

LAW OFFICES

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.

THIRD FLOOR ESSEX CENTRE
28400 NORTHWESTERN HIGHWAY
SOUTHFIELD, MICHIGAN 48034-8004

(248) 354-4030

(248) 355-5200

TELEFAX (248) 354-1422

MAILING ADDRESS
POST OFFICE BOX 215
SOUTHFIELD, MI 48037-0215

MICHAEL W. MADDIN
MARK R. HAUSER
RICHARD J. MADDIN
RICHARD F. ROTH
HARVEY R. HELLER
MICHAEL S. LEIB
ROBERT D. KAPLOW
WILLIAM E. SIGLER
STEWART C.W. WEINER
CHARLES M. LAX
STUART M. BORDMAN
STEVEN D. SALLEN
JOHN E. JACOBS
MICHAEL B. PERLMAN
GREGORY J. GAMALSKI
JULIE CHENOT MAYER
NATHANIEL H. SIMPSON
RONALD A. SOLLISH
LOWELL D. SALESIN
MARK H. FINK
STEVEN M. WOLOCK
DAVID E. HART
GEORGE A. CONTIS
MARTIN S. FRENKEL
GARY M. REMER
GEORGE V. CASSAR, JR

LORI E. TALSKY
SHERYL K. SILBERSTEIN
E. DALE WILSON
KASTURI BAGCHI
CATHERINE H. FINN
DAVID M. SAPERSTEIN
RICHARD M. MITCHELL
JOSEPH N. EJBEB
DANIELLE M. SPEHAR
CHRISTOPHER A. McMICAN
GEOFFREY N. TAYLOR
BRIAN A. NETTLEINGHAM
BRANDY L. MATHIE
DAVID B. KRAMER
THEODORE C. NITTIS
PATRICK E. WINTERS

OF COUNSEL
WALTER J. GOLDSMITH

MILTON M. MADDIN
(1902-1984)
C. ROBERT WARTELL
(1936-2001)

MEMORANDUM

TO: ELEVENTH ANNUAL REAL ESTATE SYMPOSIUM ATTENDEES
FROM: LORI E. TALSKY, ESQ.
RE: ENFORCEMENT OF EXPRESS LIMITED
NEW HOME CONSTRUCTION WARRANTIES
DATE: May 4, 2004

=====

In an unpublished opinion, the Michigan Court of Appeals recently decided that a contractual one-year warranty period for defects in materials and workmanship in a newly constructed home was reasonable and enforceable. While unpublished opinions are not binding precedent, the other courts often find the reasoning persuasive. The Court also constructed the following "rules" relating to contractual home construction warranties:

"Where there is an express limited warranty, the warrantor has a duty to correct a defect which accrues within the warranty period. Notice of the defect must be given within a reasonable time of discovery of the defect, but not necessarily within the warranty period, *unless* the contract provides otherwise, in which case the terms of the contract govern. If the contract does not provide a time in which the notice is to be given and notice is not given to the warrantor within the warranty period, the burden is on the buyer to prove that the defect accrued within the warranty period and that notice of the defect was given to the warrantor within a reasonable time after the expiration of the express warranty period".

Plymouth Pointe Condominium Association v Delcor Homes, inc., unpublished per curium opinion of the Court of Appeals, decided on October 28, 2003 (Docket No. 233847)

Given these “rules”, builders who elect to include express limited warranties in their contracts should also include a provision limiting the time period in which notice of a claimed defect must be given such as the following:

Written notice of each and every claimed defect in materials or workmanship must be delivered to Builder by the earlier of 30 days from the date of discovery of the claimed defect or the date Builder’s express one-year limited warranty expires. Builder shall not be liable under Builder’s express one-year limited warranty for any defect in materials or workmanship which Builder does not receive written notice of prior to the expiration of said warranty.

We have extensive experience representing residential builders. If you would like us to review your contracts or provide advise on contracts or warranty matters, please contact me at (248) 827-1864 or e-mail me at let@maddinhauser.com.