A developer acquired a 30-acre tract of land zoned for residential use. The developer thereafter marked out 60 building lots. The developer granted various utility providers appropriate easements to install underground sewer and utility lines. These utility easements were promptly and properly recorded.

Subsequently, the developer contracted with a man to build a home for the man on one of the 60 lots. The contract provided that, at closing, the developer would convey the home and lot to the man by a warranty deed excepting all easements and covenants of record. The home was completed nine months later.

At the closing, the developer conveyed the home and lot to the man by a valid warranty deed containing the six title covenants. Notwithstanding the language in the contract, the deed contained no exceptions to these six covenants. The deed was promptly and properly recorded.

Two months later, following a heavy storm, the man discovered rainwater in the basement level of his home. Three bedrooms were located on this level, and the influx of rainwater made all of them unusable. An expert determined that the cause of the rainwater influx was a defect in the construction of the home's foundation.

The man contacted the developer, who denied any responsibility for the influx. Rather than argue with the developer, the man contacted a plumber, who concluded that the problem could be solved by installing a sump pump in the basement. The plumber accurately told the man that the usual cost of installing a sump pump was $750, but that the location of the sewer lines coming into the home created more work, raising the installation cost to $1,500. The man told the plumber to install the pump.

Thereafter, the man sued the developer for $5,000 in damages for the cost of the sump pump, its installation, and damage to the floors and carpeting in the basement. He also sought additional damages for breach of one or more title covenants.

1. Which present title covenants, if any, did the developer breach with respect to the utility easements? Explain.

2. Assuming that there was a breach of one or more of the present title covenants, can the man recover damages from the developer for the breach? Explain.

3. May the man force the utility company that installed the underground sewer lines to remove them from the land? Explain.

4. May the man recover the $5,000 in damages from the developer? Explain.

A developer subdivided a tract into 60 lots and granted utility providers easements for underground sewer and utility lines, which were properly recorded. The developer then built a home on one lot and contracted to convey it by a warranty deed "excepting all easements and covenants of record." At closing, however, the developer delivered a warranty deed with all six title covenants and no exceptions. Two months later a storm sent rainwater into the basement, ruining three bedrooms; the cause was a defective foundation. The buyer installed a sump pump (cost raised from $750 to $1,500 by the sewer-line placement) and repaired flooring, then sued for $5,000 plus breach of one or more title covenants.

← A recorded easement is an encumbrance on the title.

← Contract terms merge into the deed at closing, so the missing exception controls.

← The buyer had record (constructive) notice, so damages for the recorded easement are doubtful.

← A new home carries an implied warranty of quality covering latent defects.

Section 1: Present Covenants (Against Encumbrances)

Issue. Whether the developer breached any present title covenant with respect to the recorded utility easements.

Start with the six covenants.

Rule. G/R: a general warranty deed carries six covenants, three present (seisin, right to convey, and against encumbrances) and three future. The covenant against encumbrances promises there is no outstanding encumbrance, meaning any third-party right that lowers value or limits use, including an easement, unless the deed expressly excepts it. Under the merger doctrine, contract terms merge into the deed at closing, so an exception stated in the contract but omitted from the deed does not save the grantor.

Easement = encumbrance; merger controls.

Analysis. Here, the recorded utility easements burden the lot and are encumbrances, and the deed listed no exceptions; the contract's exception for easements of record merged into and was superseded by the deed, so the promise of no encumbrances was false when the deed was delivered.

Contract exception dropped out at closing.

Conclusion. Therefore, Section 1: the developer breached the present covenant against encumbrances.

Breach established.

Section 2: Damages for the Breach

Issue. Whether the buyer can recover damages for the breach of the covenant against encumbrances.

Breach does not guarantee damages.

Rule. G/R: courts are split on awarding damages for a known or visible encumbrance; a buyer with actual, or record (constructive), notice often cannot recover, and any recovery requires proof that the encumbrance diminished the land's value.

Notice + diminished value both matter.

Analysis. Here, the easements were recorded, giving the buyer constructive notice, and the contract itself flagged easements of record; the underground lines also benefit the lot and are common in a subdivision, so the buyer cannot show diminished value.

Recorded, benefits the lot, no lost value.

Conclusion. Therefore, Section 2: the buyer is unlikely to recover damages for the covenant breach.

Breach, but little or no damages.

Section 3: Removal of the Sewer Lines

Issue. Whether the buyer can force the utility company to remove the recorded sewer lines.

A recording-act question.

Rule. G/R: a properly recorded easement binds later purchasers under any recording act (race, notice, or race-notice), because record notice defeats bona-fide-purchaser status.

Recorded first = binds later takers.

Analysis. Here, the utility easement was recorded before the buyer purchased, so under any recording statute the buyer took the lot subject to the easement and cannot remove it.

Buyer took subject to the easement.

Conclusion. Therefore, Section 3: the buyer may not force the utility company to remove the sewer lines.

Easement stays.

Section 4: The $5,000 Foundation Damage

Issue. Whether the buyer can recover the $5,000 in foundation-related costs from the developer.

A construction-defect claim, not a title claim.

Rule. G/R: most jurisdictions imply a warranty of quality (habitability) in a commercial builder-vendor's sale of a new home, covering significant latent defects from poor workmanship discovered within a reasonable time.

New-home implied warranty of quality.

Analysis. Here, the developer built and sold a new home whose latent foundation defect caused the flooding two months after closing, a reasonable time, and the sump pump and repair costs

Latent defect, timely discovery.

flow directly from that defect.

Conclusion. Therefore, Section 4: the buyer may recover the $5,000 under the implied warranty of quality.

Foundation costs recoverable.

Step-by-Step: Title Covenants and a New-Home Defect

Separate the title-covenant claim (easements) from the construction-defect claim (foundation).

1. Present covenant against encumbrances: a recorded easement is an encumbrance, and the contract exception merges into the deed.
→ **Deed had no exception → breach**

↓

2. Damages for the breach? Record or actual notice, plus proof of diminished value.
→ **Recorded + benefits the lot → no damages**

↓

3. Remove the easement? Recorded before purchase → took subject under any recording act.
→ **Cannot compel removal**

↓

4. Construction defect: implied warranty of quality on a new home, latent defect, reasonable time.
→ **Recover the $5,000 foundation costs**