

Modular Homes: Warranties and Rights

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Modular homes are becoming increasingly popular in both urban and rural areas. The sales and installation of modular homes raise interesting legal questions pertaining to the protections a purchaser can expect. This paper will explain the warranties afforded purchasers of new modular homes, as compared with those provided for purchasers of modular homes already installed on real property.

The U.C.C. and Modular Homes

Article 2 of the Uniform Commercial Code (U.C.C.) covers modular homes.¹ The U.C.C. governs the sale of goods.

“Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action”²

“Prefabricated modular home are [] “goods” when movable at the time of identification to the contract for sale.”³ Or stated more accurately, “[modular] homes are “goods” under the Uniform Commercial Code until affixed to real property.”⁴

The U.C.C. provides the purchaser with many warranties, but for modular homes, the warranty of merchantability is the best protection to consumers. The warranty of merchantability is found under § 2-314, it states:

- (1) Unless excluded or modified (section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. [. . .]
- (2) Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and
 - (b) in the case of fungible goods, are of fair average quality within the description; and
 - (c) are fit for the ordinary purposes for which such goods are used; and
 - (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit among all units involved; and
 - (e) are adequately contained, packaged, and labeled as the agreement may require; and
 - (f) conform to the promises or affirmations of fact made on the container or label if any
- (3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.⁵

In effect, this should provide similar results to the warranty of habitability applied in real property, but the purchaser will have a cause of action under the Article 2 implied warranties.⁶

“When a modular home is already situated on a lot at the time of sale, the transaction is one in real estate.”⁷ The U.C.C. does not govern a subsequent transfer of a modular home permanently affixed to real property because the installed modular home is outside of the definition for “goods” set forth by §2-105.⁸

Modular Homes and the Magnusson-Moss Warranty Act

Though modular homes fall within the U.C.C. Article 2, courts have almost uniformly held they do not qualify as a “consumer product” under the Magnuson-Moss Warranty Act (MMWA), 15 U.S.C. § 2301.⁹ The MMWA governs warranties concerning consumer products.¹⁰ In the MMWA, “[t]he term “consumer product” means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).¹¹ In *Clark v. Jim Walter Homes*, a federal “district court concluded that modular or prefabricated stationary houses do not constitute personal property amounting to a consumer good.”¹² A federal district court followed

Clark as recently as 2007 in *Coppernol v. Custom Housing Center, Inc.* and with no court in the country has reached a contrary decision since *Clark*.¹³ In those opinions, the courts found the plain language of the statute convincing, reasoning that the terms “real property” and “personal property” have well established meanings in traditional property law.¹⁴ “The term “consumer products” under the statute includes only personal property.”¹⁵ However, dwellings and structures erected upon land generally fall in real property categories.¹⁶

Affixed Modular Homes and Real Property

Traditional property law governs the transfer of already installed modular homes, affording the purchaser the protections guaranteed by that body of law. Within traditional property law, a purchaser can expect protection from the implied warranty of habitability that requires the property to be safe, clean, and fit for habitation. The implied warranty of good workmanship requires that the home be constructed from good material and with reasonable good workmanship. If within the statute of limitations, a subsequent purchaser will have both of these potential causes of action. Finally, if there is a fraudulent misrepresentation to a warranty of quality, then the purchaser will likely be able to pursue a tort claim as well.

Conclusion

The sale of modular homes before they are affixed to real property is governed by the Article 2 of the U.C.C., which protects the buyer through the Article 2 implied warranty of merchantability. The implied warranty of merchantability requires a good to be fit for its ordinary purpose and pass without objection in the trade. As applied to modular homes, this warranty will provide buyers with similar protection to the warranty of habitability in real property.

If the transaction occurs after the modular home is permanently situated on the property, then traditional property law will apply. In traditional property law, the buyer will be protected by the implied warranties of habitability and of good workmanship. These warranties require that the modular is safe, clean, and fit for human habitation, as well as that they are built in a competent manner with sound material.

Finally, if a seller of a permanent modular affirmatively misrepresents or fails to disclose a material defect, the buyer will likely have a tort claim to recover damages, or be able to rescind the contract. A contract is voidable if “manifestation of assent is induced by either a fraudulent or material misrepresentation by the other party upon which the recipient is justified in relying.”¹⁷ Depending on the relief sought, both tort and contract avenues will be available to the buyer if the buyer can return the property. If they cannot tender, then the tort claim will be the only available option because unwinding the contract is impossible.

¹ 67 Am. Jur. 2d *Sales* § 62 (2010)

² U.C.C. § 2-105(1)

³ 67 Am. Jur. 2d *Sales* § 62. (citing *e.g. Stephenson v. Frazier*, 425 N.E.2d 73 Ind. 1981); *Burnham v. Mark IV Homes, Inc.*, 387 Mass. 575, 441 N.E.2d 1027 (1982); *Fuqua Homes, Inc. v. Evanston Bldg. & Loan Co.*, 52 Ohio Ap. 2d 399, 6 Ohio Op.3d 440, 370 N.E.2d 780, 23 U.C.C. Rep Serv. 19 (1st Dist. Hamilton County 1977); *Thomas v. Countryside of Hastings, Inc.*, 2 Neb. App. 590, 512 N.W.2d 311 (1994), review sustained, (June 15 1994) and judgment reversed on other grounds, 246 Neb. 907, 524 N.W.2d 311 (1994); *State v. Bohne*, 2002 UT 116, 63 P.3d 63, 49 U.C.C. Rep. Serv. 2d 59 (Utah 2002).)

⁴ *State v. Bohne*, 2002 UT 116, 63 P.3d 63, 49 U.C.C. Rep. Serv. 2d 59 (Utah 2002).

⁵ U.C.C. § 2-314.

⁶ *Real Estate Transactions-Mobile Homes*. 1 The Law of Prod. Warranties § 2:26

⁷ 67 Am. Jur. 2d *Sales* § 62

⁸ *State v. Bohne*, 2002 UT 116, 63 P.3d 63, 49 U.C.C. Rep. Serv. 2d 59 (Utah 2002).

⁹ *Coppernoll v. Custom Housing Center, Inc.*, 488 F.Supp.2d 641, (W.D. Mich. 2007); *Clark v. Jim Walter Homes*, 719 F.Supp. 1037 (M.D. Ala. 1989).

¹⁰ 15 U.S.C. § 2301(1) (1975).

¹¹ *Id.*

¹² *Coppernoll v. Custom Housing Center, Inc.*, 488 F.Supp.2d 641, 644 (W.D. Mich. 2007).

¹³ *Id.* at 645.

¹⁴ *Coppernoll v. Custom Housing Center, Inc.*, 488 F.Supp.2d 641, 645 (W.D. Mich. 2007); *Clark v. Jim Walter Homes*, 719 F.Supp. 1037, 1043 (M.D. Ala. 1989).

¹⁵ *Coppernoll v. Custom Housing Center, Inc.*, 488 F.Supp.2d 641, 645 (W.D. Mich. 2007); accord *Clark v. Jim Walter Homes*, 719 F.Supp. 1037, 1043 (M.D. Ala. 1989).

¹⁶ *Coppernoll v. Custom Housing Center, Inc.*, 488 F.Supp.2d 641, 645 (W.D. Mich. 2007).

¹⁷ *Restatement (Second) of Contracts* § 164 (1) (1981).