



Understanding Warranty Laws

Part 1

by Marlo L. Dean

No matter how complete it may appear, the warranty statement typically packed with a product such as a pressure washer is not the whole story. Warranties are subject to (and sometimes created by) a host of laws and regulations. This article presents highlights that manufacturers, suppliers, distributors, and end-users may find helpful to know about the legal and regulatory aspects of warranties.

What is the difference between a full and a limited warranty. A full warranty is, well, full, while a limited warranty is—you guessed it—limited. A lawyer would probably come up with a more comprehensive definition.

To non-lawyers like us, there are four basic types of warranties. One type is express warranties, which are overtly written or spoken; a second type is implied warranties, which are not. The most important forms of the latter are the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. Most of what would be called basic warranties or product warranties or manufacturer's warranties are of the express type. A typical pressure washer warranty is a manufacturer's warranty and is expressed in the manufacturer's warranty policy.

A third type is the statutory warranty, which is usually an express warranty of certain duration as required by law. For instance, the European Union under the authority of Directive 1999/44/EC now mandates that all consumer products sold as new be covered by two-year warranties (or what they call guarantees of conformity). This is the reason European companies are more likely to perform endurance testing. Such a law does not prohibit three-year express warranties, but it would prohibit one-year warranties. In the 25 EU nations, all express warranties with durations under two years would automatically be extended to equal the statutory EU minimum. Used products sold by professionals in EU must be covered by statutory one-year warranties, but products sold at public auction need not be covered at all.

In the U.S., statutory warranties are regulated by the states, and every state has different laws. The law in Texas provides for a minimum duration and requires that warranty work be reimbursed at the dealer's posted labor rate for up to 1.5 times the manufacturer's flat rate hours. Reimbursement on parts is set at cost plus 15 percent, plus other expenses directly related to the repair. Dealers are also entitled to freight reimbursement if the manufacturer requires the defective part to be returned. The law also establishes a 30-day time period for manufacturers to accept or deny warranty claims, and an additional 30 days to submit payment or credit or respond in writing why the claim was denied. Most states presently do not have such a law, but the number is increasing—statutory law is being adopted every year by states.

"Voluntary" Minimums

In addition, a new crop of somewhat statutory, yet somewhat voluntary warranties is cropping up in the name of energy efficiency. For instance, the U.S. Department of Energy and EPA now require a two-year warranty before a product can be called energy-efficient. Technically, the sought-after "Energy Star" label is voluntary, and so adherence to these statutory minimums is voluntary as well. But the requirements illustrate how government can leverage the high correlation between warranty and product quality. Manufacturers of shoddy merchandise could never afford the cost of servicing two-year warranties. Therefore, shoddy products are unlikely to carry the Energy Star seal of approval.

The fourth type of warranty may not even be a warranty. What some merchants call extended warranties are called service contracts by others. Almost nobody wants to call them insurance policies, but basically they are contracts that exchange the payment of a premium for the assumption of the risk that a product will need to be repaired. If the product never needs repairs, the seller of the contract books the

premiums as revenue. In some cases, the reward for no claims is a partial refund. But if the product does require a repair, the seller must assume the cost.

If only it were so simple. Some extended warranties, and indeed some basic product warranties, provide different durations for coverage of parts and labor. The cost of replacement parts may be covered for a year, while labor may be covered only for 90 days. Or labor may not be covered at all. With some plans, shipping costs in one direction or in both directions must be paid by the consumer. The bottom line is that the law allows the seller a great deal of latitude when setting the terms and conditions of a warranty policy.

However, this is an article about warranty law—not the many shapes and sizes that the terms and conditions of a warranty can assume. So let's take a closer look at just the laws (Warranties) that surround the promise made by the seller and/or the manufacturer that a product is free from defects.

Implied Warranties

The implied warranty of merchantability is basically a guarantee made by the seller that the products they sell are fit to be sold. If they sell a pressure washer, the machine must be able to perform the intended function. This is why manufacturer warranty policies often have a disclaimer about Implied Warranty statements.

What's important to remember is that this implied warranty applies only in cases where a merchant is selling a product that they are normally in the business of selling. So if a pressure washer dealer sells a delivery truck, and they do not regularly trade in delivery trucks, the law would not automatically treat them like a used car dealer. The dealer would face the same laws in regards to the sale of the delivery truck as would any private individual.

The implied warranty of fitness for a particular purpose is a guarantee the dealer/distributor makes at the time of sale that a product can do what is expected of it. This is




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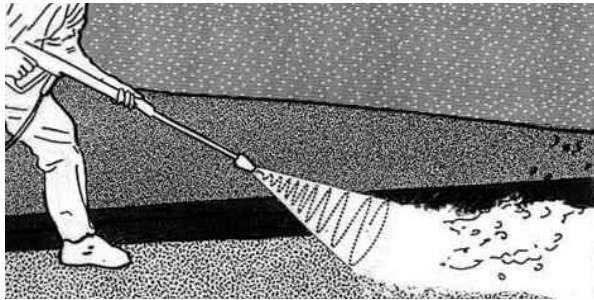
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more subjective and qualitative than the implied warranty of merchantability, but they do overlap to some extent. For instance, if a pressure washer is described as being "super duty," or more specifically as "top-of-the-line," it must live up to those attributes, especially if the buyer relied upon those attributes to make their selection. Information presented in sales literature is an implied warranty that can be used in a court of law.

Unlike an express warranty, an implied warranty normally has no set duration. This is because an implied warranty is designed to protect buyers more from fraud or unscrupulous sales practices at the outset than from poorly-designed or defective products down the road. The old warranty joke was that if the used pressure washer you just bought broke in half on first use, you would own both pieces. Nowadays, an implied warranty of merchantability would protect against that kind of problem. But it would be no of help if the pressure washer failed after months or years of normal use.

Most states allow a merchant to sell products "as is" as long as they inform the buyer of this policy in writing. In such a case, the "as is" buyer would indeed own both halves of the useless pressure washer because there would be no implied warranty of merchantability. However, some states simply do not allow a merchant to disclaim these implied warranties, even if they try to do so in writing. Some states have outlawed only "as is" sales of equipment, and some states have gone a step further by requiring statutory warranties on used equipment. In Massachusetts, for instance, dealers must cover used equipment sold for \$700 or more with a 30-day warranty.

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Watch for the conclusion of this article in next month's Cleaner Times. ☞



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