

# Kolby Homes

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DESIGN  BUILD

## 10 -Year Builder Limited Home Warranty

# Kolby Homes

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## Builder Limited Home Warranty

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## **Builder Limited Home Warranty**

**Our criteria for qualifying warranty repairs are based on our 10 Year Builder Limited Home Warranty. Kolby Homes will meet or exceed the guidelines set forth herein. Please note that we reserve the right, at our discretion, to exceed these guidelines if common sense or individual circumstances make that appropriate, without being obligated to exceed all guidelines to a similar degree or for other homeowners whose circumstances are different.**

### **General Provisions of the Builder Limited Home Warranty**

Kolby Homes (Builder) warrants your home against defective materials and workmanship for a period of one year from closing or occupancy, whichever comes first, and warrants your home against major structural defects for a period of ten years from closing. All other warranties either express or implied, other than the express warranty of merchantability or fitness for a particular purpose, are hereby EXCLUDED from all rights, obligations, terms, and conditions of this Builder Limited Home Warranty. The waiver of warranties expressed in this Paragraph is not intended to waive any implied warranty that the By Laws of the State of Texas covers, nor is it intended to waive any applicable warranty issued by a manufacturer or other third party who provided materials or products for the inclusion in the improvements located on the property. All assignable warranties by manufacturers, sub-contractors or suppliers are hereby assigned, without recourse, to the Homeowner and shall be in force. Builder does not assume any of the obligations under those manufacturer warranties and does not provide any warranty coverage of items covered by manufacturer warranties. The warranties expressed herein are not applicable and will not cover damage or failures caused by the negligent and/or intentional misuse of the improvements. Builder shall not be liable for any incidental or consequential damages relating to, or resulting from, any damage to, or defect in, the home, other improvements or the lot on which the home is located. This Builder Limited Home Warranty is not to be construed as a Completion Warranty and does not cover contractual matter between Builder and Homeowner other than as stated herein.

**This Builder Limited Home Warranty is non-transferable. Any and all obligations under it terminates if the property is sold or shall cease to be occupied by the homeowner to whom it was originally issued.**

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# Builder Limited Home Warranty

## Scope of One Year Limited Warranty

### **Thirty Day Move-In Period:**

During the first thirty days after closing you may note minor items that were not noted in the Final Punch List. Items listed must fall within the scope of warrantable conditions to be scheduled for repair. Examples of items to be included are sticking drawers, door adjustments, and other like minor items. Items that are not warrantable conditions include, but are not limited to, cosmetic items like paint touch-up, scratches on floors, counters and other surfaces and other cosmetic-type items. Submit the list by mail or email no later than forty days after closing or occupancy of home, whichever is first. This gives you a ten day grace period after your thirty day move-in period to submit your list. All items that are determined to be warrantable will be scheduled for correction within a reasonable time period.

### **Latent Defects:**

A latent defect in construction is a defect that becomes apparent after thirty day move-in period and prior to the end of the one year limited warranty period, which is one year from closing or occupancy, whichever occurs first. Latent defects must fall within the scope of warrantable conditions. Normal wear and tear, general maintenance items, and settling cracks will not constitute latent defects. If a latent defect should appear, describe all pertinent details in a letter and send it to our company as set forth in the Summary of Limited Warranty contained herein. The Builder will make an inspection and if the defect falls within the scope of warrantable conditions, it will be scheduled to be repaired within a reasonable time period.

### **Consumer Products:**

Consumer Products, as defined by the Federal Trade Commission, that are covered by the Magnuson-Moss Warranty Act when sold as part of home are excluded from this Builder Limited Home Warranty. Such Consumer Products are covered by manufacturer or supplier warranties, if any. This includes items like appliances, fixtures and mechanicals. If there is a defect in one of these items or materials, communication by the Homeowner to the appropriate vendor should ensure attention.

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# Builder Limited Home Warranty

## Scope of One Year Warrantable and Non-Warrantable Conditions

### 1. Exclusions to the Builder Limited Home Warranty

- A. Builder will not be responsible or liable for any consequential or secondary damages and/or losses that may arise from or out of any and all defects including, but not limited to, personal injury damage to personal property.
- B. Builder will not be responsible for any workmanship or materials supplied by vendors not on Builder's approved vendor and supplier list.
- C. Any addition, alteration and/or remodeling not performed under the supervision of the Builder that has adverse effects on warrantable conditions will invalidate the warranty as to such warrantable items.
- D. Consumer Products, as defined by the Federal Trade Commission, that are covered by the Magnuson-Moss Warranty Act when sold as part of a home are excluded from this Builder Limited Home Warranty.
- E. Any damage to the extent caused or made worse by the negligence, improper maintenance, failure to take reasonable action to mitigate damages or other action or inaction by Homeowner, except at the direction of the Builder, will invalidate the warranty as to such warrantable items.
- F. Builder will not be responsible for any alterations to the grade of the soils, except alterations done by Builder.
- G. Builder will not be responsible for damages or losses resulting from lightning, tropical storms, hurricanes, hard-driven rain, gale-force winds, sink holes, changes in underground water tables or below-ground water pressure or leaks into the home or swimming pools or onto driveways, walks, porches or other improvements on the property.
- H. Builder will not be responsible for damages caused directly or indirectly by abnormal loads placed on floors that exceed residential design loads, abnormal demands placed on the electrical system that exceed normal residential design capacity, erosion or accretion, animals both wild and domestic, insects, birds or other like items that are beyond the control of the Builder.

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## Builder Limited Home Warranty

- I. Builder will not be responsible for damages dealing with the potability of water.
- J. Builder will be responsible for adhering to the International Residential Code in place at the time of signing the Contract. The obligation of the Builder to repair any Defects shall be limited to repair of the defective warranted portion of the Home.
- K. Builder will not be responsible for trees, shrubs, or other plants prior to or after closing on the Home.

### 2. Lot Grading and Drainage

- A. If ground settlement occurs around the foundation, utility trenches, or other filled areas will be filled in one time during the first year. Builder will not be responsible for removal or replacement of any items not originally installed by Builder.
- B. If water remains standing in areas immediately surrounding the home for 48 hours after normal rainfall, new swales or drains will be installed to correct the problem. The possibility of standing water after an unusually heavy rain should be anticipated. No grading determination will be made while the ground is saturated.
- C. If the drainage is modified by anyone other than the builder, the builder will not be responsible for the drainage or any impact it may have on the foundation, drives, walks or other improvements on the property.

### 3. Masonry, Stucco, Concrete Flatwork, Concrete Floors, and Foundations

- A. Cracks, separations and shrinkage are common and should be expected within certain tolerances in masonry, stucco, and concrete surfaces. Any cracks greater than 1/8" in width or 1/8" in vertical displacement will be repaired by surface patching or pointing. The Builder will not be responsible for color variations in repairs. Concrete drives are designed for single axle vehicles. Excessive axle weight loads will result in cracking that is not warrantable. This Paragraph is not intended to mean, nor shall it be interpreted to mean, a crack exceeding 1/8" or vertical displacement exceeding 1/8" is a major structural failure.
- B. If a crack in the concrete slab ruptures the finished flooring, Builder will repair the finished flooring so that the crack is not readily apparent. Builder will not be responsible for discontinued patterns or color variations in tile or grout.

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## **Builder Limited Home Warranty**

C. Cosmetic appearances of concrete including, but not limited to, varying finish texture, pitting, scaling, accretion or spalling are specifically not warrantable items.

D. Deterioration of wood expansion joints or separation of caulked expansion joints are specifically not warrantable items.

E. Water may drain across driveways and sidewalks. Water should not pond more than 1/8" deep when measured 24 hours after rain.

### **4. Interior Cracks, Separations, Shrinkage and Warpage**

A. Cracks, separations and shrinkage are common and should be expected within certain tolerances in wood floors, wood moldings, sheetrock and grout lines. Movement resulting in 1/8" cracks or larger will be inspected and repaired with caulk, paint or grout one time during the first-year warranty period. The Builder will not be responsible for color or texture variations in repairs.

B. Floor squeaks are often temporary conditions caused by lumber shrinkage or temperature changes. An isolated floor squeak is not a defective item. If a large section of floor has a loud and noticeable squeak, the condition will be inspected and repaired only one time during the first-year warranty period.

### **5. Flooring**

A. Ceramic tile, granite, marble and other types of tiles may crack or come loose as a result of initial differential foundation settlement. Cracked tiles or loose tiles will be replaced. The Builder will not be responsible for discontinued products, variations in material or variations in grout if a repair is performed. Variations in grout color, tile color and tile texture are common and are not warrantable items.

B. Chips, scratches, spots or other imperfections on all flooring types that are not noted in the Final Punch List or identified in writing before closing or occupancy, whichever comes first, are warrantable.

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## Builder Limited Home Warranty

C. Wood floors are very sensitive to moisture. Moisture will cause the wood to expand and release from the floor and the finish of the wood floors to become rough. Builder will not be responsible for damage to wood floors as a result of exposed moisture from Homeowner occupancy. Builder, at his choice, will fill, replace, or re-glue wood floors that release from the slab, move leaving a crack greater than 1/8" or have more than 1/16" height variation at any joint between boards. Builder will not be responsible for squeaks or popping wood floors.

D. Warpage of wood doors and cabinet doors is common and is not warrantable unless the warpage of the door exceeds 1/4" over a 5' area measured along one side of the door and the door does not function properly. If the door exceeds 1/4" in warpage and does not properly operate, the door will be repaired or replaced. New paint may vary in color and will not be warrantable.

E. Variations in natural stones are common and are not warrantable.

F. Visible carpet seams, spots, stains, fading and carpet wear are not warrantable items. Open carpet seams and loose or wrinkled carpet will be repaired one time only during the first-year warranty period by stretching or re-securing the areas.

### 6. Paint and Stain

A. Conditions of color fastness are not warrantable. Mildew and fungus are caused by climatic conditions and are not warrantable. Color variations in stain are an intended process and are controlled by the grain of the wood and are therefore not warrantable.

B. Exterior paint should not peel during the first year and will be corrected if necessary.

C. All other paint items or alleged paint defects are expressly excluded from this Builder Limited Home Warranty

D. Cracks, chips, and scratches in cabinets and millwork are not warrantable items.

E. Rust stains that develop on steel lintels are not warrantable items.

F. Fading of paint, stain, and varnishes are to be expected and are not warrantable items.

G. It is recommended that exterior varnishes are re-done at least once a year to protect the products it applied to.

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# Builder Limited Home Warranty

## 7. Water Leaks, Roofs, and Caulking

- A. The roof and flashing should not leak except where debris is allowed to collect on the roof or if the caulking is not maintained. If a leak is due to collection of debris on the roof or inadequate maintenance of caulking, the leak and all resulting damage from the leak will not be warrantable. The Homeowner has the responsibility of keeping the roof surface free of pine needles, leaves and other debris and to maintain the caulking. If a leak is not due to debris or caulking, the leak will be inspected and repaired.
- B. Roofing appearance including, but not limited to, shingles not laying flat, outlines of framing members visible, and mildew on shingles are not warrantable items.
- C. Windows should not leak under normal conditions. Windows may leak during times of hard-driven rain or if water is applied to the window with force; these are not considered normal conditions. Leaks due to conditions not considered normal are not warrantable items. The Homeowner has the responsibility to maintain the weather-stripping and caulking at the window due to the contraction and expansion of these materials with temperature changes.
- D. Leaks in fireboxes, ridge vents, attic vents, soffit vents and louvers are common during hard-driven rains and is not considered a defect. These items should not leak under normal rains and will be inspected and corrected if they do.
- E. Exterior and interior leaks related to caulking are not warrantable items. Caulking will shrink after it is installed, and the Homeowner has the responsibility of maintaining the caulking outside and inside the home.

## 8. Cooling and Heating

- A. The cooling system should be able to maintain a minimum of 15 degrees difference from the outside temperature when the temperature is equal to or exceeds 95 degrees. When the outside temperature is less than 95 degrees, the cooling system needs to maintain a temperature of 75 degrees. Temperatures are measured at the center of the room at five feet above the floor. It is common for rooms to have four degree temperature differences. If these tolerances are not maintained, the system will be inspected and corrected.

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## Builder Limited Home Warranty

B. The heating system should be able to maintain an inside temperature of 70 degrees measured in the center of the room at 5 feet above the floor. It is common for rooms to have four degree temperature differences. If these tolerances are not maintained, the system will be inspected and corrected.

c. It is the Homeowner's responsibility to keep condensation lines clear of foreign objects. The Builder will not be responsible for damages resulting from clogged drain lines.

### 9. Plumbing

A. It is the responsibility of the Homeowner to maintain adequate house temperatures and proper winterization on outside water supplies and drains to prevent pipes from freezing.

B. Water supply lines, drain lines, vent pipes, and plumbing fixtures should not leak. If a leak does occur due to defective workmanship or materials, the occurrence will be corrected utilizing methods to be determined by the Builder.

C. Water supply lines and drain lines should not make noise referred to as "water hammer" and will be corrected by Builder. Builder is not responsible for noise from water flow through the lines.

D. Builder is not responsible for exterior finishes of plumbing fixtures or for the drain line stoppages from foreign objects in line.

### 10. Electrical

A. Defective switches, plugs, and breakers will be inspected and repaired. Circuit breakers are designed to trip if overloaded but should not trip under normal loads.

B. GFCI circuits are intentionally designed to be sensitive and trip frequently for safety reasons. This is not considered a warrantable item.

### 11. Framing

A. Sub-floor squeaks will be repaired one time during the first-year warranty period.

B. Bowed studs or walls out of plumb will be corrected by a method to be determined by the Builder if the bowed area or out of plumb area exceeds 3/8" variance over 32" vertical measurement.

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# Builder Limited Home Warranty

## Scope of 2 to 10 Year Warrantable Items

### Major Structural Defects:

1. Major structural defects will be warranted for ten years from the date of closing. A major structural defect is defined by all three of the following conditions being present:
  - A. There has to be actual physical damage to one or more of the following specified load-bearing segments:
    - Roof framing members
    - Floor framing members
    - Bearing walls
    - Columns
    - Lintels (other than lintels supporting veneers)
    - Girders
    - Load-bearing beams
    - Foundation systems and footings
  - B. It must cause the failure of the specified major structural component.
  - C. It must affect the load-bearing function to the degree that it materially affects the physical safety of the occupants of the home.
2. If all the criteria for establishing the existence of a Major Structural Defect is present, then the Builder will correct the defective Major Structural Defect limited to such actions necessary to restore the load-bearing capability of the component(s) to meet the criterial of a Major Structural Defect, and to correct those items of the home damaged by the Major Structural Defect.

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## **Builder Limited Home Warranty**

### **Summary of the Builder Limited Home Warranty**

1. This Builder Limited Home Warranty expressly excludes remedy for damage or defect caused by, (1) all construction not executed by Builder, (2) improper or insufficient maintenance, (3) improper operation, and (4) normal wear and tear.
2. Any dispute, controversy, claim or other matter in question between Homeowner and Builder arising out of or related to this Builder Limited Home Warranty shall be settled by Mediation and Arbitration.
3. Written notice of an alleged Defect (other than a Defect regarding Major Structural Defect, which are provided for below) occurring in year one of this Builder Limited Home Warranty must be mailed or emailed to the builder no later than 10 days after the expiration of the first year in order to be eligible for such first-year coverage. Written notice of an alleged Major Structural Defect must be mailed or emailed to the builder no later than 10 days after the expiration of the first ten years in order to be eligible for such ten-year coverage. Notice of defect must be provided to the Builder in writing within a reasonable time after Homeowner is aware of defect. Notice of alleged Defects has to describe the alleged Defect in reasonable detail. Builder shall not be responsible or liable for any defects nor any other obligations imposed on Builder under this Builder Limited Home Warranty whatsoever if Builder has not received actual written notice strictly within the time specified in this Paragraph.
4. For any defect covered by this Builder Limited Home Warranty, Builder may repair, replace or pay Homeowner the reasonable cost of repairing or replacing the defective item, as Builder chooses. Repair of a Major Structural Defect is limited to the repair of damage to the load-bearing portion of the Home and repair to those components of the Home damaged by the Major Structural Defect that is necessary to restore those items to their original intended function. Builder's right to pay Homeowner the reasonable cost to repair or replacement shall be available, at Builder's option, in lieu of Builder's responsibility to repair or replace a defective or damaged component.
5. This Builder Limited Home Warranty is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Builder Limited Home Warranty, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Builder Limited Home Warranty and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law or equity.

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## **Builder Limited Home Warranty**

6. This Builder Limited Home Warranty contains the entire understanding between Builder and Homeowner with respect to the Warranty of the Home, and supersedes all prior agreements, communication or representations, if any. Builder is not bound by any statement, promise, condition, or stipulation not specifically set forth in this Builder Limited Home Warranty. No representative of Builder has any authority to make any oral or written statements that modify, add to, or change the terms and conditions of this Builder Limited Home Warranty, and Homeowner represents that Homeowner is not relying in any such oral or written statements in entering into this contract.

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## Builder Limited Home Warranty

This Builder Limited Home Warranty is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect the Homeowner's right to recover damages arising from the performance of this Contract. If Homeowner has a complaint concerning a construction defect arising from the performance of this Contract and that defect has not been corrected through normal warranty service, the Homeowner must provide notice regarding the defect to the Builder by certified mail, return receipt requested, not later than the 60<sup>th</sup> day before the date the Homeowner initiates a claim to recover damages in an arbitration proceeding. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the Builder, the Homeowner must provide the Builder an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Homeowner's Address

\_\_\_\_\_  
Builder

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Homeowner's Telephone Number

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Homeowner

\_\_\_\_\_  
Homeowner

