

WARRANTIES IN SALES OF DWELLINGS--ISSUE OF BUILDER'S DEFENSE THAT  
BUYER HAD NOTICE OF DEFECT.

The (*state number*) issue reads:

"Did the plaintiff [buy] [take possession of] (*identify dwelling*) with notice of the defect(s)?"

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that the plaintiff had notice of the defect(s) at the time *he* [bought] [took possession of] (*identify dwelling*).<sup>1</sup>

A home buyer has notice of a defect when he has actual knowledge of it or when it is sufficiently visible that a reasonable home buyer under the same or similar circumstances would discover it upon an inspection of the dwelling.<sup>2</sup>

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the plaintiff [bought] [took possession of] (*identify dwelling*) with notice of the defect(s), then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

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<sup>1</sup>*Hartley v. Ballou*, 286 N.C. 51, 209 S.E.2d 776 (1974).

<sup>2</sup>*Id.* at 61, 209 S.E.2d at 782.

