

## Offering A Warranty In A Motor Vehicle Transaction

While there are many aspects to a motor vehicle sale, one area that presents a number of significant legal compliance issues is the proper way to offer a warranty. While at first glance the subject appears relatively straightforward, it becomes complicated because of the various federal and state regulations that often have an overlapping effect on the subject matter and the differences in their application to business and consumer transactions.

Generally speaking, a warranty is a promise by a manufacturer or seller, or a third party on their behalf, to stand behind its product. There are two types of warranties that businesses give consumers with the sale of a product, implied warranties and express warranties. Implied warranties are a creation of state law and are based upon the common law principle of "fair value for money spent." There are two types of implied warranties for consumer goods such as motor vehicles, the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. An implied warranty of merchantability is a dealership's standard obligation when it sells a product and it is made automatically with every product sold. In essence, an implied warranty is a promise that the product is in proper condition for sale, that it will function as intended and that there is nothing significantly wrong with the product. An implied warranty of fitness for a particular purpose arises when a consumer relies on the dealership's advice that a truck can be used for a particular purpose. Implied warranties do not cover problems caused by abuse, misuse, wear or other factors not relating to the product's condition at the time of sale.



Many states, but not all, allow motor vehicle dealerships to limit or disclaim implied warranties. Since state laws vary with respect to which implied warranties may be disclaimed and the manner in which they may be disclaimed, dealers should be familiar with their state laws. Generally, disclaiming implied warranties is accomplished by including a statement on the motor vehicle sales contract which states the dealer's intention to disclaim the implied warranties and sell the vehicle "as is," "with all faults," or by using other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty. Note also that some state statutes provide that there is no implied warranty for defects that ought to have been discovered by a consumer if, before entering into the contract, the consumer has examined the vehicle as fully as desired or has refused to examine the vehicle and an examination would have revealed the defects.

In states that do not allow dealerships to disclaim all implied warranties, dealerships may still be able to disclaim one or the other. To exclude or modify the implied warranty of merchantability, the disclaimer language must mention the word "merchantability" and, if in writing, must be clear and conspicuous. To exclude or modify an implied warranty of fitness for a particular purpose, the disclaimer must be in writing and conspicuous. In any event, the disclaimer should be contained on the front side of the sales contract. If it must appear on the reverse side of the sales contract, language on the front side of the contract should be included informing the consumer that the warranty disclaimer does appear on the reverse side.



Unlike the implied warranty which is automatically provided to the consumer unless disclaimed, an express warranty is an affirmative fact or promise made by the dealership's representative orally or in writing which relates to the goods and becomes part of the basis of the bargain. Express warranties are governed by both state and federal law. Again, dealerships should refer to their state statutes to determine how express warranties are created and disclaimed in their state. If, however, a dealership offers a written warranty, it must comply with the Magnuson Moss Warranty Act.

The general goal of the Magnuson Moss Warranty Act is to ensure that consumers get complete information about warranty terms for products they purchase. The Act covers any "consumer product" and only applies to written warranties, including written express and written implied warranties. The term "written warranty" means any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product. Only the supplier actually making a written warranty is liable under the Act. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person is not liable for failure of the written warranty to comply with the Act unless the supplier is deemed to have adopted the warranty."

The Act provides that, if a written warranty is offered, only necessary information should be included in a warranty document. Any extraneous material in a warranty may confuse consumers about the purpose of the document and about what it really covers. The Act further requires some very detailed information to be included in any written warranty, which must be disclosed clearly and conspicuously in a single document, in simple and readily understood language.



The Magnuson Moss Warranty Act also defines two types of written warranties, full warranties and limited warranties. These titles have been given special meaning by Federal Warranty Law. All warranties have to be prominently labeled as one type or the other. The title "full" on a warranty means a defective product will be repaired or replaced for free, including removal and reinstallation when necessary, and that the warranty extends to anyone who owns the product during the warranty period. If a full written warranty is provided, implied warranties cannot be disclaimed or limited to the duration of the warranty. The title "limited" on a warranty means the warranty gives the consumer less than full warranty protection. By giving a limited warranty, the dealership is representing to consumers that there are some costs or responsibilities that are not undertaken by the dealership. Implied warranties can be limited in duration to the term of an express limited warranty.

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