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## Roofing Warranties

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**Warranty:** An express or implied written or oral promise. A warranty or guaranty is an undertaking to remedy a defect described in the warranted item(s) for a period of time.

**Lawyer's View:** That the product is free of defects.

**Owner's View:** The roof will not leak and if it does I get a new roof.

**Roofer's View:** The roof will not leak for one (1) year from completion. If it does, I will repair as necessary. After one (1) year, See Manufacturer's Warranty.

**Manufacturer's View:** The roofing products I sold are not defective. If they are defective, and I am timely notified, I will replace assuming certain exclusions are not applicable. Moreover, the roofing products that I sold you are not defective; the roof is currently failing due to improper installation.

### Warranties typically come in one of three different forms:

- Manufacturer's Material Warranty,
- Manufacturer's Roof System Warranty, and
- Roofer's Guarantee (other than the general warranty representations under typical AIA General Conditions). Typical AIA generally warranty representations provide for the following:

"The Contractor warrants to the Owner and Architect that the materials and equipment furnished under the contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. The Contractors' Warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment."

Manufacturer's material warranties typically range in length from 5 to 20 years. As the name implies, these warranties are backed by the manufacturer and cover only defects and failure of the roofing material itself (e.g. cracks in asphalt shingles, tears in built-up roofing plies). These warranties are only as good as the company that stands behind them. The major problem with these warranties is that they are extremely narrow in scope, typically covering only the materials themselves. Given that most leaks occur at roof to wall intersections,



*"The developer shall be deemed to have granted to the purchaser of each unit an implied warranty ..."*

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flashings and other roof penetrations, the usefulness of the warranty in most leak situations will be severely limited.

Manufacturer's roof system warranties are also backed by the manufacturer of the roofing materials, but these warranties are broader in scope to cover certain instances of defective workmanship. Typical terms of manufacturer system warranties are five to ten years. As with the manufacturer's material warranties, these warranties are only as strong as the companies that issue them.

Roofer's guarantees are issued by the contractor installing the roof. They are typically very short in length, one to five years. They also cover instances of defective workmanship as well as defective materials.

### Five Key Warranty Provisions:

There are five key provisions to be aware of when evaluating the merits of a manufacturer's material warranty, a manufacturer's system warranty, or a roofer's guarantee: scope of coverage, monetary limits, determination of applicability, exclusions and nullification.

1. **Scope of Coverage:** Scope of coverage simply refers to whether the warranty is limited to defects in materials or whether it also includes defective workmanship.

2. **Monetary Limits:** Some commercial roofing warranties do not include specific monetary limits. These are referred to as No Dollar Limit (or NDNL) warranties. Some warranties, however, cap repairs at the original cost of the roof or per square foot amounts that are based on the size of the roof. These monetary caps typically would not cover the cost of replacing the roof and do not increase as the cost of materials increase due to inflation.

3. **Determination of Applicability:** Some warranties contain provisions that allow the manufacturer to reserve to itself the exclusive right to determine whether a needed repair is covered under the warranty or not. (Often when the manufacturer reserves this right, the manufacturer also will reserve the right to charge for service calls when it determines that the problem is outside the warranty's scope). This could lead to denial of coverage even though a repair is clearly covered under the warranty, so long as the manufacturer's determination was made in "good faith".

4. **Exclusions:** Exclusions serve as a defense for manufacturers, protecting them from liability. They can be subdivided into two sub-categories: legal exclusions and technical exclusions. Legal exclusions seek to bar claimants from recovery under other theories of law such as breach of contract, breach of express warranty or breach of implied warranties. Technical limitations on the other hand, will bar the repair of leaks resulting from certain enumerated causes (e.g., natural disaster, abuse, lack of proper maintenance, etc.).

5. **Nullification:** Nullification provisions of a warranty set out a list of events that will void the warranty in total. Here is a list of some typical events that may nullify the warranty:

- Repairs, alterations or additions without manufacturer's prior approval;
- Failure to pay bills for materials and installation;
- Lack of inspection at time of application;
- Failure to notify manufacturer of building ownership transfer within a certain time period;
- Failure to maintain the roof in accordance with the manufacturer's instructions;
- Change in building use; and
- Failure to repair damaged roof within certain time limit, using an approved applicator.

**Express Warranty - Roof is free from defects in materials or workmanship.**

An express warranty is one that is created by the language of the agreement or separate document, usually given at the conclusion of performance. In creating an Express Warranty the following items should be considered:

- A clear description of item(s) of work that is warranted.
- The time frame/duration that the warranty is applicable, specifically defining when the warranty starts and ends.
- Permissible claimants under the warranty
- Procedure for making a claim on the warranty
- Duties of the warrantor: duties may include, repair, replacement, and payment of money
- The appropriate forum and venue for warranty enforcement. It must be considered whether the matter should be brought in arbitration or litigation. Each has its positives and negatives.
- Conditions and limitations: whether there is required maintenance, dollar limitations, materials only limitations, and whether the express warranty is the sole remedy.

**Implied Warranty - Products are fit for intended purpose.**

Implied warranty of constructability—constructed in a workmanlike manner

- Purchaser(s) of a new structure receive an implied warranty that the structure has been constructed in a workmanlike manner. A workmanlike manner does not mean the best construction available; it would mean that the work is in accordance with the accepted norm of the industry.

**Commonly utilized defenses to claims based upon warranties.**

Misuse of the warranted product is a defense.

- Under the terms of an express warranty, maintenance may be a condition to recovery. Under the statutory implied warranty for condominium construction, maintenance is required.

Independent Intervening Cause

- Potentially, there can be no liability for warranty should the building suffer from a catastrophic event like a category five hurricane, earthquake, and fire.

Lack of Notice

- The warranty itself usually sets forth mandatory notice procedures that have to be followed in order to enforce the warranty, typically there must be notice of the breach to give the warrantor an opportunity to remedy the breach and mitigate any damages.

**Statutory Warranties - Condominiums**

- Three (3) year warranty on roof from Certificate of Occupancy, if no Certificate of Occupancy then substantial completion.
- Extended by turnover delays or latent defect (10 year exposure max).
- § 718.203 Warranties:

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(2) The contractor, and all subcontractors and suppliers, grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

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