



The Warranty Game

Don't get caught using a 3lb glue from a guy not holding the bag or in other words, a purposeful manipulation of expressed vs implied warranties in order to strong arm sales.

by

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All manufacturers of flooring and adhesive in the construction industry supply an expressed warranty, albeit limited, describing the performance expectations of their products. The warranties as expressed fall under a generally accepted code of statutes called The Uniform Commercial Code (UCC or the Code). First published in 1952, the UCC is one of a number of uniform acts that have been created in an effort to harmonize the law of sales and other commercial transactions in all 50 states.

The goal of harmonizing state law is important because of the prevalence of commercial transactions that extend beyond state borders. For example, goods may be manufactured in State A, warehoused in State B, sold from State C and delivered in State D. The UCC therefore achieves the goal of substantial uniformity in commercial laws and, at the same time, allows the states the flexibility to meet local customs. In one or another of its several revisions, the UCC has been enacted in all 50 states, as well as in the District of Columbia,

When a warranty is expressed or written under UCC it must be pervasive and cover all geographies where UCC is accepted or codified. Words used in the creation of the warranty or words used to negate or limit warranty must be construed as reasonable and consistent with each other. Warranties are written to enhance the merchantability of a product by securing the performance claims made by the manufacturer. In general a manufacturer's representative is not the holder of the warranty value. As such when a flooring manufacturer warrants their product typically the reference of performance pertains to the flooring material within the scope of their manufacturing control. Adhesive represented by flooring manufacturers and not manufactured by the flooring manufacturer will hold their warranty value with the manufacturer of the original article or the adhesive manufacturer.

The warranty rests with the manufacturer not its representative. When flooring manufacturers representing a particular adhesive not of their construction and tie the warranty to the performance of the flooring product confusion typically erupts. The flooring manufacturer states their product warranty is nullified unless the adhesive is used. This negation of warranty must be stated and understood or in other words "expressed". The confusion is actually the purposeful mixing of an expressed warranty of construction with an implied warranty of installation. Unfortunately for many flooring contractors they find out the hard way what an implied warranty actually stands for in court... diddle. This strong arm tactic runs counter to Section 2316 of the UCC and any flooring manufacturer hoping to add to his bottom line with adhesive sales ought to be careful. The guy "not" holding the bag also doesn't have a leg to stand on. Don't be pushed around to take a risk on an elevated moisture floor because a flooring manufacturer's rep is pushing you to purchase his 3lb glue. If the failure occurs your on the hook he's on the other end of the fishing line holding the pole.