



## **Implied Consumer Warranties in California**

In the State of California there are two implied warranties that are in place to protect consumers regarding the sale and purchase of leased or sold retail goods. While there are express warranties that can be made by way of contract, this article focuses on the implied warranties mentioned above. Specifically, how they protect consumers and how they can affect the seller unless certain mitigating language is used. Only by following very precise and highly-detailed statutory requirements can a seller disclaim the warranties.

The implied warranty of merchantability is one such warranty that is inherent in every sale of consumer goods in California. Specifically, the implied warranty of merchantability extends to the retailer, distributor, and manufacturer of goods. The retailer is indemnified by the manufacturer for the full amount of liability. Merchantable goods must either conform to the contract description or be of acceptable quality in the trade or business. In addition, the goods must be fit for their ordinary use, rather than for a specific purpose. The goods must also be identified, labeled and packaged appropriately. Lastly, the goods must conform to the promises made on the label or packaging. Goods are non-conforming if they fail to satisfy any one of the necessary requirements set forth above.

A second implied warranty arises in specific circumstances. This warranty is the implied warranty of fitness for a particular purpose. This warranty attaches to the sale of goods when the retailer, distributor or manufacturer knows or has reason to know that the consumer is relying on the goods to perform a very specific purpose. The idea behind the warranty of fitness for a particular purpose is that the buyer is relying on the seller's expertise and advice that the goods purchased are sufficient to satisfy the particular purpose. Furthermore, the seller must know or have reason to know that the buyer is relying on the seller's expertise and judgment. The goods must conform to the seller's expectations, i.e. the particular reason the consumer purchased the goods.

Although the two warranties sound similar, they are in fact distinct. A particular purpose is different than the ordinary purpose for which the buyer purchased goods. The particular purpose is "peculiar" to the buyer's business. In contrast, the implied warranty of merchantability indemnifies the buyer if goods fail to conform to their usual or ordinary purpose. With merchantability, the buyer is not relying on the seller's expertise. Whereas, under the implied warranty of fitness for a particular purpose, the buyer must rely on the seller's skills and judgment to sell goods suitable to meet the needs of the buyer.

In California, implied warranties are of limited duration by operation of law. Implied warranties cannot be shorter than 60 days, and they do not last longer than one year. The implied warranties last as long as any express warranties last if an express warranty accompanied the goods. An

express warranty would last for one year if notice of the express warranty included no time limitation.

A seller can disclaim the implied warranties if the seller satisfies the notice requirements imposed by statute. A seller may sell an item “as is” or “with all faults” provided that such a disclaimer appears conspicuously in writing. The consumer must become aware of this before the purchase. Additionally, the seller must include in the writing that the risk of the performance and quality of goods is on the buyer, and the buyer must repair the goods at their expense.

The lawyers at Selman, Munson & Lerner P.C. understand that limiting the liability of a business for damages from the sale of goods after a closed sale can be extremely important and can assist businesses in ensuring that their liabilities are limited to the maximum extent that the law will allow. Call Katya Mezek at 800-276-1413 today to speak to an attorney about protecting your business.

Katya Mezek

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