

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

The *(state number)* issue reads:

"Did the defendant breach the implied warranty of workmanlike quality?"

You will answer this issue only if you have answered the *(state number)* issue "Yes" in favor of the plaintiff (and the *(state number)* issue "No" in favor of the plaintiff).

On this issue the burden of proof is on the plaintiff. This means the plaintiff must prove, by the greater weight of the evidence, that the defendant breached the implied warranty of workmanlike quality.

A breach occurs if the dwelling is not constructed [sufficiently free of major structural defects]¹ [in a workmanlike manner so that it meets the standard of workmanlike quality then prevailing at the time and place of construction.² "Workmanlike manner" means work done with the ordinary care customarily used by a skilled workman under the same or similar circumstances.³]

¹Use of a synthetic stucco that failed to keep moisture out of a house is a major structural defect. *Medlin v. FYCO, Inc.*, 139 N.C. App. 534, 541, 534 S.E.2d 622, 627 (2000), *disc. rev. denied*, 353 N.C. 377, 547 S.E.2d 12 (2001).

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

³*Id.* at 62, 209 S.E.2d at 782.

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WARRANTY OF HABITABILITY. (Continued.)

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 the defendant breached the implied warranty 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.