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LEGAL TOOLBOX #5 FRENCH STATUTORY CONSTRUCTION GUARANTEES

QUESTION

ANSWER

Statutory construction guarantees were introduced by the so-called "Spinetta" Law Nr. n° 78-12 dated 4 January 1978, which aimed at protecting the interests of building owners and purchasers. The Spinetta Law created Article 1792 and following of the Civil Code, which provides for an **assumption of builders' liability** for certain types of damage.

As a result, builders bear by law three specific legal guarantees with respect to the building work carried out:

What are the statutory guarantees to be borne by builders in France?

- The **perfect completion guarantee** ("garantie de parfait achèvement") is a one-year guarantee from the date of acceptance of the works during which builders must repair any defects notified by the owner at the time of acceptance or within one year from the acceptance, regardless of the nature or extent of the defect.
- The **good functioning guarantee** ("garantie de bon fonctionnement") is a two-year guarantee which covers the repair or replacement of malfunctioning movable equipment that does not form part of the structure of the building (for example ventilation or heating equipment).
- The **decennial guarantee** ("garantie décennale") is a ten-year guarantee under which any builder is liable to the owner or subsequent buyer(s) for the repair of any damage that occurs within ten years after acceptance of the works and which either compromises the integrity of the construction or renders it unfit for use.

Who is concerned?

The statutory construction guarantees concern **all parties involved in the construction** of a building are deemed as builders within the Civil Code (Article 1792), i.e. all developers, architects, general contractors, construction workers, sellers of a building which they have constructed or commissioned, or any other party who has signed a contract for the design and/or performance of construction works ("contrat de louage d'ouvrage").

What is the starting point and duration of the statutory construction guarantees?

The starting point of all three statutory guarantees is the date of acceptance of the works: this generally corresponds to the date on which the owner accepts the completed works, with or without reservations, in written joint report recording the completion and the delivery of the works or building. In specific instances however, the acceptance of works can be tacit.

The duration varies:

- The perfect completion guarantee covers defects notified **during the first year** from the acceptance of the works.
- The good functioning guarantee covers defects of the equipment **during the first two years** from the acceptance of the works.
- The decennial guarantee covers damages (either structural or which render the building unfit for use) which occurred **during the first ten years** from the acceptance of the works.



Who is covered by the statutory construction guarantees?

The beneficiaries of these statutory guarantees are **the current owner** of the building at the request of whom the construction works are being carried out, as well as **all subsequent owners** of the building. The statutory construction guarantees are ancillary to the building.

Is it mandatory to take out insurance policies for statutory construction guarantees?

Yes. Under the French Insurance Code (articles L. 241-1 and L. 242-1), the project owner ("maître de l'ouvrage") and the builders must respectively take out the following **mandatory insurance policies**:

- Builders within the meaning of article 1792 of the Civil Code must be covered by a decennial insurance policy ("assurance de responsabilité civile décennale").
- Building owners, sellers, or owner's representative, and those who had building works carried out on their behalf, must take out an insurance policy before the opening of the construction site which covers payment of all repair work necessary to remedy damage which builders are liable for under the decennial guarantee ("assurance dommages-ouvrage"). This insurance pre-finances the repair of damage covered by the ten-year guarantee of the builders. It then takes action against the builders and their insurers.

Mandatory insurance policies for contractors and project owners do not cover for all types of damage and do not extend to the period before the acceptance of the works. It is highly recommended that project owners take out optional insurance to cover the risk of damage on the worksite before the acceptance.

Wish to learn more? You can contact us!

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Our team



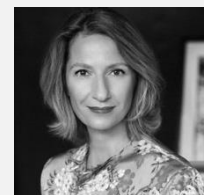
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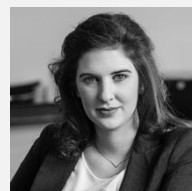
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