

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 200-033

Headline: **Warranty Basics**

Publication date: December 2004

Publication: CHOA Journal

Written by: Matthew Fischer, Lawyer with McCormack & Company Law Corporation

Warranties exist to protect consumers and grant peace of mind. But what happens when a consumer does not understand their rights and obligations, or is unable to distinguish between a warranty which provides valuable protection to the consumer, and a warranty which is mere fluff, or provides minimal protection only to those who can stand a great deal of hassle?

Warranties can offer significant protection against risk for new strata corporations in the form of Home Warranty coverage, or various manufacturer or installer warranties on work and installations done during or subsequent to construction. Older strata corporations will want to keep track of warranties on contracted upgrades, new fixtures and system replacements on everything from re-piping projects, roofing work, new windows, carpeting, and elevator repairs to replacement hot water tanks and beyond. Any recently performed work, consumer product, installed product or restored system may be covered by some sort of warranty.

There are a variety of warranties ranging from:

- Manufacturer warranties on products such as hot water heaters, video cameras, or fire sprinkler heads.
- Vendor warranties for repair to replacement of defective products.
- Contractor or installer warranties.
- Extended warranties or service contracts which may be provided by a 3rd party. Example: a purchased extended warranty extending the time period of the manufacturer's warranty.
- 3rd party warranty insurance.
- Statutorily implied warranties such as the implied conditions of quiet possession, fitness for purpose and merchantable quality under the B.C. *Sale of Goods Act*.

With all warranties except for implied warranties, the terms of the agreement which create the warranty will govern everything from; whether the purchaser is entitled to replacement, repair or cash award as redress for any discovered defect; to the period of the warranty; to the procedure whereby the buyer can enforce the warranty; and the purchaser's obligations under the warranty.

At www.hiringcontractor.com, a "Get it in Writing" campaign emphasizes that when dealing with contractors, it is important to have written details of what is covered under a warranty, and the period of coverage.

The law of contracts in all of its complexity applies to warranty clauses and agreements, and a full discussion exceeds the scope of this article. At a very minimum, make sure you have a warranty in writing that specifies who is offering the warranty, what is covered and for what period of time. Be sure to read and understand the terms at the time of purchase, so that you are aware of any obligations that fall on your shoulders.

For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.

page 1

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

How long do warranties last?

The period of warranty coverage will vary according to the written terms of each warranty. Some warranties have different periods for different items, or categories of items. Home Warranties in British Columbia have different coverage periods ranging from 1 to 2 years for defects in material and labour depending upon whether or not they compose part of the common property, as well as whether they form part of certain specified systems (including plumbing, electrical and environmental systems). Lengthier coverage periods are specified for building envelope defects (5 years) and structural defects (10 years).

Do the owners have any obligations under warranties?

Obligations can be imposed on the purchaser according to the terms of a warranty. Most people understand for example that their motor vehicle warranty coverage is dependent upon following the manufacturer's maintenance guidelines. Similarly a roofing contractor's warranty is likely going to impose obligations on the strata corporation to inspect and maintain a new roof.

In order to help ensure coverage in the case of a defect, it is important to read and understand the terms and abide by the purchasers obligations created under a warranty agreement. This warning is particularly true of Home Warranties where there are typically various obligations on the purchaser of these very costly purchases such as:

- To perform reasonable maintenance on the new home, including all of the builder recommended maintenance in a timely manner. In the case of a strata complex, this obligation is borne both by the owner in terms of their strata lot, and by the strata corporation in terms of common property.
- To mitigate and restrict damage to the new home by reasonable efforts in a timely manner.
- To permit access to the home to inspect, maintain or investigate claims.
- To give the insurer and builder prompt notice of a discovered or potential defect or loss. If a claim arises, give prompt, detailed written notice of the defect or loss, before the expiry of the warranty coverage.

What is the best warranty?

Some warranties provide little to no effective coverage. It may be that the warranty on a \$20 item has no value, if the terms of the warranty require the buyer to pay shipping and a \$15 handling fee when having a defect repaired. Other dangers include where a warranty is provided verbally, or by a numbered company that subsequently goes out of business.

A clearly written warranty from a reputable and established contractor or manufacturer, or a 3rd party insured warranty is likely to provide the best protection, all depending upon the terms in the written agreement.

There are situations where multiple warranties or types of warranties may apply. For example, an installed video camera may be covered by the manufacturer's warranty, the installer's warranty, an extended warranty provided by a third party, and the statutory warranties under the *Sale of Goods Act*.

How can the consumer protect their warranty interests in a strata context?

1. Be selective about what product and service providers you contract with. Beware of contractors who wish to avoid mandatory warranties to save costs.
2. Always read and understand the warranty before signing an agreement, and get a copy once it is signed.
3. Pay particular attention to the exclusions and purchaser obligations created under the warranty.

For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.

page 2

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

4. If your strata corporation has a full service strata manager, they need to be kept apprised of new purchases and contracts which come with warranties, and promptly informed of discovered defects.
5. If your strata corporation is self or only partially managed, a council member should monitor the strata corporation's obligations under all applicable warranties, make sure that defects are reported and claims filed on time, and maintain a warranty file to pass to their successors on council.
6. As an owner, if there is a defect which affects your strata lot, do not rely upon the strata corporation to make a claim on your behalf. Certain defects under some warranties will require that the strata lot owner file their own claim instead of, or as well as the strata corporation's claim.
7. Know when to seek legal advice:
 - If you are denied warranty coverage for a significant purchase.
 - If you do not understand the warranty coverage or purchaser obligations and steps that need to be taken to keep your warranty coverage for a significant purchase
 - If you would like to ensure that a contract for a significant purchase will provide adequate warranty protection. Keep in mind that having a lawyer review a major contract or competing bids before any contract is signed may prevent much greater expense in the future.



CHOA

For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.

page 3

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.