

Product warranties do more harm than good

Lots of protections you might expect often aren't there

Commercial and residential consumers of construction products often believe that product warranties extend additional benefits not otherwise available. What most consumers don't realize is that product warranties often strip more benefits than they confer.

The two most important issues to consider are the duration of the warranty and the remedies available if a warranty claim becomes necessary.

First, consumers should recognize that the duration of the warranty can be very misleading.

If—as it often does—the warranty purports to be the exclusive remedy, a warranty that is shorter than the statute of limitations may actually reduce the period of time you have to bring defective product claims.

Also, although many warranties extend past the limitation period—sometimes by 20 years or more—the warranty payout typically decreases with each passing year. This means that a warranty claim made in the middle or later years of the warranty period may hold very little value.

Similarly, the warranty may have no value if the manufacturer goes out of business or is acquired by another corporation.

Consumers should also pay attention to when the warranty period begins to run.

In some cases, the warranty

period begins on the date of manufacture—not on the date of purchase or delivery. If you buy a product that has been in circulation for two years and



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has a two-year warranty from the date of manufacture, you have no warranty rights at all.

Even long warranty periods may be shortened by the statute of limitations.

Some product manufacturers argue that a warranty claim must be brought within two years of discovery of the defect or damage—under Oregon's product-liability law—even if the warranty purports to last for 20 years. Thus, a 20-year warranty may dissolve in two years if you immediately discovered some defect or damage, perhaps even a minimal, one but failed to bring a lawsuit within two years of your discovery.

Remedies often stripped

Second, most product warranties try to eliminate all other rights and remedies that the consumer would otherwise have, including the warranties of fitness and merchantability that are implied by law.

By disclaiming implied warranties, the product manufacturer attempts to reduce the consumer's remedy to only the express warranty and its onerous limitations. The limitations typically include, among other

things, a waiver of any liability for incidental, consequential, special or punitive damages.

These types of damages are quite broad, and waiving them can severely limit your rights of recovery.

For example, "consequential" damages may include loss of use, or loss of revenue, resulting from a failed product such as defective HVAC equipment, leaky windows or faulty roof shingles. Consequential and/or incidental damages may also include the cost of construction labor necessary to remove and replace the defective equipment or materials.

In fact, many product warranties explicitly limit the manufacturer's total liability to the original purchase price or replacement cost of the product. While the consumer may get new products for free, the cost of removing the old windows and installing new windows is borne by the consumer. In most cases, the construction cost exceeds the product cost by a significant margin.

Many product warranties are accompanied by or incorporate by reference the manufacturer's installation instructions.

Such warranties typically state that the warranty is void unless the installation instructions are strictly followed. Read literally, warranties with such language may be disavowed even if the instruction that was not followed had nothing to do with the cause of the product's failure.

Too many consumers, both commercial and residential, either do not read the warranty carefully or assume that it cannot be changed. But consumers

should compare warranties of competing manufacturers.

If one product warranty is better than another, ask whether you can get a "matching" warranty on the product you prefer by calling the manufacturer's customer service department.

Alternatively, try revising the warranty language and ask the manufacturer whether it will sell the product under your alternative language. There is no harm in asking.

Commercial consumers often have more leverage to obtain a better warranty because of the size of their purchase. Nevertheless, many commercial consumers overlook their leverage and do nothing to change unfavorable warranty language. Particularly with regard to key products such as HVAC equipment and building envelope components, failing to negotiate the warranty language can be a critical mistake.

Finally, to avoid a manufacturer voiding its warranties, ask whether it will send a representative during construction to confirm that the product is being installed properly. Waiting to confirm the existence of the warranty until you bring a warranty claim will not yield the best results.

Like with all construction agreements, careful reading and good negotiation up front will reduce your risk and provide a better result in the end.

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