DEATH BY WARRANTY

By Robért Hinojosa, RRC, RWC, RRO, PE, CDT, and Harold G. "Buster" Marohn Jr., RRO

The material and labor warranty was originally designed to be a good thing; and, although it started out that way, like so many other things developed with good intentions (and human management), it eventually turned on the very thing it was meant to protect. The best example of this metamorphosis is the roof warranty.

These warranties (sometimes with a little help from those receiving them) can turn an instrument of protection into a lethal weapon. It would be wrong to place the blame totally on the warranty document. Since there is plenty of guilt to go around, it should be shared equally; and the first in line would be the overzealous attorneys. These are the people who created the warranty and, with each new printing, add more and more escape clauses and exclusions. Then come the overanxious and sometimes unscrupulous contractors who will use the leverage of the warranty as a collection tool. Just as guilty of being overly anxious are the owner/managers who will approve substandard workmanship just to get a warranty that will most likely be put into a box and never read. Finally—and perhaps the driving force behind each of the others—is human greed.

Every roof actually comes with a total of three warranties. The first is an absolute guarantee from Mother Nature that, no matter what we do, one day, the roof will fail. Another is an implied warranty as provided by common law and called a warranty of merchantability. We have occasionally seen this warranty used in legal cases; and when used, it was said to be based on common law that says one cannot sell something to someone that does not work or that cannot be resold. Like all laws, this one is best explained by an attorney. The warranty we are most concerned with here is the one for labor and material, created to protect a new or replacement roof. It can often be recognized as the one held tightly in the fist of the owner or manager who has fought the hard battle to get it but, unfortunately, has failed to read it.

Roof warranties differ a great deal from manufacturer to manufacturer and roof style to roof style. Some have several pages of ultrasmall print, while others have only one page of ultrasmall print. One thing they all have in common is the ratio of words telling what they *will* do as opposed to the number of words telling what they *will not* do. One of our associates actually counted the words in one of the elaborate roof warranties and reported 17 "will-do" words and 3,312 "will-not-do" words.

If one reads the small print, one sees that there are traps placed to void or severely limit the coverage of that warranty. The first trap, common in most roof warranties, is a claim to provide protection according to the Beaufort scale or up-to-gale-force winds. Most people who are not sailors are surprised to find that gale-force winds are simply an empirical measure for describing wind speed starting at 38 miles per hour. For those who live in a condominium along the coast of Florida where the codes require designs based on wind speeds up to 140 mph, this news is not good. In reality, the property insurance carrier—not the manufacturer or contractor—is expected to pay to replace the roof.

The Beaufort scale was created in 1805 by Sir Francis Beaufort, a British admiral and hydrographer. His scale was used to determine which sails should be taken down in response to various wind speeds. Although his scale ranges from 1 to 17, warranties normally refer to levels 6 or 7, while it should be pointed out that levels 12 through 17 represent hurricane-force winds. The underlying theory here is that the warranty provider is relieved of duty at these relatively low wind speeds; however, the owner will still be covered by property insurance policies. This assumes the owner has property insurance and is happy to pay the deductible but leaves the rhetorical question, did this roof fail below or above the designed wind speeds required by code? It also assumes the owner has insurance and the cost of a new roof exceeds the deductible.

Then there are the "gotcha" statements that show up in most warranties, such as "any repairs to the roof by unauthorized persons not approved by the manufacturer will void the warranty." Experts know full well that no building manager is going to wait three weeks for the warranty crew to show up during the rainy season to fix a leak. Most managers will call the roofer, not the manufacturer, and seldom put such complaints in writing. By the conditions of most warranties, this repair provides the manufacturer a perfect reason to void the warranty. Manufacturers get even more clever with other conditions that require the owner to notify them in writing and to identify the source of the leak. In many roofs—especially single-ply membranes—a hole in the roof can result in a leak anywhere as water is free to travel below the membrane. It takes a very skilled and experienced roofer or consultant to find such leak sources; however, the warranty assigns that task to the owner. A detailed study of the fine print will disclose one trap after the other, and one thing that will always stand out is that the company lawyer has written a warranty document to protect his company, not the integrity of the roof.

Time after time, consultants will report an obviously poor job of constructing a roof, and the owner will plead that even though he knew it was poor workmanship, he had to accept it. He tells how he tried holding back money from the contractor, but the manufacturer refused to issue the warranty until the contractor was fully paid. Is it possible that the contractor may have owed the manufacturer money? This common alliance between the contractor and the manufacturer forces owners to accept questionable workmanship and a problematic roof application just to obtain a warranty.

In most cases, the owner would have been better off considering alternatives, such as third-party arbitration based on a report prepared by a Registered Roof Consultant.

Among the most misunderstood facts associated with roof warranties is the significance of the first leak. This is the true test of both the warranty and the roof system. If there is ever a time an owner needs a roof consultant, it is then. It is well worth the money to hire an expert, even if one believes one has the perfect roof and the perfect warranty. The question to be resolved at this point is this: Is this leak a generalized condition, or is it simply an isolated anomaly that is easily repaired? A consultant expert will let an owner know, but the warranty holder never will. He may make a note in the company file about the poor condition of the roof that will alert the company to future problems. Chances are he will not tell an owner what a poorly constructed roof his company had approved for warranty. If the expert passes the roof on this first real test, the next 20 years should be normal. If not, now is the time to challenge both the warranty and the contractor.

Now that the lawyer who wrote the warranty, the contractor who built the roof, and the owner or manager of the building have been identified as coconspirators, there remains one more very important contributor to the "Death by Warranty" case, and that is the mindset of low expectations. Those who love their warranties seldom look past the 10-, 15-, or 20-year limits printed on their warranty documents. It becomes a death sentence for a roof the day the warranty runs out. Most reserve plans for eventual replacement will show the expected service life for a roof to be the day the warranty expires. The truth is, every product should have a full service life well in excess of the warranty period. It stands to reason if a manufacturer is willing to warranty a product for 20 years, it should have a full service life well past this point.

Not all warranty progression is negative. The practice of joint manufacturer and contractor warranty responsibility, with the contractor participating in the first years and the financially stronger manufacturer taking the majority of the later years, has worked well. However, even in these progressively improving documents, we still find an ever-growing list of "gotcha" clauses that increase in number with each year and become more protective of both the manufacturer and the contractor.

The solution to the "warranty-gone-badly" issue is simple. Every few years, industry leaders must provide a forum to bring these creeping issues into the light of day and to work out guidelines that are fair and workable, then allow competition to get rid of the "gotcha" clauses that have made our warranties destructive as opposed to being protective the way that they should be.

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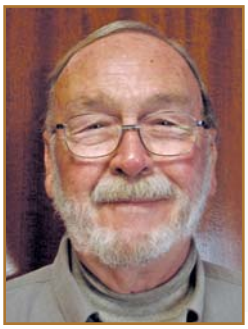

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