

**Update on Arizona Law on Express Warranties vs. Implied Warranties
on Commercial and Residential Work**

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Residential Work – in 2021 the Arizona Court of Appeals issued a ruling on a contractor’s attempt to limit a homeowner’s implied warranty. In September 2022, the Arizona Supreme Court upheld the decision in *Zambrano v. M&RC II, LLC*, finding that a homeowner cannot waive an implied warranty even if it is spelled out clearly in the contract. The builder attempted to limit the implied warranty through this clause:

THE HOME BUILDER'S LIMITED WARRANTY REFERENCED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THE PURCHASE OF THE PROPERTY. ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP ARE HEREBY DISCLAIMED BY SELLER AND ITS AFFILIATES AND WAIVED BY BUYER, ANY IMPLIED WARRANTY THAT MAY EXIST DESPITE THE ABOVE DISCLAIMER IS HEREBY LIMITED TO A ONE (1) YEAR PERIOD.

The court in *Zambrano* held that homeowners are generally not as skilled nor as knowledgeable as business owners and builders and cannot be expected to understand the risks involved in waiving warranty rights.

Overview of Warranty periods:

Express Warranties – usually a period of 1 or 2 years from completion.

ROC Workmanship – 2 years from date of completion.

Contract Claims – six years for breach of written contract.

Implied Warranties – can run up to 8 years but are then cut off by the Statute of Repose. Implied warranties are not stated in the contract; instead the courts “insert” them into contracts to cover the reasonable expectations of the owner.

Commercial Work – contractors and commercial property owners can negotiate shorter warranty periods and can also limit liability if the contract clearly spells this out. For instance, an implied warranty can be waived by a business owner and the total damages for defective work can be limited by contract.