

## WARRANTIES AND SERVICE PLANS

The boundaries between warranties, service contracts and insurance can often blur. A warranty or service contract may actually constitute insurance and therefore be regulated by Title 48 RCW. To the converse, a large segment of service contracts are left unregulated resulting in unfulfilled contracts and loss to the public. It was in 1999 that the legislature enacted Chapter 48.110 RCW giving the insurance commissioner regulatory authority over service contracts and requiring registration with that office. Warranties and maintenance agreements, and service agreements where the tangible property is \$50.00 or less are excluded specifically. See RCW 48.110.015.

What is included?

“Insurance” is defined by statute at RCW 48.01.040 as:

(a) “a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.”

Warranties and service contracts are distinguishable by virtue of their elements.

(b) RCW 48.110.020(9) defines “service contract” as,

“[a] contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or the indemnification for repair, replacement or maintenance for operational or structural failure due to a defect in materials or workmanship or normal wear and tear.

(c) RCW 48.110.020(13) defines “warranty” as,

“[a] warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guaranties indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measure, such as repair or replacement of the property or repetition of services.”

You should be aware there are state and federal laws which do address warranties. These include the Federal Magnuson-Moss Act (see 15 U.S.C. @ 2301 et seq. and its regulations 16 C.F.R. @ 700 et seq.) and the applicable state’s version of the Uniform Commercial code (“UCC”) at Title 62A RCW.

### What is the Difference

There is a difference between a warranty and a service contract. A warranty is the standard warranty you find included in the box for all those who purchase that product. A service contract goes beyond that warranty for one to purchase a service contract or super warranty at an additional price. These can be construed as insurance if they can be interpreted to be an indemnification contract for specified losses in exchange for consideration.

It is not uncommon for a warranty or service contract to cross the lines into insurance. This is a heavily regulated industry and an otherwise unwitting business could be deemed to be an insurer subject to all of the state insurance regulations.

To avoid any problems, we recommend you have your warranties and service plans reviewed by our business and insurance counsel.

For more information, contact Kevin Collette.