

CONTRACTOR ALERT

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MODULAR HOMES ARE THEY CONSIDERED REAL PROPERTY OR PERSONALTY IN VIRGINIA

The housing market has taken a recent slump; however, what is still selling well are modular homes. For instance Penn-Lyon Homes produces modular homes that are trucked to the site whereupon after the foundation is poured, the house is then permanently affixed thereon.

The question arises whether this home, once it is affixed to the foundation is it considered personalty or realty or both for warranty purposes. In a case that is in litigation, the owner of the home has alleged that the builder is covered by warranties that fall under the Uniform Commercial Code ("UCC"), asserting that the builder provided an implied warranty of fitness... and an implied warranty of merchantability. These are warranties arising from the sale of goods and not from the sale of realty.

The UCC provisions are codified at Va. Code Ann. § 8.2-314, and fitness for a particular purpose, Va. Code Ann. § 8.2-315, in connection with a sale of goods, unless effectively modified or excluded. *See* Va. Code Ann. § 8.2-316.

The UCC refers to the "sale of goods."¹ Article 2 of the UCC limits its application to "goods," Va. Code Ann.

§§ 8.2-102, 8.2-105. The argument is strong to

assert that the provisions of the UCC do not extend to purchases of new homes. The provisions of the UCC do not extend the warranty of merchantability to a buyer of a new home, as a home buyer does not purchase "goods".

Title 8.2 of the Uniform Commercial Code applies only to transactions in goods, under §8.2-102, and only items that are movable at the time of identification to the contract are goods, under § 8.2-105. Glass v. Trafalgar House Prop., Inc., 58 Va. Cir. 437, 2002 (Loudoun County 2002).

The flip side is that the prefabricated portions of the house are deemed moveable and therefore would fall under the UCC as goods.

In conclusion, as a builder or homeowner there is no definitive case law in Virginia determining whether a modular home can have UCC warranties that fall under "goods" or "personalty."

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¹An implied warranty of merchantability or a warranty of fitness for a particular purpose is made only when a sale of goods occurs. Moore v. Allied Chem. Corp., 480 F. Supp. 364 (E.D. Va. 1979).