

HOUSE BILL 632

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Patricio Ruiloba

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CONSTRUCTION; ENACTING THE HOME WARRANTY ACT;  
REQUIRING BUILDERS TO PROVIDE A HOME WARRANTY WITH A NEWLY  
CONSTRUCTED HOME; ESTABLISHING REQUIREMENTS FOR A HOME  
WARRANTY; ESTABLISHING RESPONSIBILITIES FOR BUILDERS, HOME  
WARRANTY GUARANTORS AND HOMEOWNERS; REQUIRING RULEMAKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Home Warranty Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the

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Home Warranty Act:

A. "builder" means a person who contracts directly with an owner for the purchase of a newly constructed home, that was not previously occupied, unless it was occupied only by the builder for the builder's residential or commercial use;

B. "construction code" means the applicable laws and standards, and materials and workmanship standards, in effect in the jurisdiction where a home is located at the time the building permit for the home was issued;

C. "damage" means a defect or a major structural defect;

D. "defect" means that a component of a home fails to meet the terms stated in a home warranty;

E. "emergency repair" means a repair to a home necessary because of an imminent and substantial risk of damage to the home or of serious bodily injury to the home's occupants;

F. "home":

(1) means a detached one- or multi-family residence that has five or fewer stories above grade plane, has a separate means of egress, is newly constructed by a builder and will be occupied by the owner as the owner's residence; and

(2) does not include any common areas owned by a homeowners' or condominium association;

G. "home warranty" means a written warranty that

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conforms to the requirements provided in the Home Warranty Act and that constitutes the entire warranties provided by a builder to an owner;

H. "home warranty guarantor" means an entity that guarantees HCEDC→and or←HCEDC administers a home warranty on behalf of a builder HCEDC→as provided by rule←HCEDC;

I. "load-bearing elements" includes footings and foundation systems, beams, headers, girders, lintels, columns, load-bearing walls, roof framing systems and floor systems as described in a home warranty;

J. "major structural defect" means any physical damage to the load-bearing portions of a home caused by failure of the home's load-bearing elements, which affects those elements' functions to the extent that the home becomes unsafe or unsanitary or is otherwise unlivable;

K. "owner" means the first person to whom a home is sold upon completion of the home's construction and any successors in title to the home, during the time the home's home warranty is in effect;

L. "superintendent" means the superintendent of insurance; and

M. "warranty commencement date" means the date that legal title to a home is conveyed to the owner.

SECTION 3. [NEW MATERIAL] HOME WARRANTY--WARRANTY TERMS--EXCLUSIONS.--

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A. When a purchase contract between a builder and owner is signed, the builder shall provide to the owner a sample of the home warranty that will be provided upon sale of the home.

B. Upon the sale of a home, every builder shall provide a home warranty to the owner that shall be backed by a home warranty guarantor and that:

(1) is substantially the same as the sample provided in accordance with Subsection A of this section, unless the builder allows the owner an opportunity to review proposed changes to the home warranty and the owner and builder agree in writing to those changes;

(2) provides the following periods of coverage:

(a) for three hundred sixty-five days following the warranty commencement date, the home will be free from any defect or major structural defect due to noncompliance with construction codes described in the home warranty;

(b) for a one-year period beginning three hundred sixty-six days from the warranty commencement date, the home's plumbing, electrical and mechanical distribution systems will be free from any defect and the home will be free from major structural defects; and

(c) for an eight-year period beginning with the end of the period described in Subparagraph (b) of

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this paragraph, the home will be free from major structural defects;

(3) clearly describes the parties' responsibilities under the warranty; and

(4) clearly describes whether the builder or the home warranty guarantor is the party primarily responsible for satisfying claims against the home warranty throughout the term of the home warranty. This information shall also be clearly explained to an owner before the warranty commencement date and shall not be revised after the warranty commencement date.

C. Unless the builder and owner agree otherwise in writing, a builder's home warranty shall not cover:

(1) any damage to the home that is caused or made worse by:

(a) the owner's neglect, negligence, improper maintenance, use or operation;

(b) the owner's failure to provide timely notice to the builder or the home warranty guarantor as required in the Home Warranty Act of any damage to the home; provided, however, that such a failure shall not be construed to change the period of coverage provided in a home warranty;

(c) nonresidential use of the home; or

(d) the repair of damage to the home by anyone other than the builder or the builder's agent, except as

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otherwise provided for in the Home Warranty Act;

(2) any loss or damage that the owner fails to take timely action to mitigate;

(3) manufacturers' warranties related to appliances, equipment or fixtures; or

(4) if the home was constructed on land that was owned by the owner, any loss or damage to a home caused by soil conditions or soil movement; provided that the builder obtains a written waiver from the owner for such loss or damage.

D. The requirements in this section shall not be waived by the owner or diminished by the builder.

**SECTION 4. [NEW MATERIAL] RULES--REQUIREMENTS FOR HOME WARRANTY GUARANTORS AND HOME WARRANTIES.--**

A. The superintendent shall promulgate rules to govern the Home Warranty Act, including rules to establish:

(1) qualifications for a home warranty guarantor;

(2) requirements for the terms and conditions of a home warranty;

(3) a process for approving a home warranty guarantor to sell HCEDC→and or←HCEDC back home warranties; and

(4) standards related to home warranty products purchased by builders from home warranty guarantors.

B. To be approved to sell and back home warranties,

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a home warranty guarantor shall:

(1) meet the qualifications established in rule by the superintendent;

(2) possess a certificate of authority issued by the superintendent to write the type of insurance specified in a home warranty, be designated by the superintendent as an eligible surplus lines carrier or be a risk retention guarantor company that meets the licensing, filing and approval requirements provided in state and federal law; and

(3) be able to show financial security sufficient to cover the total amount of claims that could be made against builders whose home warranties the guarantor backs and to cover the costs of operation of the home warranties it backs.

HCEDC → ~~C. A home warranty guarantor shall not require any payment by an owner at any time subsequent to the home warranty commencement date as a condition of maintaining the home warranty.~~ ← HCEDC

HCEDC → ~~D.~~ **C.** ← HCEDC The terms and conditions of a home warranty are subject to approval by the superintendent. Once approved, the terms and conditions shall not be altered without the consent of the superintendent.

HCEDC → ~~E.~~ **D.** ← HCEDC A home warranty guarantor's approval to sell and back home warranties may be suspended or revoked by the superintendent if the superintendent finds that

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the guarantor has violated the Home Warranty Act or the rules promulgated by the superintendent.

SECTION 5. [NEW MATERIAL] REQUIRED NOTICE HCEDC→--RIGHT TO REPAIR←HCEDC.--

A. Before an owner personally undertakes a home repair that is not an emergency repair, and before commencing HCEDC→a related←HCEDC legal action HCEDC→for a breach of warranty←HCEDC, the owner shall first notify the builder or the home warranty guarantor as specified in the home warranty. The notice shall be made in writing and delivered by first class mail or as otherwise specified in the home warranty and shall advise the builder or guarantor of all damage to the home. The notice shall include a detailed and itemized list that describes all damage, the location of the damage within the home and whether any additional damage was caused or is likely to be caused if the damage is not repaired or replaced.

B. If damage to a home requires an emergency repair, before the owner personally undertakes the emergency repair, the owner shall first notify the builder or the home warranty administrator, as specified in the home warranty. If the owner is unable to make contact with the builder or the home warranty guarantor, the owner shall:

(1) make as minimal repairs as are necessary to mitigate or avoid an emergency until additional repairs can be approved by the builder or home warranty guarantor; and

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(2) take reasonable action to mitigate additional damage.

C. An owner may amend a notice provided in accordance with Subsection A or B of this section to include additional alleged damage that the owner identifies in good faith after submission of the original notice.

D. A builder or a home warranty guarantor who receives a written notice of damage from an owner:

(1) may:

(a) inspect the home to determine the nature and cause of the damage and the nature and extent of any repairs or replacements necessary to remedy the damage;

(b) use industry measures as necessary, including deconstruction testing, to determine the nature and cause of the damage and the nature and extent of any repairs or replacements necessary to remedy the damage; provided, however, that if deconstruction testing is used, the builder shall restore the home to the condition it was in before the testing; or

(c) repair or replace the damage; and

(2) shall, within sixty days of receipt of the notice, send to the owner by first class mail a good faith written response, stating whether the builder or home warranty guarantor intends to inspect the home; use testing methods, including deconstruction; have the damage repaired or replaced;

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or negotiate a monetary settlement with the owner.

E. If a builder or home warranty guarantor notifies an owner of the intent to repair or replace damage, the notice shall describe all repairs or replacements that the builder intends to undertake and an estimate of the date by which the work will be complete. The owner shall allow an opportunity for the damage to be repaired or replaced, and the builder or home warranty guarantor and the owner shall coordinate the repair or replacement work. Any extensions to the completion date shall be agreed to in writing by the owner and the builder or home warranty guarantor.

F. An owner shall ensure that the owner's home is available during business hours or as otherwise agreed with the builder or home warranty guarantor for inspection, testing, repairs or replacement as provided in the builder's or guarantor's response to the owner.

G. If a builder or a home warranty guarantor offers to negotiate a monetary settlement with an owner, the owner may accept or reject a settlement offered, but if the owner also rejects an offer to repair or replace damage, the owner shall file a claim with the home warranty guarantor. If the owner accepts a monetary settlement, the owner and the builder or home warranty guarantor shall negotiate for a release of liability.

H. If a builder does not comply with the

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requirements of this section and that failure is not due to any action or inaction of the owner or to an unforeseen event outside the builder's control, the owner shall file a claim with the home warranty guarantor.

**SECTION 6. [NEW MATERIAL] VIOLATIONS--CAUSE OF ACTION--LIMITATIONS.--**

A. If a builder violates the Home Warranty Act by failing to provide a warranty or to perform as required by a home warranty, an affected owner has a cause of action against the builder for actual damages, including attorney fees and related legal fees and costs arising out of the violation.

B. A monetary settlement with respect to a single instance of damage shall not exceed the cost of repair or replacement that would be necessary to cure the damage.

C. A monetary settlement with respect to all damage in a home or to settle any legal action provided for in Subsection A of this section, exclusive of costs and legal fees, shall not exceed the original purchase price of the home.

**SECTION 7. [NEW MATERIAL] TRANSFER OF WARRANTY.--**A home warranty made pursuant to the provisions of the Home Warranty Act shall automatically transfer, without charge, to a subsequent owner who acquires title to the home at a time when the warranty is still in effect. The transfer of a home covered by a home warranty shall not extend the duration of home warranty coverage HCEDC→**and the subsequent owner shall be**

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held to the terms of the warranty←HCEDC.

SECTION 8. [NEW MATERIAL] NO EFFECT ON OTHER WARRANTIES  
OR REMEDIES.--Nothing in the Home Warranty Act shall be  
construed:

A. as affecting or limiting any warranty of title  
to land or improvements; or

B. to prevent the parties to a home warranty from  
agreeing to alternative dispute resolution as the sole or  
optional remedy to a dispute or violation of the provisions of  
that act or the home warranty.

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