the defect shall satisfy the notice requirements.

Present law requires the builder to give the owner written notice of the requirements of the Act at the time of closing, or if there is no closing, at the time of the execution of the construction contract between the builder and the owner.

Proposed law provides that the written notice shall be given at the time of closing or upon execution of the new home construction contract. Proposed law provides that if the builder fails to give the owner such notice, the builder and any employee, agent, or subcontractor of the builder shall lose the right to claim any exclusivity, protection, or defenses available to him as provided by law.

Present law provides for the exclusive remedies, warranties, and preemptive periods as between the builder and the owner relative to home construction.

Proposed law specifies that such exclusive remedies, warranties, and preemptive periods as between the builder and the owner are relative to warranties and redhibitory vices and defects of home construction discovered after the warranty commencement date.

Proposed law provides that nothing in the Act shall be construed as affecting or limiting the right of the owner to bring claims against the builder for punch list items not properly completed or for failing to construct the home in accordance with the plans and specifications or agreed upon change orders modifying the plans and specifications.

Effective August 1, 2019.

(Amends R.S. 9:3143(1) and (7), 3144(B), 3145, and 3150; adds R.S. 9:3143(8))