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MEMORANDUM

TO: ELEVENTH ANNUAL REAL ESTATE SYMPOSIUM ATTENDEES

FROM:

RE: ENFORCEMENT OF EXPRESS LIMITED
NEW HOME CONSTRUCTION WARRANTIES

DATE: May 4, 2004

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In an unpublished opinion, the Michigan Court of Appeals recently decided that a contractual one-year warranty period for defects in materials and workmanship in a newly constructed home was reasonable and enforceable. While unpublished opinions are not binding precedent, the other courts often find the reasoning persuasive. The Court also constructed the following "rules" relating to contractual home construction warranties:

"Where there is an express limited warranty, the warrantor has a duty to correct a defect which accrues within the warranty period. Notice of the defect must be given within a reasonable time of discovery of the defect, but not necessarily within the warranty period, *unless* the contract provides otherwise, in which case the terms of the contract govern. If the contract does not provide a time in which the notice is to be given and notice is not given to the warrantor within the warranty period, the burden is on the buyer to prove that the defect accrued within the warranty period and that notice of the defect was given to the warrantor within a reasonable time after the expiration of the express warranty period".

Plymouth Pointe Condominium Association v Delcor Homes, inc., unpublished per curium opinion of the Court of Appeals, decided on October 28, 2003 (Docket No. 233847)

Given these “rules”, builders who elect to include express limited warranties in their contracts should also include a provision limiting the time period in which notice of a claimed defect must be given such as the following:

Written notice of each and every claimed defect in materials or workmanship must be delivered to Builder by the earlier of 30 days from the date of discovery of the claimed defect or the date Builder’s express one-year limited warranty expires. Builder shall not be liable under Builder’s express one-year limited warranty for any defect in materials or workmanship which Builder does not receive written notice of prior to the expiration of said warranty.

We have extensive experience representing residential builders. If you would like us to review your contracts or provide advise on contracts or warranty matters, please contact me at (248) 827-1864 or e-mail me at let@maddinhauser.com.