Issue Brief

Statutorily-Imposed Warranties for Design Services

Key Points:

- *A legal "warranty" is an assurance by one party of the existence of a fact on which another party can rely.*
- *A warranty is intended to relieve the relying party of any duty to ascertain the facts. This amounts to a promise by the party providing the warranty to indemnify the relying party for any loss if the fact warranted proves untrue.*
- *Warranties are, generally, created by contract. Contractual warranties are expressly agreed to by the warranting party.*
- *Many private insurance policies routinely exclude liability based on warranties.*
- *Statutory-design service warranties are overly burdensome as it may be impossible for an architect to have the necessary power or control over those things that might enable the architect to satisfy the requirements of an express warranty.*
- *Statutory-design service warranties are superfluous as a typical, basic contractual agreement between an architect and a client provides that the architect will provide knowledge-based services in exchange for compensation by the client. Moreover, an owner may bring an action for simple negligence.*

AIA Position

The American Institute of Architects believes that statutory warranties of professional services place an unreasonable and typically uninsurable level of risk on the architect.

Action Sought

The American Institute of Architects opposes state legislation that would impose statutorily mandated warranties on design services.

Explanation and Justification

Due to the nature of architecture, the success or failure of a design often hinges on the subjective opinions of both the designer and the owner. An owner's "vision" for a project is open to interpretation and may change as the structure is designed and built. For the design professional to warrant or make a legally-binding assurance that the completed project will meet every subjective and objective expectation of an owner (down to the smallest detail) would place an unreasonable level of risk on the designer. This onerous duty would leave the design professional open to potentially unending liability for each project completed based on the subjective assessment of the owner.

Furthermore, the statutory imposition of warranties for design services is largely unnecessary. Basic design service contracts contain design standards negotiated by both the designer and the owner. Design professionals, like all professionals, must provide their services in a non-negligent manner. If the services of the architect fall below the standard of professional skill and care ordinarily provided by other design professionals of similar licensure, experience and expertise, practicing in the same jurisdiction, and under the same or similar circumstances, an owner may bring legal action via a negligence claim.

Finally, many professional liability insurance policies routinely exclude liability based on warranties. These policies exclude all obligations assumed by contract or established as warranties by statutes because insurance is based on reasonable expectations of the services provided and the risk of negligence in performing those services. Assumption of liability based on warranty goes beyond the normal and reasonable risk associated with a legal negligence standard.

The reasonable expectations of an owner are already legally protected without adding this cumbersome and unneeded layer of statutory protection.

Definitions

1. **Warranty** –an assurance by one party of the existence of a fact on which another party can rely. A warranty is intended to relieve the relying party of any duty to ascertain the facts. This amounts to a promise by the party providing the warranty to indemnify the relying party for any loss if the fact warranted proves untrue.
2. **Negligence** – a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act.

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