

HOME WARRANTIES

More Than You Want To Know

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Just what is a warranty? Well, it seems that it depends on who you ask and what the context is. Perhaps the purest definition of a warranty is: *a written guarantee, issued to the purchaser of an article or product, by its manufacturer, promising to repair or replace it if necessary within a specified period of time.* However, we all know that warranties come with lots of buts, ifs, depends, and maybe nots – the so called ‘fine print’. We also know that warranties are sometimes made by licensed tradespeople on the services that they perform.

Generally speaking, warranties, guarantees, assurances, promises, covenants, commitments, agreements, etc., are all governed by jurisdictional contract law. The underlying obligations are usually between a seller of a product or service and its’ buyer. Sometimes there may be ‘middlemen’ (contractors, agents, etc.) involved too.

Warranties almost always have limitations, exclusions, conditions, and expiration dates. They rarely cover all perils all the time in all locations or provide absolute repair, replacement or refund. Unlike many other warranties, home warranties almost always have a deductible (typically \$30 to \$125) on each service call. This component of home warranties makes them sometimes thought of as a form of insurance – because insurance typically has a deductible or copay. The business model of spreading the risk and expense of something going wrong over many participants is also like insurance. But, in at least most states, home warranty providers are not regulated like insurance companies and do not have to be licensed by their state’s insurance department.

New cars are commonly sold with a three-year warranty provided by the original equipment manufacturer. We all know that there are lots of ‘exceptions’ though (there are some ten-year warranties on certain

components). And, there is usually a maximum of 36,000 miles coverage during that first three years and many other exclusions. The auto industry is also well known for marketing what they call an “extended warranty”. These products are just another warranty – a new one, or perhaps providing overlapping coverage.

Newly constructed homes often come with a ten-year structural warranty. Let’s just hope the builder is still in business in ten years. These builder warranties are often mandated and governed by local and state laws and have lots of restrictions and exclusions. These warranties usually only cover the structure of the house and the electrical and plumbing systems – but not the appliances and fixtures served by those arterial systems. However, heating, ventilation, and air conditioning (HVAC) systems, light fixtures, stoves, dishwashers, refrigerators, clothes washers and dryers, central vacuum systems, garbage disposals, sinks, toilets, tubs, etc., are usually covered for some shorter period of time (typically one to three years – maybe longer) by their manufacturers.

Unlike and unrelated to new home builder warranties and product manufacturer guarantees, there are also products/services available that are generally known as “home warranties”. A home warranty is something that might be considered for purchase when the household systems and appliance warranties are about to expire or already have.

Just to be clear, a home warranty is not, in any way shape or form, similar to or a replacement for homeowner’s insurance – which covers perils like fire, hail and other storm damage, theft / loss, and other perils usually including personal liability related to visitors and guests. Appropriate homeowners insurance should always be in force. It is something that should be carefully selected, reviewed and maintained as a matter of common sense and selfish interest, and will be required by any lender. Home warranties, on the other hand, are purely optional – never required.

There are many home warranty vendors to choose from. So many in fact, that it would seem to indicate that they must be engaged in a very

profitable business. Here is a fairly comprehensive list of companies that currently have home warranties available for purchase:

2-10 Home Buyers Warranty

<http://www.2-10.com/>

America's 1st Choice Home Club

<https://afchomeclub.com/>

American Home Guard

<https://www.americanhomeguard.com/>

American Home Shield

<https://www.ahs.com/>

American Residential Warranty

<http://www.americanresidentialwarranty.com/>

Assurant Service Protection Advantage

<https://www.serviceprotectionadvantage.com/spa/Default.aspx>

Choice Home Warranty

<https://www.choicehomewarranty.com/>

First American Home Warranty

<https://homewarranty.firstam.com/>

Home Security America

<http://www.onlinehsa.com/>

Home Warranty of America

<https://www.hwahomewarranty.com/>

HMS Home Warranty

<https://www.hmsnational.com/>

Landmark Home Warranty

<https://www.landmarkhw.com/>

Old Republic Home Protection

<https://www.orhp.com/>

OneGuard Home Warranties

<https://www.oneguardhomewarranty.com/>

Secure Home Warranty

<https://www.securehomewarranty.com/>

Select Home Warranty

<https://selecthomewarranty.com/>

Total Home Protection

<http://www.totalhomeprotection.com/>

TotalProtect Home Warranty

<https://www.totalprotect.com/>

Good luck with making a decision about which company to select. There are many differences between the coverage provided, limitations, deductibles, caps, and many, many other factors.

Here is one example of a published review of some of these companies: <https://www.reviews.com/home-warranty/> There are also plenty of other reviews available online.

The following is a partial list of possible features and variables to consider with different home warranties from different home warranty companies:

- Cost – annual charge for std warranty, additional charge for upgrade
- Deductible – service fee charged for each service call rendered
- Coverage Cap – maximum reimbursement for a repair / replacement
- Service Providers – who selects service provider / are they licensed
- Response Time – any assurance of how long you'll wait for service
- Days and Schedules – when can service be expected
- Pre-Existing Conditions / Poor Maintenance – what isn't covered
- Optional Coverage – very large houses, pools, spas, outbuildings
- Upgraded Coverage – lower deductible, higher coverage limits
- HVAC, Wells, Septic Systems – are these covered
- List of Covered Items – what is covered
- Repair vs. Replacement – who decides, what criteria
- Credit Homeowner in lieu of replacement – to allow for upgrades
- Complaint Policy – what is the process for disputes
- Cancellation Policy – free look period within 30 days for refund
- NHSCA Membership – are they registered members of the NHSCA.

The National Home Service Contract Association (NHSCA) is a trade association of the nation's premier home (warranty) service contract providers. The NHSCA represents quality minded companies that service, repair or replace household systems and appliances. The association is a non-profit 501(c) (6) industry trade organization serving providers, legislators, regulators and consumers throughout the United States.

Buying a `resale' home (one that is not brand new), often triggers an onslaught of advertisements in the mail and sales calls from some of the companies offering the type of home warranty that this article is primarily about. It is also possible that the home seller was convinced to offer a one-year home warranty as part of the sales deal. Maybe they paid for it or maybe their REALTOR® paid for it. If so, that warranty was probably in force from the onset of listing the home for sale, until settlement, with the seller as the beneficiary. At settlement, the coverage transferred to the buyer for free and is usually good for one year – with options for renewal and options for upgrades in coverage.

This practice can provide a lot of peace of mind to all parties. The seller is protected against unexpected large repair expenses. And, the buyer, who is typically financially stretched for at least the first year of ownership anyway, gets some protection from surprise costs. And, the REALTOR® has some peace of mind that a broken down component is not going to throw a wrench into the middle of the sale process, being a source of dispute over who pays for the repair or replacement. Win, win, win!

One, not so good twist on this topic is the illegal practice engaged in by some title insurance producers have been advertising free home warranties as an inducement to purchase their title insurance policy. This is a big no, no and the Maryland Insurance Administration has issued an official notice to address the matter. Bulletin No. 17-16, regarding Prohibition of Rebates, Discounts and Inducements, dated December 18, 2017 has been sent out to all licensed title insurance producers. A copy of this document follows:

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

Please note that this article was written by John to provide objective information and to also reflect his opinion of good practice at the time of its' writing for the general benefit of those considering sale or purchase of real estate. It is not intended as definitive legal advice and you should not act upon it as such without seeking independent legal and financial counsel. Frequent changes in the law and standards of practice may cause this information to become outdated and no longer applicable or incorrect.

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BULLETIN NO. 17-16

DATE: December 18, 2017
TO: All Licensed Title Insurance Producers
RE: Prohibition of Rebates, Discounts and Inducements

It has come to the attention of the Maryland Insurance Administration ("MIA") that title insurance producers are offering consumers free home warranties or other things of value as an inducement for the purchase of a title insurance policy. The purpose of this Bulletin is to provide guidance on rebating, discounts, and other inducements offered in connection with Maryland real estate transactions under the Insurance Article.

Specifically, § 27-212(b) of the Insurance Article of the Annotated Code of Maryland states:

Except to the extent provided for in an applicable filing with the Commissioner as provided by law, an insurer, employee or representative of an insurer or insurance producer may not pay, allow, give, or offer to pay, allow, or give directly or indirectly as an inducement to insurance or after insurance has become effective:

- (1) a rebate, discount, abatement, credit, or reduction of the premium stated in the policy;
- (2) a special favor or advantage in the dividends or other benefits to accrue on the policy; or
- (3) any valuable consideration or other inducement not specified in the policy.

Additionally, § 11-407 (b) provides:

Each title insurer must hold to the rates or premiums as approved by the Commissioner and may not deviate from the rates or premiums or allow to or for the account of an insured a rebate or discount on the rates or premiums payable.

Section 27-216(b)(1) states:

A person may not willfully collect a premium or charge for insurance that:

(i) exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates as filed with and approved the Commissioner, or

(ii) if classifications, premiums, or rates are not required by this article to be filed with and approved by the Commissioner, exceeds or is less than the premium or charge specified in the policy and set by the insurer.

Offering rebates or discounts in the form of free home warranties or home inspections as thank you gifts to consumers who purchase a title insurance policy from an insurance producer is prohibited by Maryland insurance law. Likewise, offering all consumers seeking title insurance free home warranties or inspections regardless of whether a title insurance purchase is ultimately made is also prohibited by Maryland insurance law.

In the first circumstance, the insurance producer is directly and explicitly offering the free item in exchange for receiving that consumer's business, which is an inducement that falls within the scope of § 27-212(b)(1) (no rebate, discount, or credit may be given as an inducement directly connected to a purchase). Likewise, offering free items of value, even though not expressly conditioned on the purchase of an insurance product, violates § 27-212(b)(3) as an "indirect" inducement because it conveys a hopeful expectation that the consumer may ultimately be so moved or persuaded to purchase an insurance product or to do business with a specific title insurance producer. Accordingly, insurance producers should not offer to consumers any type of rebates, discounts, or other free items of value, directly or indirectly even if not expressly conditioned on the purchase of contract of title insurance.¹

Please direct any questions regarding this Bulletin to Darlene Arnold, Director of Producer Enforcement, Compliance and Enforcement at darlene.arnold@maryland.gov or 410-46-2354 or to Erica J. Bailey, Associate Commissioner, Compliance and Enforcement at 410-468-2113 or erica.bailey@maryland.gov.

ALFRED W. REDMER, JR.
Commissioner

signature on original

By:

Erica J. Bailey
Associate Commissioner

¹ See § 14-127 of the Real Property Article, Annotated Code of Maryland