

WARRANTIES IN SALES OF DWELLINGS--ISSUE OF EXISTENCE OF IMPLIED
WARRANTY OF HABITABILITY.

The (*state number*) issue reads:

"Was an implied warranty created that (*identify dwelling*) would meet the prevailing standard of workmanlike quality?"

On this issue the burden of proof is on the plaintiff to establish the existence of this warranty. This means that the plaintiff must prove, by the greater weight of the evidence, three things:¹

First, that the plaintiff [bought] [contracted to buy] (*identify dwelling*)² from the defendant.

Second, that, at the time the plaintiff [completed his purchase of] [contracted to purchase] (*identify dwelling*), it was new construction. ("New construction" includes a dwelling recently completed. In determining whether (*identify dwelling*) was recently completed, you may consider the age of the dwelling, the use to which it has been put, its maintenance, the nature of the defects and the expectations of the parties.)³

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

²The implied warranty of habitability does not arise with construction of commercial buildings. *Dawson Industries, Inc. v. Godley Construction Co., Inc.*, 29 N.C. App. 270, 224 S.E.2d 266, *disc. review denied*, 290 N.C. 551, 226 S.E.2d 509 (1976).

³*Gaito v. Auman*, 313 N.C. 243, 250, 327 S.E.2d 870, 876 (1985).

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Third, that when he constructed (*identify dwelling*), the defendant was in the business of building dwellings of that type.⁴

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that an implied warranty was created that the (*identify dwelling*) would meet the prevailing standard of workmanlike quality, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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 defendant.

⁴A person in the business of constructing new dwellings impliedly warrants to his buyer that the dwelling is constructed sufficiently free from major structural defects and in a workmanlike manner so that it meets the standard of workmanlike quality then prevailing at the time and place of construction. *Gaito v. Auman*, 313 N.C. 243, 327 S.E.2d 870 (1985); *Hartley v. Ballou*, 286 N.C. 51, 209 S.E.2d 776 (1974); *Lumsden v. Lawing*, 107 N.C. App. 493, 421 S.E.2d 594 (1992); *Lapierre v. Samco Development Corp.*, 103 N.C. App. 551, 406 S.E.2d 646 (1991).