The Magnuson-Moss Warranty Act applies to consumer products, defined as “any tangible personal property.”

Real property and houses are thus not covered. The Act may apply to manufactured homes to the extent they are treated as personal property rather than real property under state law. In New York, the sale of shares in a cooperative apartment is considered a sale of goods covered by Article 2.

Real property is not included in the term goods under UCC Article 2 because it is not a movable thing, as required by section 2-105(1). Existing houses built on real property are thus outside the scope of the UCC. Article 2 may apply, however, to a house to be built on real property, depending on the type of construction. A contract for construction of a house from raw materials is not a contract for goods, because the house is not movable at the time it is identifiable as a house. But an existing house or other structure is covered if it is to be removed from the realty by the seller. Moreover, building materials are goods when they are purchased, although once they are incorporated into realty they cease to be goods and are no longer covered by the UCC. Thus, a person who purchases a completed house does not have UCC claims against a manufacturer who supplied construction materials to the builder. Nonetheless, one court allowed homeowners to sue the manufacturer as third-party beneficiary of the supplier who purchased the construction materials. The court reasoned that the homeowners' claim related to goods because the materials were movable at the time of the supplier's purchase.

UDAP statutes may or may not apply to realty, depending on the statutory language. Negligence and fraud claims are not limited to personal property and apply to realty warranties. Common law warranties usually arise in the construction and sale of a new home, and in many states there are statutory warranties.

Footnotes


129 [117] See §§ 2.2.1.5 [1], 17.2.2 [2], infra.


133 [121] See Wehr Constructors, Inc. v. Steel Fabricators, Inc., 769 S.W.2d 51 (Ky. Ct. App. 1988) (construction of justice center; "goods incorporated into a real estate construction contract are not goods"); Heffernan v. Reinhold, 73 S.W.3d 659 (Mo. Ct. App. 2002) (storm sewer pipe installed underground as part of site development before decedent bought home was not goods); Glass v. Trafalgar House Prop., Inc., 58 Va. Cir. 437 (Va. Cir. Ct. 2002). See also Palmer v. Espey Huston & Associates, 84 S.W.3d 345 (Tex. App. 2002) (contract to build breakwater not goods because it was to be a permanent improvement to real estate).

See, e.g., Ogden Martin Sys., Inc. v. Whiting Corp., 179 F.3d 523 (7th Cir. 1999) (overhead cranes were movable at time of contracting and are goods even though they were to be installed in buyer’s plant); Blesi-Evans Co. v. Western Mech. Serv., Inc., 72 U.C.C. Rep. Serv. 2d 115 (D.S.D. 2010) (boiler is goods); W.R. Constr. & Consulting, Inc. v. Jeld-Wen, Inc., 2002 WL 31194870 (D. Mass. Sept. 10, 2002) (windows to be installed in a home were goods because they were movable at the time of identification to contract).


See § 11.1.1 [4], infra.

See Ch. 18 [5], infra.

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