

Home Service/Warranty Model Clause for Standard Residential Purchase Contracts

HOME SERVICE/WARRANTY: A home service/warranty plan will will not be purchased at the closing of this property by BUYER SELLER at a cost not to exceed \$ _____ and ordered by _____.

Where allowed by law, the Agent/Broker may be compensated by the home service contract provider for services performed. The home service contract *may not* cover pre-existing conditions or defects and does not replace or supersede a home inspection or responsibility. If not purchased, both BUYER AND SELLER declare they have been made aware of the availability of such a plan and hold their respective Agent/Broker harmless if either reject such a plan.

- This clause protects the Agent or Broker from malpractice or other civil liability from an aggrieved buyer or seller who claims they were not advised of the option to have a home warranty (now called a “home service contract” in most states).
- The clause prompts all parties to discuss the benefits, costs and options for payment of a home service (warranty) contract at time of contracting. This is integral to any agent/broker risk mitigation plan.
- Whether purchased or not, this clause addresses any dispute later when a covered household appliance or system fails due to normal wear and tear and resolves who is responsible.
- The clause emphasizes to both parties that home service contracts and home inspections do not address the same risks.
- Over 30 states utilize a similar clause in their model, residential sales agreements. These are endorsed by state and local REALTOR associations as well as many state bar associations.
- Given the standard use of the clause nationally, *not including* the clause could give rise to contractual malpractice and liability.
- The clause addresses disclosure issues contained in Federal RESPA law.
- A similar clause should be included in any residential listing agreement as a pause for both seller and agent/broker to consider the potential benefits of a home service contract during the listing period.
- Adopted and published by the NHSCA on July 30, 2012