

**Phase II Proposal #1 First-Party Warranty Proposal**  
**Part 1 - Two Year Warranty**  
**November 28, 2006**

*At the September 19, 2006 meeting the Construction Claims Task Force moved to have staff outline specific suggestions for a mandated first party warranty for new residential structures. Utilizing the warranty research completed by American Actuarial Consulting Group, staff created the following outline of what a first-party warranty might look like in Oregon.*

1. *General Warranty Requirement*

Every builder of a new residential structure must provide a written first party warranty.

2. *Scope of the Warranty*

For purposes of this proposal, staff recommends that 'residential structure' encompasses detached single family homes, duplexes, townhouses, row houses and residential structures including condominiums that are three stories or less in height.

3. *Warranty Coverage*

Staff recommends that the warranty agreement cover, at a minimum, the following:

- During the one-year period following the warranty commencement date, the *residential structure* will be free from any defect due to faulty workmanship, defective materials or noncompliance with the building standards.
- During the two year period following the warranty commencement date:
  - The plumbing, electrical, heating, cooling and ventilating delivery and distribution systems exclusive of any appliance, fixture and equipment will be free from any defect due to materials, workmanship, or noncompliance with building standards.
  - The building envelope, including all assemblies, components and materials of the home which are intended to separate and protect the interior space of the new home from adverse affects of exterior climatic conditions, will be free from defects due to materials, workmanship or noncompliance with building codes.

4. *Recording Written Warranty In Deed Record*

Staff recommends that in order to ensure contractors cover structures for the required time period, irregardless of ownership, the warranty provided will be required to be recorded as currently outlined in ORS 701.605 in the deed records of the county in which the new structure is built. Any warranty provided under this provision shall automatically transfer without charge to a subsequent owner who acquires title to the residential structure. However, transfer of the title of the structure shall not extend the duration of the warranty.

5. *No Disclaimer or Waiver of Warranty Permitted*

The warranty provided under this requirement cannot be waived or modified to reduce or curtail protection by contract or otherwise. Any agreement which purports to waive or modify the provisions shall be void.

6. *Warranty Claim Process/Enforcement*

If a defect subject to warranty exists the owner must notify the contractor of the defect and allow him to repair the damage. If a contractor breaches the warranty set forth and fails to repair the damage in a timely manner, the home buyer may bring an action against the builder in one of two ways:

- If the damage is discovered and not repaired during the first year the owner may elect to file their claim with the Construction Contractors Board (CCB) as outlined in ORS 701.140. Language of ORS 701.140 would need to be changed to indicate that warranty claims are acceptable.
- If the damage is discovered and not repaired one year after the date the structure was first occupied, the owner could seek legal action under ORS 701.560 – 701.600 instituting cause of action only after the notice of opportunity to repair a construction defect is sent as outlined.

7. *Damage Remedies*

Upon breach of warranty, damages shall be limited to the lesser of:

- The amount necessary to remedy the defect or breach; or
- The difference between the value of the dwelling without the defect and the value of the dwelling with the defect
- Damage may include attorney fees for the prevailing party along with any other costs as agreed to by contract or allowed by law

8. *Effect on Other Warranties*

The warranties provided as required under this action shall be in addition to all other warranties and remedies imposed by law or agreement.

**Part 2 on next page:**



**Phase II Proposal #1 First-Party Warranty Proposal**  
**Part 2 – Ten Year Structural**  
**November 28, 2006**

*At the September 19, 2006 meeting the Construction Claims Task Force moved to have staff outline specific suggestions for a mandated first party warranty for new residential structures. Utilizing the warranty research completed by American Actuarial Consulting Group, staff created the following outline of what a first-party warranty might look like in Oregon.*

9. *General Warranty Requirement*

Every builder of a new residential structure must provide a written first party warranty.

10. *Scope of the Warranty*

For purposes of this proposal, staff recommends that 'residential structure' encompasses detached single family homes, duplexes, townhouses, row houses and residential structures including condominiums that are three stories or less in height.

11. *Warranty Coverage*

Staff recommends that the warranty agreement cover should be established in two parts. Part 1 is the builder provided warranty for the two year period. Part 2 is the ten year structural warranty which may be builder provided, or, at the election of the builder may be backed by a third party warranty provider. The warranty will at a minimum, provide the following:

- During the ten year period following the warranty commencement date the *residential structure* shall be free from *structural defect*, including but not limited to any defect in materials that result in failure of a load bearing part of the home or cause structural damage that materially and adversely affects the use of the home for residential occupancy.
- *Structural defect* means any defect in the load-bearing portions of a new residential structure that adversely affects its load-bearing function to the extent that the home becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise uninhabitable.

12. *Recording Written Warranty In Deed Record*

Staff recommends that in order to ensure contractors cover structures for the required time period, irregardless of ownership, the warranty provided will be required to be recorded as currently outlined in ORS 701.605 in the deed records of the county in which the new structure is built. Any warranty provided under this provision shall automatically transfer without charge to a subsequent owner who acquires title to the residential structure. However, transfer of the title of the structure shall not extend the duration of the warranty.

13. *No Disclaimer or Waiver of Warranty Permitted*

The warranty provided under this requirement cannot be waived or modified to reduce or curtail protection by contract or otherwise. Any agreement which purports to waive or modify the provisions shall be void.

14. *Warranty Claim Process/Enforcement*

If a defect subject to warranty exists the owner must notify the contractor of the defect and allow him to repair the damage. If a contractor breaches the warranty set forth and fails to repair the

damage in a timely manner, the home buyer may bring an action against the builder in one of two ways:

- If the damage is discovered and not repaired during the first year the owner may elect to file their claim with the Construction Contractors Board (CCB) as outlined in ORS 701.140. Language of ORS 701.140 would need to be changed to indicate that warranty claims are acceptable.
- If the damage is discovered and not repaired one year after the date the structure was first occupied, the owner could seek legal action under ORS 701.560 – 701.600 instituting cause of action only after the notice of opportunity to repair a construction defect is sent as outlined.
- If the warranty is backed by a third party warranty provider the claim should be submitted to the warranty provider as outlined in the contract agreement for handling through regular claim channels.

#### 15. *Damage Remedies*

Upon breach of warranty, damages shall be limited to the lesser of:

- The amount necessary to remedy the defect or breach; or
- The difference between the value of the dwelling without the defect and the value of the dwelling with the defect

Damage may include attorney fees for the prevailing party along with any other costs as agreed to by contract or allowed by law.

#### 8. *Effect on Other Warranties*

The warranties provided as required under this action shall be in addition to all other warranties imposed by law or agreement.