

Durability vs warranty

A product warranty is usually a written promise to replace or repair a product or work, if necessary, during a specified period. Usually, the company manufacturing or selling the product provides the warranty to the buyer. Durability, on the other hand, is about people's reasonable expectations that, subject to normal maintenance, a product will last for a specified number of years.

Consider, for example, a motor car. New cars are usually sold with a 3-year warranty. This is the manufacturer's undertaking that it will accept responsibility for any faults that happen within that time. However, most people would expect a new car (based on how earlier models have performed, knowledge of the manufacturer, and the competitiveness of the marketplace) to still be on the road in 10 to 15 years, subject to normal maintenance. Therefore, 10 to 15 years is the expected durability of the new car.

In this article, we explain the difference between the Building Code durability requirements and two different types of warranties for building work – product warranties and implied warranties.

DURABILITY

The Building Code sets the required durability standard for building work. Clause B2 Durability aims to ensure that buildings are durable enough so all other objectives of the Building Code are satisfied throughout the life of the building without needing reconstruction or major renovation.

Required durability periods for building elements

To comply with the Building Code, building elements must, with normal maintenance, continue to satisfy Building Code performance requirements for the following periods (or the specified intended life of the building, if shorter).

The life of the building, being not less than 50 years, for building elements:

- that provide structural stability to the building (for example, floors, walls, and fixtures)
- that are difficult to access or replace
- for which failure to comply with the Building Code would go undetected during the building's normal use and maintenance.

The life of the building, being not less than 15 years, for building elements:

- that are moderately difficult to access or replace (for example, the building envelope, exposed plumbing in the sub-floor space, and in-built chimneys and flues)
- for which failure to comply with the Building Code would go undetected during the building's normal use, but would be easily detected during maintenance.

The life of the building, being not less than 5 years, for building elements:

- that are easy to access and replace (for example, services, linings, renewable project coatings, and fixtures)
- for which failure to comply with the Building Code would be easily detected during the building's normal use.

Assessing building product durability

Designers and builders recommend the use of building products based on their opinions that those products will meet Building Code durability requirements. In assessing the durability of building products, regard should be given to:

- appraisals
- history in use
- manufacturers' technical literature
- reputation of the manufacturer
- the product's warranty (which may be provided by the manufacturer).

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A building consent authority may be satisfied that a product complies with Clause B2 Durability despite there being no product warranty. Although a product warranty can be considered (for example, if the manufacturer is willing to replace its product for a period equal to its required durability), a warranty cannot be the sole criteria for assessing durability.

Warranties do not ensure durability

The existence of a product warranty does not mean the product will necessarily be durable or last for a certain number of years. Rather, a warranty only helps to repair or replace the product when there are problems, or to compensate for any damage. Additionally, a warranty for several years is worthless if the company offering it goes into liquidation.

PRODUCT WARRANTIES

Product warranties only apply when voluntarily offered by the manufacturer, installer, or other business providing the product. These types of warranties are based on either representations made by, or a contract with, the person or company providing the product or service.

The party providing the warranty usually decides the warranty period as well as the terms and conditions for the warranty.

IMPLIED WARRANTIES UNDER SECTIONS 396-399 OF THE BUILDING ACT 2004

Implied warranties are different from product warranties because they are duties that can arise automatically without a guarantee ever being offered.

New consumer protection measures set out in sections 396 to 399 of the Building Act 2004 offer homeowners increased protection by ensuring various warranties are implied into certain contracts regardless of whether the warranties are specified in the contract.

The warranties are implied despite any provision to the contrary in any agreement or contract.

When do the implied warranties apply?

These 'implied warranties' only exist in certain circumstances. The warranties apply to two types of contracts for:

- building work on household units
- sale of household units by a residential property developer.

The warranties will only be implied into contracts of these types if the contract was entered into from 30 November 2004, the main commencement date of the Building Act 2004.

The contract need not be written for the implied warranties to apply. The warranties are also implied into contracts that arise from an oral agreement or understanding (for example, a verbal contract for building work on someone's house).

What are the implied warranties?

The implied warranties for products are:

1. All materials supplied for use in building the household unit:
 - will be suitable for the purpose they are used, and
 - will be new (unless otherwise stated in the contract).
2. If the contract states a purpose or result expected by the owner, the building work and materials will be:
 - reasonably fit for that purpose
 - of a nature and quality reasonably expected to achieve that result.

There are also implied warranties relating to the way in which building work is done. These are:

1. The building work will be done:
 - in a proper and competent manner
 - with reasonable care and skill
 - according to the plans and specifications in the contract
 - according to the building consent
 - according to all laws and legal requirements (this includes the Building Act 2004 and the Building Code).

2. The building work will be completed by the date specified in the contract (or if no period or date is specified, within a reasonable period).

3. The household unit will be suitable for occupation when building work is complete.

Claims for breach of implied warranties

The contractor (in a contract for residential building work) or the residential property developer (in a contract for sale of a household unit), is responsible for ensuring that he or she meets each of the implied warranties. Breach of the implied warranties would be considered a breach of contract.

The recourse for breach of contract depends on the circumstances of the particular case, but are likely to include monetary damages based on the nature of the loss suffered.

The period for an owner to bring action for breach of contract is 6 years from the date of breach.

Not only the original owner, but also future owners of the household unit to which the contract applied, are entitled to enforce the implied warranties as if they were a party to the original contract (section 398).

HOW PRODUCT WARRANTIES, IMPLIED WARRANTIES AND CLAUSE B2'S DURABILITY REQUIREMENTS INTERRELATE

Whether product warranties or implied warranties apply and how they relate to the Building Code durability requirements in any particular circumstance must be considered case by case.

However, the following points provide a useful general guide.

- The existence of a product warranty does not itself mean the product necessarily meets the durability requirements under Clause B2 of the Building Code. While the product warranty is something that can be considered when assessing durability, other relevant matters should be considered.
- A product warranty may help to repair or replace the product when there are problems, or compensate for any damage.
- Product warranties, which are voluntarily offered by a business, are different from the Building Act's 'implied warranties'. A contractor for residential building work or a residential property developer has no choice about whether to offer the implied warranties.
- If a product fails because it was used for the wrong purpose, it would not be a breach of the manufacturer's product warranty, but may be a breach of the contractor's or residential property developer's implied warranty that the materials used in building the household unit will be 'suitable for the purpose'.

- Where a product is faulty, as well as any claim under the implied warranties the product was not 'suitable for purpose', a homeowner may have a separate claim against the manufacturer under any manufacturer product warranties the owner relied on.
- If building work by a contractor or residential property developer does not meet Building Code durability requirements, the contractor or developer could also be in breach of contract for failing to comply with some of the implied warranties (for example, failing to do the work according to legal requirements, failing to do the work in a 'proper and competent manner' with 'reasonable care and skill', or failing to use materials that are 'suitable for the purpose they are used').

DISCLAIMER

This article is not a substitute for legal advice. This article is published as general guidance only. If you have questions about application of the law to a particular set of circumstances, the Department recommends that you seek independent legal advice.