



Construction Law Update: Contractor Warranty vs. Correction of Work Provision - What's the Difference?

Contractors and owners alike often operate under a common misconception that the “industry-standard” for construction contracts limits the contractor’s responsibility to correct defective construction to one year after completion of the work.

However, such a one-year “industry-standard” really does not exist. The likely culprit for the misconception is found in common construction documents, such as the AIA Document A201–2017, General Conditions of the Contract for Construction Projects. Specifically, Section 12.2.2.1 provides that:

“In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof ... or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so. ... During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.”

This one-year correction period is becoming notorious in the construction industry as a “one-year warranty.” In fact, both owners and contractors are pointing to this provision as a contractual limit on the contractor’s obligation to correct defective work discovered more than one year after completion of the construction.

However, it is critical to read this section together with Section 3.5.1 of the A201. When read together, it is made certain that the intent is not to provide a one-year limitation period. Rather, only the contractor’s obligation to repair defective work is limited to one year. There is simply no such limitation on the contractor’s financial obligation to pay to correct defective work. In fact, Section 12.2.2.1 states in plain language that the one-year requirement is “in addition” to the contractor’s obligations under Section 3.5.

Section 3.5.1, entitled “Warranty,” states:

“The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.”

On the face of the provision, there is no language that establishes any sort of limitation period. Furthermore, Section 12.2.5 states:

“Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor’s liability with respect to the Contractor’s obligations other than specifically to correct the Work.”

As a result, the contractor’s warranty obligations set forth in Section 3.5.1 are not limited by any contractual timeframe and, instead, the usual statutory limitations periods should apply.

It is critical to note whether the construction contract contains any express language limiting the contractor’s obligations to the one-year period after the completion of the project. If limitation language appears, then it could be used by the contractor as a defense against an owner’s claim that falls outside of the express limitation period. However, if the construction contract incorporates an unmodified version of the A201, the applicable warranty will not be limited.

ABOUT THE AUTHOR:

Craig H. Handler is an experienced attorney dedicating much of his practice to working with construction industry professionals and property owners in contract drafting and negotiation and in disputes related to defective construction, delay, scope of work, mechanic's lien foreclosure and defense, OSHA violations, ECB violations, and Labor Law claims. Mr. Handler's prior experience working with the insurance industry has afforded him a broad understanding of the complex insurance coverage and indemnity issues that regularly impact the construction industry. Mr. Handler routinely applies this expertise to his practice in order to help his clients cut costs, limit exposure and avoid the many risks associated with this fast-paced industry.

For more information, please contact:

Craig H. Handler, Esq.
(516) 663-6506
chandler@rmfpc.com