

AN ANALYSIS OF HOME WARRANTY CONTRACTS

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I. INTRODUCTION

The question of whether a home warranty¹ contract is a wise financial decision for the typical homeowner is a debatable one in the realm of personal finance.² With a general rise in housing prices and the housing market in the United States the past couple of years,³ the sale of home warranties reportedly rose eight percent from 2014 to 2015.⁴ Despite the reported rise in the number of issued home warranty contracts in the United States, home warranty companies have been subject to complaints⁵ and many home warranty contracts

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¹ See *What Does a Home Warranty Cover*, AM. RESIDENTIAL WARRANTY, <http://americanresidentialwarranty.com/typical-home-warranty-cover/> (last visited Nov. 13, 2017) (“A home warranty, also known as a home service agreement, typically helps cover the cost of repairs or replacement for home systems and appliances.”).

² See Cathie Ericson, *What Is a Home Warranty? Peace of Mind for Home Buyers and Sellers*, REALTOR (Feb. 10, 2017), <http://www.realtor.com/advice/buy/what-is-a-home-warranty/>; Anthony Giorgianni, *Why You Should Avoid Home Warranty Choices*, CONSUMER REP. (Sept. 6, 2014), <http://www.consumerreports.org/cro/news/2014/09/why-you-should-avoid-home-warranties/index.htm>; Clark Howard, *Are Home Warranties Worth the Money?*, CLARK (May 23, 2014), <http://www.clark.com/home-warranties-not-worth-paper-theyre-written>; Marilyn Lewis, *Home Warranties Often Aren't Worth It: How to Judge for Yourself*, MONEY TALKS NEWS (May 5, 2016), <http://www.moneytalksnews.com/are-home-warranties-worth-the-money/>; *What You Need to Know About Home Warranties*, NEA MEMBER BENEFITS, <https://www.neamb.com/insurance/what-you-need-to-know-about-home-warranties.htm> (last visited Nov. 13, 2017).

³ See Annalyn Kurtz, *2 Ways the Fed Could Crush the Housing Market Recovery*, FORTUNE (Mar. 13, 2017), <http://fortune.com/2017/03/13/federal-reserve-interest-rates-housing-market-recovery/>; see also Lalaine C. Delmendo, *U.S. Housing Market Remains Surprisingly Robust*, GLOBAL PROPERTY GUIDE (Apr. 01, 2017), <https://www.globalpropertyguide.com/North-America/United-States/Price-History>.

⁴ See *Sales of Home Warranties Soar as Industry Covers Billions of Dollars in Appliances & Systems*, NAT'L HOME SERVICE CONTRACT ASS'N (Sept. 20, 2016), <http://homeservicecontract.org/2016/09/20/sales-home-warranties-soar-record-number-home-owners-cover-billions-dollars-appliances-systems-2/>.

⁵ See Lauren Sweeney, *Warranty Company Notorious for Denying Claims*, CLICK2HOUSTON (July 11, 2016), <http://www.click2houston.com/news/investigates/warranty-company-notorious-for-denying-claims>; Deanna Dewberry & Maggie Kerkman, *NBC 5 Responds Resolves Home Warranty Complaints*, NBC 5 DALLAS-FORT WORTH (Apr. 21, 2016), <http://www.nbcdfw.com/news/local/NBC5-Responds-Resolves-Home-Warranty-Complaints-376467031.html>.

often include exclusions.⁶

An unexplored area of the literature concerning home warranty contracts is an analysis of the types of contractual provisions that are actually found in home warranty contracts. This article comprehensively examines the contractual provisions of the standard contracts of seventeen different home warranty companies to compare and contrast contractual provisions.⁷ As discussed in Part II, almost all of the standard contracts limit home warranty coverage to residential property only, and a number of the contracts not only exclude commercial property, but property utilized in situations such as day care facilities and the homes of fraternities and sororities. Part III discusses the typical coverage grants—in most cases, the standard coverage included within a home warranty contract is an air conditioning system, heating system, electrical system, and often included kitchen appliances. Many home warranty contracts also include additional coverage options which can be purchased outside of the standard contract price, such as pools, spas, and septic tanks.⁸

Part IV examines the common exclusions and limitation of liability provisions found in standard home warranty contracts. Home warranty contracts commonly include a provision stating that the home warranty company has the sole right to determine whether a covered item will be repaired, replaced, or whether a cash settlement will be offered in lieu of repair or replacement.⁹ Home warranty contracts also often include a provision excluding primary coverage or coverage altogether in the event there is coverage for the covered item under an existing warranty or contract.¹⁰ In addition, home warranty agreements often include exclusions for hazardous substances, force majeure events, acts of nature, and other occurrences as well as an overall monetary limitation per contract period.¹¹

⁶ See, e.g., Rebecca Edwards, *10 Surprising Things NOT Covered by Your Home Warranty*, SAFEWISE (Feb. 17, 2017), <http://www.safewise.com/blog/things-not-covered-home-warranty/>.

⁷ The seventeen home warranty contracts were identified from companies that were listed on Consumer Affairs' "Most Reviewed" home warranty companies. See *Compare Reviews for Home Warranty Companies*, CONSUMER AFF., https://www.consumeraffairs.com/homeowners/aaa_warranties.html#.

A complete listing of the seventeen different home warranty companies can be found in Appendix I which includes the internet location of the company's standard contract.

⁸ Saundra Latham, *Best Home Warranty Companies for 2017*, THE SIMPLE DOLLAR (Sept. 13, 2017), <https://www.thesimpledollar.com/best-home-warranty/>.

⁹ See, e.g., *Sample Contract*, AM. HOME SHIELD CORP., § A(5) https://ahs.com/static-srvm/ahs/sample-contract.pdf?_ga=2.94872220.1866284913.1505846523-42195355.1505846523 (last updated Apr. 25, 2017) [hereinafter AM. HOME SHIELD]; see also *infra* Part IV.

¹⁰ See, e.g., AM. HOME SHIELD, *supra* note 9, § A(6).

¹¹ See, e.g., *id.* §§ I(2), (3), (6).

Part V of this article analyzes the various waiver of damages provisions found in almost all home warranty contracts. Generally, home warranty contracts often include a waiver of tort, and a waiver of special, punitive and consequential damages.¹² A number of home warranty contracts also contain class action waiver provisions, class arbitration waiver provisions, arbitration clauses, choice of law clauses, and/or choice of forum clauses.¹³ Finally, Part VI of this article examines several other miscellaneous provisions which have appeared in various home warranty contracts.

II. HOME WARRANTY CONTRACTS AND RESIDENTIAL PROPERTY

Home warranties are generally a product intended for homeowners who are utilizing a home for residential purposes.¹⁴ Home warranties are similar in many respects to homeowner's insurance policies, but while homeowner's policies typically do not cover loss due to "wear and tear" a home warranty contract generally will.¹⁵ While the question of whether a home warranty constitutes insurance is beyond the scope of this particular article, throughout this article many comparisons to certain provisions in homeowner's policies will be made to the provisions in home warranty contracts, as both types of contracts contain many similar contractual exclusions.

One of the most familiar general exclusions in a typical homeowner's insurance policy is an exclusion for commercial activity, which precludes coverage for situations when the home is utilized for business pursuits.¹⁶ Home warranty contracts are similar in that nearly all provide that coverage is exclusively for residential property only and excludes commercial property or residences used as businesses.¹⁷ The contracts of sixteen out of seventeen companies analyzed in this article contain language indicating that the contracts are for residential property only.¹⁸ A prime example of the

¹² See, e.g., *id.* §§ I(8), (9), (10); see also *Home Warranty Contract*, AM. HOME GUARDIAN, ¶¶ 6.1, 6.2, 6.3 (Dec. 28, 2011), <http://www.ahghomewarranty.com/brochures/2009tx.pdf> [hereinafter AM. HOME GUARDIAN]; *infra* Part V.

¹³ See, e.g., AM. HOME SHIELD, *supra* note 9, § M (containing arbitration and class action waiver clauses); see *infra* Part V.

¹⁴ See Chad Marzen et al., *The New Sharing Economy: The Role of Property, Tort, and Contract Law for Managing the Airbnb Model*, 13 N.Y.U. J. L. & BUS. 295, 319–20 (2017).

¹⁵ See Ericson, *supra* note 3.

¹⁶ See Marzen et al., *supra* note 14, at 319–20.

¹⁷ See *Home Warranty Gotchas*, HOMEWARRANTYEXPERTS (July 19, 2015), <http://homewarrantyexperts.com/home-warranty-gotchas/>.

¹⁸ See *Terms and Conditions*, AM. HOME GUARD, ¶ 12, <https://www.americanhomeguard.com/termsandconditions> (last updated Sept. 6, 2017) [hereinafter AM. HOME GUARD]; AM.

residential purposes language utilized in a home warranty contract is the following: “This Agreement covers a single family residence (under 5,000 square feet), including a condominium, townhouse or villa, or a multi-family property of two (2) to four (4) units (duplex, triplex, or fourplex) used solely for residential purposes.”¹⁹

While almost all home warranty contracts specifically note that coverage is only for residential properties, a number of the sample contracts analyzed for this article particularly delineate exclusions where a residence is utilized as a business.²⁰ Several of these situations include the following in Table A:

HOME GUARDIAN, *supra* note 12, ¶ 2.2; AM. HOME SHIELD, *supra* note 9, § (A)(7); *Agreement, AM. RESIDENTIAL WARRANTY*, § III, http://americanresidentialwarranty.com/assets/images/TWG_T-C_Home_Service_Agreement8-15-15.pdf (last visited Nov. 14, 2017) [hereinafter AM. RESIDENTIAL WARRANTY]; *Terms and Conditions*, ASSURANT SOLUTIONS, ¶ 20, <https://www.assurantsolutions.com/extended-warranty/what-you-get> (last visited Dec. 20, 2017) [hereinafter ASSURANT SOLUTIONS]; *Terms of Service Agreement*, CHOICE HOME WARRANTY, § A(3), http://www.choicehomewarranty.com/user_agreement.php (last visited Nov. 14, 2017) [hereinafter CHOICE HOME WARRANTY]; *First American Home Warranty Sample Contract*, FIRST AM. HOME WARRANTY, <http://coverage.firstam.com/images/samplecontracts/LL/LLTX.pdf> (last visited Nov. 14, 2017) [hereinafter FIRST AM. HOME WARRANTY]; *Home Warranty Agreement*, HMS HOME WARRANTY, § VI(1), <https://www.hmsnational.com/landing-pages/hms-home-warranty-agreement> (last visited Nov. 14, 2017) [hereinafter HMS HOME WARRANTY]; *Sample Contract*, HOME SECURITY OF AM., § A(2), <http://www.onlinehsa.com/Images/Marketing/BHHSFR2015warrantybrochure.pdf> (last visited Nov. 14, 2017) [hereinafter HOME SECURITY AMERICA]; *Home Warranty Terms and Conditions*, THE HOME SERVICE CLUB, § G(3), <https://www.hscwarranty.com/Documents/SampleContract/Version5/2017%20The%20Home%20Service%20Club%20TERMS%20AND%20CONDITIONS%20SAMPLE%20CONTRACT.pdf> (last visited Nov. 14, 2017) [hereinafter HOME SERVICE CLUB]; *Sample Coverage Terms*, HOME WARRANTY OF AM., § I(B)(7), https://secure.hwahomewarranty.com/pdfs/DTC_NA_Sample_Coverage_Terms.pdf (last visited Nov. 14, 2017) [hereinafter HOME WARRANTY OF AM.]; *Home Warranty Plan – Florida*, OLD REPUBLIC HOME PROTECTION 9 https://www.orhp.com/index.cfm?go=realEstatePros.viewPlanPDF&file=FL_5_1_Brochure.pdf (last visited Nov. 14, 2017) [hereinafter OLD REPUBLIC HOME PROTECTION]; *Sample Contract*, ONEGUARD HOME WARRANTY & SERVICE PLANS, § A(2), <https://common.oneguardhomewarranty.com/RealEstate/PlansAndPrices/TX> (last visited Nov. 14, 2017) (click on “Sample Contract” hyperlink) [hereinafter ONEGUARD HOME WARRANTIES]; *Terms of Service Contract*, SECURE HOME WARRANTY, § I(B)(9), <https://securehomewarranty.com/terms-and-conditions.pdf> (last visited Sept. 19, 2017) [hereinafter SECURE HOME WARRANTY]; *Terms and Conditions/Service Contract Agreement*, SELECT HOME WARRANTY, ¶ 2, <https://selecthomewarranty.com/termsconditions> (last visited Nov. 14, 2017) [hereinafter SELECT HOME WARRANTY]; *TotalProtect Home Service Agreement*, TOTALPROTECT HOME WARRANTY, § V(1), https://deals.totalprotect.com/Global/FileLib/SampleContract/TotalProtect_DTC.pdf (last visited Nov. 14, 2017) [hereinafter TOTALPROTECT HOME WARRANTY].

¹⁹ HOME SERVICE CLUB, *supra* note 18, at § G(3).

²⁰ See AM. HOME GUARD, *supra* note 18, ¶ 12; AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; CHOICE HOME WARRANTY, *supra* note 18, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, at § VI(1); HOME SECURITY AM., *supra* note 18, at § A(2); HOME SERVICE CLUB, *supra* note 18, § G(3); HOME WARRANTY OF AM., *supra* note 18, § I(B)(7); OLD REPUBLIC HOME PROTECTION, *supra* note 18, 9; SELECT HOME WARRANTY, *supra* note 18, ¶ 2; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

Table A: Home Warranty Residential Exclusions

Type of Residential Exclusion	Number of Sample Contracts with Exclusion
Day Care²¹	10
Fraternity/Sorority Home²²	7
School²³	6
Nursing Care/Homes²⁴	4
Church²⁵	4
Historical Register²⁶	4
Bed and Breakfast²⁷	2

Several of these common exclusions—including properties utilized as a day care facility, school, church, and bed and breakfast facility—are sometimes found in restrictive covenants limiting property usage to “residential purposes” only.²⁸ The majority of courts have enforced

²¹ See AM. HOME GUARD, *supra* note 18, ¶ 12; AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; CHOICE HOME WARRANTY, *supra* note 18, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SECURITY AM., *supra* note 18, § A(2); HOME SERVICE CLUB, *supra* note 18, § G(3); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9; SELECT HOME WARRANTY, *supra* note 18, ¶ 2; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

²² See CHOICE HOME WARRANTY, *supra* note 18, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SECURITY AM., *supra* note 18, § A(2); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1). Note that this number does not include broader “rest homes.”

²³ See AM. HOME GUARD, *supra* note 18, ¶ 12; AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SERVICE CLUB, *supra* note 18, § G(3); SELECT HOME WARRANTY, *supra* note 18, at ¶ 2; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

²⁴ See CHOICE HOME WARRANTY, *supra* note 18, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HOME SECURITY AM., *supra* note 18, § A(2); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

²⁵ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SERVICE CLUB, *supra* note 18, § G(3); TOTALPROTECT HOME WARRANTY, *supra* note 18, § I(B)(7).

²⁶ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SERVICE CLUB, *supra* note 18, § G(3); TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

²⁷ See HMS HOME WARRANTY, *supra* note 18, § VI(1); TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

²⁸ See Marcy Allen, Note and Comment, *A Touchy Subject: Has the Restatement Replaced the Touch and Concern Doctrine With an Equally Troublesome Test?*, 65 BAYLOR L. REV. 1034, 1056–57 (2013) (“Restrictive covenants are one of the most common ways to impose land-use limitations. These devices popularly appear as deed restrictions, governing issues such as what property owners can do on their land, how the land can be used, and what structures can be built on the land.”).

restrictive covenants in situations where a property owner operates a day care facility.²⁹ For example, in *Farmington Woods Homeowners Ass'n v. Wolf*,³⁰ the Nebraska Supreme Court upheld the general legal enforceability of a restrictive covenant, which prohibited “business activities of any kind whatsoever[.]” against a couple who for twelve years operated a day care from their home.³¹ However, the Nebraska Supreme Court in *Wolf* reversed a trial court’s summary judgment in favor of the defendants on the homeowners’ defense of waiver, as there was evidence that the homeowner’s association was aware of the covenant for at least a decade before it sought enforcement.³²

On the other hand, the Indiana Court of Appeals in *Stewart v. Jackson*³³ held that an unlicensed home care operation qualified as a “residential” use and did not violate a residential use covenant.³⁴ The *Stewart* Court weighed the fact that the Indiana Legislature did not have a legislative apparatus to regulate home day care operations with fewer than six children and it stated that “[t]he deliberate abstinence from monitoring small home day care is indicative of an intent not to place barriers that inhibit these services. Public policy in Indiana clearly favors home day care.”³⁵ Overall, ten out of seventeen contracts analyzed contained an exclusion of day care from home warranty coverage.³⁶

Similar to several courts which have upheld the validity of restrictive covenants applied to a day care facility, courts throughout the country have upheld restrictive covenants limiting property

²⁹ See, e.g., *Hill v. Lindner*, 769 N.W.2d 427, 428–29, 432 (N.D. 2009) (citation omitted) (“We conclude that the usual, ordinary and incidental use of property as a residence does not violate a covenant restricting use of the property to residential purposes only, but that an unusual and extraordinary use may constitute a violation, and that an incidental business use does not violate a covenant for residential purposes only as long as the business use is casual, infrequent or unobtrusive.”); *Chambers v. Gallagher*, 364 S.E.2d 576, 577 (Ga. 1988) (“It is uncontroverted that the [defendant’s] operate a ‘family day care home’ in their house in the subdivision, providing care for up to fifteen children throughout the day. The [defendant’s] business violates the subdivision’s restrictive covenants and the trial court erred as a matter of law by denying the subdivision’s motion to enjoin the business.”).

³⁰ *Farmington Woods Homeowners Ass'n v. Wolf*, 817 N.W.2d 758 (Neb. 2012).

³¹ *Id.* at 762–63.

³² See *id.* at 765.

³³ *Stewart v. Jackson*, 635 N.E.2d 186 (Ind. Ct. App. 1994).

³⁴ See *id.* at 188, 194.

³⁵ *Id.* at 193.

³⁶ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; AM. HOME GUARD, *supra* note 18, ¶ 12; CHOICE HOME WARRANTY, *supra* note 18, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SECURITY AM., *supra* note 18, § A(2); HOME SERVICE CLUB, *supra* note 18, § G(3); OLD REPUBLIC HOME PROTECTIONS, *supra* note 18, at 9; SELECT HOME WARRANTY, *supra* note 18, ¶ 2; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

usage to residential purposes in the cases of a school,³⁷ church,³⁸ and bed and breakfast operation.³⁹ Seven of the seventeen home warranty contracts contained a residential exclusion for fraternity or sorority homes;⁴⁰ six of the seventeen contained an exclusion for schools;⁴¹ four contained an exclusion for nursing homes;⁴² four included an exclusion for a church; and two included a specific exclusion for properties utilized as a bed and breakfast.⁴³

Properties listed in a historical register are sometimes subject to state or local regulations and restrictions to protect the historical character and quality of the home.⁴⁴ While non-federal owners of properties listed on the National Register of Historic Places generally encounter no restrictions on what they can do with the property,⁴⁵ some cities, such as Old Town Alexandria, reportedly prohibit property owners from changing the exterior of a home more than 100 years old without first obtaining approval from the city's Board of Architectural Review and City Council.⁴⁶ Just as some owners of historic properties face restrictions via restrictive covenants, some owners of historic properties may face exclusions to coverage under a

³⁷ See, e.g., *Ginsberg v. Yeshiva of Far Rockaway*, 358 N.Y.S.2d 477, 480 (N.Y. App. Div. 1974) ("The trial court found that despite the synagogue's use of one lot as a parking lot and some deterioration in the residential character of the area, the area retains a residential character of substantial value. This value will be adversely affected by the presence of groups of students of high school age and by the use and servicing of the school property by persons other than private residents.")

³⁸ See, e.g., *Matthews v. First Christian Church*, 197 S.W.2d 617, 619, 620 (Mo. 1946).

³⁹ See, e.g., *Robins v. Walter*, 670 So. 2d 971, 975 (Fla. Dist. Ct. App. 1995) ("The rental of a residence . . . involves the rental as a residence rather than just a facility serving temporary or transient guests from the general public. . . . [W]e, therefore, find that all of the restrictions concerning the use of the premises as a bed and breakfast inn were properly imposed.")

⁴⁰ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; CHOICE HOME WARRANTY, *supra* note 18, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SECURITY AM., *supra* note 18, § A(2); OLD REPUBLIC HOME PROTECTIONS, *supra* note 18, at 9; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

⁴¹ See AM. RESIDENTIAL WARRANTY, *supra* note 18, §. III; AM. HOME GUARD, *supra* note 18, ¶ 12; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SERVICE CLUB, *supra* note 18, § G(3); SELECT HOME WARRANTY, *supra* note 18, ¶ 2.; TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

⁴² See CHOICE HOME WARRANTY, *supra* note 12, § (A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HOME SECURITY AM., *supra* note 18, § A(2); OLD REPUBLIC HOME PROTECTIONS, *supra* note 18, at 9.

⁴³ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § III; HMS HOME WARRANTY, *supra* note 18, § VI(1); HOME SERVICE CLUB, *supra* note 18, § G(3); TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

⁴⁴ See Jay Macdonald, *Know Rules When Buying Historic Home*, BANKRATE (Oct. 6, 2008), <http://www.bankrate.com/finance/real-estate/know-rules-when-buying-historic-home-1.aspx>.

⁴⁵ See *National Register of Historic Places Program: Frequently Asked Questions*, NAT'L PARK SERVICE U.S. DEPT. OF THE INTERIOR, <https://www.nps.gov/nr/faq.htm> (last visited Nov. 14, 2017).

⁴⁶ See Macdonald, *supra* note 45.

home warranty contract—four of the seventeen home warranty contracts reviewed for this article contained an exclusion for coverage for a home listed on a historical register.⁴⁷

III. TYPICAL COVERAGE GRANTS IN HOME WARRANTY CONTRACTS

A. *Standard Coverage Grants*

The standard coverage in many home warranty contracts includes coverage for the major systems in a home as well as major appliances.⁴⁸ The following major systems and appliances typically covered under standard coverage appear in Table B:

Table B: Typical Home Warranty Standard Coverages

Type of System/Appliance	Number of Sample Contracts Covering System/Appliance
Air Conditioning System⁴⁹	13
Heating System⁵⁰	14
Electrical System⁵¹	13

⁴⁷ See AMERICAN RESIDENTIAL WARRANTY, *supra* note 18, at para. III; HMS HOME WARRANTY, *supra* note 18, § VI(1)(A); THE HOME SERVICE CLUB, *supra* note 18, § G(3); TOTALPROTECT HOME WARRANTY, *supra* note 18, § V(1).

⁴⁸ See *What You Need to Know About Home Warranties*, *supra* note 3.

⁴⁹ See *Residential Service Contract*, ALLIED HOME WARRANTY, § (D)(1), <https://www.alliedhomewarranty.com/alliedhomewarranty/CC1WarrantyOnePageBrochure?type=Current> (last visited Nov. 14, 2017) [hereinafter ALLIED HOME WARRANTY]; AM. HOME GUARD, *supra* note 18, ¶ 38(d); AM. HOME GUARDIAN, *supra* note 12, ¶ 8.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 12, § D(4); HMS HOME WARRANTY, *supra* note 18, § III(1); HOME SECURITY AM., *supra* note 12, § E(6); HOME SERVICE CLUB, *supra* note 18, § E(2); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 3; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(2); SECURE HOME WARRANTY, *supra* note 18, § V(P); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.6; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(2).

⁵⁰ See ALLIED HOME WARRANTY, *supra* note 49, § D(1); AM. HOME GUARD, *supra* note 18, ¶ 38(e); AM. HOME GUARDIAN, *supra* note 12, ¶ 8.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(5); HMS HOME WARRANTY, *supra* note 18, § III(2); HOME SECURITY AM., *supra* note 18, § E(5); HOME SERVICE CLUB, *supra* note 18, § E(1); HOME WARRANTY OF AM., *supra* note 18, § IV(A); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 3; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(2); SECURE HOME WARRANTY, *supra* note 18, § V(Q); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.3; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(3).

⁵¹ See ALLIED HOME WARRANTY, *supra* note 49, § D(5); AM. HOME GUARD, *supra* note 18, ¶ 38(f); AM. HOME GUARDIAN, *supra* note 12, ¶ 11.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(7); HMS HOME WARRANTY, *supra* note 18, § III(4); HOME SECURITY AM., *supra* note 18, § E(3); HOME SERVICE CLUB, *supra* note 18, § E(10); HOME

Plumbing System ⁵²	13
Ductwork ⁵³	12
Refrigerator ⁵⁴	11
Oven/Range/Stove/	14
Cooktop ⁵⁵	
Dishwasher ⁵⁶	14
Clothes Washer ⁵⁷	12

WARRANTY OF AM., *supra* note 18, § IV(E); OLD REPUBLIC HOME PROTECTION, *supra* note 12, at 3; ONEGUARD HOME WARRANTIES, *supra* note 12, § F(6); SECURE HOME WARRANTY, *supra* note 18, § V(U); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.4; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(6).

⁵² See ALLIED HOME WARRANTY, *supra* note 49, § D(2); AM. HOME GUARD, *supra* note 18, ¶ 38(C); AM. HOME GUARDIAN, *supra* note 12, ¶ 9.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(8); HMS HOME WARRANTY, *supra* note 18, § III(8); HOME SECURITY AM., *supra* note 18, § E(2); HOME SERVICE CLUB, *supra* note 18, § E(4); HOME WARRANTY OF AM., *supra* note 18, § IV(D); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 3; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(4); SECURE HOME WARRANTY, *supra* note 18, § V(V); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.1; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(4).

⁵³ See ALLIED HOME WARRANTY, *supra* note 49, § D(1); AM. HOME GUARD, *supra* note 18, ¶ 38(h); AM. HOME GUARDIAN, *supra* note 12, ¶ 8.1; CHOICE HOME WARRANTY, *supra* note 18, § D(14); HMS HOME WARRANTY, *supra* note 18, § III(1); HOME SERVICE CLUB, *supra* note 18, § E(3); HOME WARRANTY OF AM., *supra* note 18, § IV(C); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 3; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(2); SECURE HOME WARRANTY, *supra* note 18, § V(R); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.5; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(2), (3).

⁵⁴ See AM. HOME GUARD, *supra* note 18, ¶ 37(b); AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(3); HMS HOME WARRANTY, *supra* note 18, § III(7); HOME SERVICE CLUB, *supra* note 18, § E(17); HOME WARRANTY OF AM., *supra* note 18, § IV(L); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 4; SECURE HOME WARRANTY, *supra* note 18, § V(I); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.1; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(1). In addition, two home warranty contracts included optional coverage for refrigerators. See ALLIED HOME WARRANTY, *supra* note 49, § E(3); ONEGUARD HOME WARRANTIES, *supra* note 18, § I(3).

⁵⁵ See ALLIED HOME WARRANTY, *supra* note 49, § D(4); AM. HOME GUARD, *supra* note 18, ¶ 37(f); AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(10); HMS HOME WARRANTY, *supra* note 18, § III(7); HOME SECURITY AM., *supra* note 18, § E(4); HOME SERVICE CLUB, *supra* note 18, § E(18); HOME WARRANTY OF AM., *supra* note 18, § IV(F)(4); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 4; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(8); SECURE HOME WARRANTY, *supra* note 18, § V(C); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.2; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(1).

⁵⁶ See ALLIED HOME WARRANTY, *supra* note 49, § D(4); AM. HOME GUARD, *supra* note 18, ¶ 37(e); AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(11); HMS HOME WARRANTY, *supra* note 18, § III(7); HOME SECURITY AM., *supra* note 18, § E(4); HOME SERVICE CLUB, *supra* note 18, § E(15); HOME WARRANTY OF AM., *supra* note 18, § IV(F)(1); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 4; ONEGUARD HOME WARRANTIES, *supra* note 18, at § F(7); SECURE HOME WARRANTY, *supra* note 18, § V(D); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.4; TOTALPROTECT HOME WARRANTY, *supra* note 18, at § II(1).

⁵⁷ See AM. HOME GUARD, *supra* note 18, ¶ 37(a); AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(2); HMS HOME WARRANTY, *supra* note 18, § III(7); HOME SECURITY AM., *supra* note 18, § E(4);

Clothes Dryer ⁵⁸	12
Garbage Disposal ⁵⁹	14
Garage Door Opener ⁶⁰	13

As Table B indicates, thirteen home warranty contracts included the air conditioning systems and fourteen contracts included the heating system among standard coverage grants.⁶¹ One standard contract includes the air conditioning system as an optional coverage.⁶² For many homeowners, replacing an air conditioning and heating system is among the greatest home expenses a homeowner may face and likely a primary reason for a homeowner to purchase a home warranty.⁶³ The average cost of a new air conditioning system for a homeowner is well over \$5,000.⁶⁴ For a heating system, a

HOME SERVICE CLUB, *supra* note 18, § E(22); HOME WARRANTY OF AM., *supra* note 18, § IV(M)(1); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 4; SECURE HOME WARRANTY, *supra* note 18, § V(A); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.6; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(1). In addition, two home warranty contracts included optional coverage for clothes washers. See ALLIED HOME WARRANTY, *supra* note 49, § E(6); ONEGUARD HOME WARRANTIES, *supra* note 18, § I(5).

⁵⁸ See AM. HOME GUARD, *supra* note 18, ¶ 37(a); AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3.; CHOICE HOME WARRANTY, *supra* note 18, § D(1); HMS HOME WARRANTY, *supra* note 18, at § III(7); HOME SECURITY AM., *supra* note 18, § E(4); HOME SERVICE CLUB, *supra* note 18, § E(23); HOME WARRANTY OF AM., *supra* note 18, § IV(M)(2); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 4; SECURE HOME WARRANTY, *supra* note 18, § V(B); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.6; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(1). In addition, two home warranty contracts included optional coverage for clothes dryers. See ALLIED HOME WARRANTY, *supra* note 49, § E(6); ONEGUARD HOME WARRANTIES, *supra* note 18, § I(5).

⁵⁹ See ALLIED HOME WARRANTY, *supra* note 49, § D(4); AM. HOME GUARD, *supra* note 18, ¶ 37(g); AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; CHOICE HOME WARRANTY, *supra* note 18, § D(12); HMS HOME WARRANTY, *supra* note 18, § III(8); HOME SECURITY AM., *supra* note 18, § E(2); HOME SERVICE CLUB, *supra* note 18, § E(19); HOME WARRANTY OF AM., *supra* note 18, § IV(F)(2); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 3; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(10); SECURE HOME WARRANTY, *supra* note 18, § V(G); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.5; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(4).

⁶⁰ See ALLIED HOME WARRANTY, *supra* note 49, § D(6); AM. HOME GUARD, *supra* note 18, ¶ 38(b); AM. HOME GUARDIAN, *supra* note 12, ¶ 14.1; CHOICE HOME WARRANTY, *supra* note 18, § D(15); HMS HOME WARRANTY, *supra* note 18, § III(5); HOME SECURITY AM., *supra* note 18, § E(3); HOME SERVICE CLUB, *supra* note 18, § E(25); HOME WARRANTY OF AMERICA, *supra* note 18, § IV(K); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 3; ONEGUARD HOME WARRANTIES, *supra* note 18, at § F(14); SECURE HOME WARRANTY, *supra* note 18, at § V(O); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.7; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(6).

⁶¹ See *supra* Table B.

⁶² See HOME WARRANTY OF AM., *supra* note 18, at V(A).

⁶³ See Paul F. P. Pogue, *How Much Does Installing New A/C Cost?*, ANGIE'S LIST (June 12, 2017), <https://www.angieslist.com/articles/how-much-does-installing-new-ac-cost.htm>; Doug Bonderud, *How Much Does It Cost to Install a New Furnace?*, ANGIE'S LIST (Oct. 6, 2016), <https://www.angieslist.com/articles/how-much-does-it-cost-install-new-furnace.htm>.

⁶⁴ See Pogue, *supra* note 64.

natural gas furnace typically costs between \$2,250 and \$3,800.⁶⁵ In addition to most home warranty contracts containing standard coverage for air conditioning systems, twelve contracts included standard coverage for ductwork.⁶⁶

Most home warranty contracts also include standard coverage for the electrical system as well as the plumbing system.⁶⁷ Thirteen contracts analyzed included standard coverage for the electrical system, and thirteen contracts included standard coverage for the plumbing system.⁶⁸

The clear majority of home warranty contracts reviewed include standard coverage for key appliances in many homes.⁶⁹ Fourteen have standard coverage for a dishwasher;⁷⁰ fourteen included standard coverage for an oven/range/stove/cooktop;⁷¹ eleven have standard coverage for a refrigerator;⁷² twelve include standard coverage for a clothes washer;⁷³ twelve have standard coverage for a clothes dryer;⁷⁴ thirteen include standard coverage for a garage door opener;⁷⁵ and fourteen contracts include coverage for a garbage disposal.⁷⁶

Finally, while most home warranty companies differentiate coverage options between standard options and optional/comprehensive coverage options,⁷⁷ the contracts of three companies reviewed have various tiers of coverage. For example, American Residential Warranty in its sample contract includes five different tiers of coverage: Platinum Premier, Platinum, Kitchen Plus, Heating and Cooling, and Additional Coverage.⁷⁸ First American Home Warranty has a Basic Plan and Premier Plan, and Optional Coverage can be added to either the Basic Plan or Premier Plan.⁷⁹ American Home Shield has a Systems Plan, Appliance Plan, and

⁶⁵ See Bonderud, *supra* note 64.

⁶⁶ See *supra* Table B.

⁶⁷ See Staci Giordullo, *What's Covered in a Home Warranty?*, ANGIO'S LIST (June 1, 2016), <https://www.angieslist.com/articles/whats-covered-home-warranty.htm>.

⁶⁸ See *supra* Table B.

⁶⁹ See, e.g., *supra* Table B.

⁷⁰ See *supra* Table B.

⁷¹ See *supra* Table B.

⁷² See *supra* Table B.

⁷³ See *supra* Table B.

⁷⁴ See *supra* Table B.

⁷⁵ See *supra* Table B.

⁷⁶ See *supra* Table B.

⁷⁷ See Lewis, *supra* note 3; NEA MEMBER BENEFITS, *supra* note 3.

⁷⁸ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § IV.

⁷⁹ See FIRST AM. HOME WARRANTY, *supra* note 18.

Optional Coverage.⁸⁰ Many of these plans cover similar systems and appliances in their plans compared to the standard plans analyzed above.⁸¹

B. Optional or Comprehensive Coverage Grants

In addition to standard coverage grants, many home warranty companies include optional or comprehensive coverage grants to cover additional systems or appliances.⁸² Generally, most home warranty companies will provide these types of coverages for an increased premium/fee.⁸³ Common optional coverages are listed in Table C:

Table C: Typical Home Warranty Optional Coverages

Type of System/ Appliance/Coverage	Number of Sample Contracts Covering System/Appliance/ Coverage
In-Ground Swimming Pool⁸⁴	13
Spa⁸⁵	11
Septic Pump and System⁸⁶	9

⁸⁰ See AM. HOME SHIELD, *supra* note 9, § E, F, H.

⁸¹ Compare AM. RESIDENTIAL WARRANTY, *supra* note 18, § IV, FIRST AM. HOME WARRANTY, *supra* note 18, and AM. HOME SHIELD, *supra* note 9, § H; with *supra* Table B.

⁸² See *infra* Table C.

⁸³ See, e.g., FIRST AM. HOME WARRANTY, *supra* note 18; AM. HOME SHIELD, *supra* note 9, § H; AM. HOME GUARD, *supra* note 18, ¶ 39; AM. HOME GUARDIAN, *supra* note 12.

⁸⁴ See ALLIED HOME WARRANTY, *supra* note 49, at § E(7); AM. HOME GUARD, *supra* note 18, ¶ 39(e); AM. HOME SHIELD, *supra* note 9, § H(1); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VI(2)(O); CHOICE HOME WARRANTY, *supra* note 18, § E(1); FIRST AM. HOME WARRANTY, *supra* note 18; HOME WARRANTY OF AM., *supra* note 18, § VI(A); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 10; ONEGUARD HOME WARRANTIES, *supra* note 18, §§ G(1), (2); SECURE HOME WARRANTY, *supra* note 18, § VI(A); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.4.3. In addition, two home warranty contracts include coverage for an in-ground swimming pool in their standard coverage. See AM. HOME GUARDIAN, *supra* note 12, ¶ 17(1); HMS HOME WARRANTY, *supra* note 18, § III(11).

⁸⁵ See ALLIED HOME WARRANTY, *supra* note 49, § E(7); AM. HOME GUARD, *supra* note 18, ¶ 39(e); AM. HOME SHIELD, *supra* note 9, ¶ H(1); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VI(2)(O); CHOICE HOME WARRANTY, *supra* note 18, § E(I); FIRST AM. HOME WARRANTY, *supra* note 18; HOME WARRANTY OF AM., *supra* note 18, § VI(A); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 10; ONEGUARD HOME WARRANTIES, *supra* note 18, at §§ G(1), (2); SECURE HOME WARRANTY, *supra* note 18, § VI(A); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.4.3. In addition, three home warranty contracts include coverage for a spa in their standard coverage. See AM. HOME GUARDIAN, *supra* note 12, at para. 17.1; ASSURANT SOLUTIONS, *supra* note 18, at para. 3; HMS HOME WARRANTY, *supra* note 18, at § III(11).

⁸⁶ See ALLIED HOME WARRANTY, *supra* note 49, § E(9); AM. HOME GUARD, *supra* note 18, ¶

Roof Repair/Leak ⁸⁷	7
Well Pump ⁸⁸	11
Freezer ⁸⁹	5

The presence of optional swimming pool and spa coverage in many home warranty contracts may be an attractive option for some homeowners. The average cost of a poured concrete pool or fiberglass pool has been reported to typically range between \$20,000 to \$30,000, but may vary depending upon the size and options for the pool.⁹⁰ A new spa or hot tub generally costs anywhere from \$3,000 to \$16,000.⁹¹ Thirteen different home warranty contracts included optional coverage for an in-ground swimming pool,⁹² with two contracts including coverage as a standard grant.⁹³ Similarly, eleven different contracts included coverage for a spa or hot tub,⁹⁴ and three included

39(a); AM. HOME SHIELD, *supra* note 9, § H(3); CHOICE HOME WARRANTY, *supra* note 18, § E(9); HOME SECURITY AM., *supra* note 18, § E(12); HOME WARRANTY OF AM., *supra* note 18, § VI(E), (G); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 10; SECURE HOME WARRANTY, *supra* note 18, § VI(G); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.4.10. In addition, one home warranty contract included standard coverage for a septic pump and system. See HMS HOME WARRANTY, *supra* note 18, § III(9).

⁸⁷ See AM. HOME GUARD, *supra* note 18, ¶ 39(e); CHOICE HOME WARRANTY, *supra* note 18, § E(6); HOME SERVICE CLUB, *supra* note 18, § E(40); HOME WARRANTY OF AM., *supra* note 18, § VI(H); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 10; SECURE HOME WARRANTY, *supra* note 18, § VI(O); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.4.2. In addition, two home warranty contracts include coverage for roof repair in their standard coverage. See AM. HOME GUARDIAN, *supra* note 12, ¶ 16.1; HOME SECURITY AM., *supra* note 18, § E(9).

⁸⁸ See ALLIED HOME WARRANTY, *supra* note 49, § E(8); AM. HOME GUARD, *supra* note 18, ¶ 39(b); AM. HOME SHIELD, *supra* note 9, § H(2); CHOICE HOME WARRANTY, *supra* note 18, § E(3); FIRST AM. HOME WARRANTY, *supra* note 18, Well Pump; HOME SECURITY AM., *supra* note 18, § E(11); HOME SERVICE CLUB, *supra* note 18, § E(37); HOME WARRANTY OF AM., *supra* note 18, § VI(C); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 10; SECURE HOME WARRANTY, *supra* note 18, § VI(H); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.4.4. In addition, two home warranty contracts included standard coverage for a well pump. See AM. HOME GUARDIAN, *supra* note 12, ¶ 25.3; HMS HOME WARRANTY, *supra* note 18, § III(15).

⁸⁹ See CHOICE HOME WARRANTY, *supra* note 18, § E(7); HOME SECURITY AM., *supra* note 18, § E(14); HOME SERVICE CLUB, *supra* note 18, § E(34); ONEGUARD HOME WARRANTIES, *supra* note 18, at §§ G(6); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.4.8. In addition, three home warranty contracts include coverage for a freezer in their standard coverage. See AM. HOME GUARDIAN, *supra* note 12, ¶ 12.1; ASSURANT SOLUTIONS, *supra* note 18, ¶ 3; SECURE HOME WARRANTY, *supra* note 18, § V(K).

⁹⁰ See Victoria Georgoff, *How Much Does It Cost to Install a Pool?*, ANGIE'S LIST (Apr. 27, 2016), <https://www.angieslist.com/articles/how-much-does-it-cost-install-pool.htm>.

⁹¹ See Kimberly Rotter, *How Much Does a Hot Tub Cost in 2017?*, HOTSPRING SPAS, <http://www.hotspring.com/blog/how-much-does-hot-tub-cost>, (last visited Nov. 15, 2017).

⁹² See *supra* Table C.

⁹³ See AM. HOME GUARDIAN, *supra* note 12, ¶ 17(1); HMS HOME WARRANTY, *supra* note 18, § III(11).

⁹⁴ See *supra* Table C.

coverage under their standard coverages.⁹⁵

A number of home warranty contracts analyzed also included optional coverage for a septic pump and septic system, well pump, and stand-alone freezer.⁹⁶ Nine home warranty contracts included optional coverage for a septic tank and septic system,⁹⁷ eleven contracts included optional coverage for a well pump,⁹⁸ and five contracts included optional coverage for a stand-alone freezer.⁹⁹ One contract included a septic pump and septic system under its standard coverage,¹⁰⁰ two contracts included standard coverage for a well pump,¹⁰¹ and three contracts included a stand-alone freezer under standard coverage.¹⁰²

Finally, one of the most significant expenses a homeowner may face is to replace a roof. Replacement of a roof generally costs anywhere from \$4,500 to \$10,000.¹⁰³ While a number of shingle or manufacturer warranties may last anywhere from twenty to fifty years,¹⁰⁴ the shingle or manufacturer warranties will not cover defects in workmanship.¹⁰⁵ Some roofing contractors may offer a labor or workmanship warranty, and others do not.¹⁰⁶ In the event of a roof repair or leak, several home warranty companies will provide a limited optional coverage.¹⁰⁷ Seven home warranty contracts analyzed provided such an optional coverage,¹⁰⁸ while two contracts provided limited roof leak/repair as a standard coverage grant.¹⁰⁹

IV. EXCLUSIONS AND LIMITATIONS OF LIABILITY IN HOME WARRANTY CONTRACTS

Exclusions and limitations of liability are very common in home

⁹⁵ See AMERICAN HOME GUARDIAN, *supra* note 12, at para. 17.1; ASSURANT SOLUTIONS, *supra* note 18, at para. 3; HMS HOME WARRANTY, *supra* note 18, at § III(11).

⁹⁶ See *supra* Table C.

⁹⁷ See *supra* Table C.

⁹⁸ See *supra* Table C.

⁹⁹ See *supra* Table C.

¹⁰⁰ See HMS HOME WARRANTY, *supra* note 18, § III(9).

¹⁰¹ See HMS HOME WARRANTY, *supra* note 18, § III(15).

¹⁰² See *supra* note 90.

¹⁰³ See Tom Moor, *What Is the Average Cost to Replace a Roof?*, ANGIE'S LIST (Sept. 15, 2016), <https://www.angieslist.com/articles/what-average-cost-replace-roof.htm>.

¹⁰⁴ See *What Does Your Roof Warranty Cover?*, ANGIE'S LIST (Jan. 8, 2016), <https://www.angieslist.com/articles/what-does-your-roof-warranty-cover.htm>.

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

¹⁰⁷ See *supra* Table C.

¹⁰⁸ See *supra* Table C.

¹⁰⁹ See AM. HOME GUARDIAN, *supra* note 12, ¶ 16.1; HOME SECURITY AM., *supra* note 18, § E(9).

warranty contracts. As discussed below, some of the exclusions limitations place significant restrictions on coverage and a number of provisions leave home warranty companies in a position where they contractually are the sole entity which can determine whether a covered item will be repaired, replaced, or whether a cash settlement is offered in lieu of the item. Additionally, a number of exclusions and limitations exclude coverage altogether in certain instances.¹¹⁰ Common home warranty exclusions, as well as limitations, are listed in Table D:

Table D: Typical Home Warranty Exclusions and Limitations on Coverage

Home Warranty Exclusion/ Limitation	Number of Sample Contracts Including Home Warranty Exclusion/Limitation
Sole Right to Determine Provision¹¹¹	16
Coverage Under Existing Warranty¹¹²	12
Solar¹¹³	16

¹¹⁰ See *infra* Table D.

¹¹¹ See ALLIED HOME WARRANTY, *supra* note 49, § F(1); AM. HOME GUARD, *supra* note 18, ¶ 41(IV); AM. HOME GUARDIAN, *supra* note 12, ¶ 2.16; AM. HOME SHIELD, *supra* note 9, § A(4); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(2); ASSURANT SOLUTIONS, *supra* note 18, ¶ 7; CHOICE HOME WARRANTY, *supra* note 18, § F(9); HMS HOME WARRANTY, *supra* note 18, §§ IV(7), (8); HOME SECURITY AM., *supra* note 18, § D(2); HOME SERVICE CLUB, *supra* note 18, § F(6); HOME WARRANTY OF AM., *supra* note 18, § VII(H); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, §§ A(4), (5); SECURE HOME WARRANTY, *supra* note 18, §§ VII(H), (N); SELECT HOME WARRANTY, *supra* note 18, ¶¶ (8)(ii), (iii); TOTALPROTECT HOME WARRANTY, *supra* note 18, at §§ III(7), (8).

¹¹² See ALLIED HOME WARRANTY, *supra* note 49, § B(1)(d); AM. HOME GUARDIAN, *supra* note 12, ¶ 3.4; AM. HOME SHIELD, *supra* note 9, § A(6); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(9); ASSURANT SOLUTIONS, *supra* note 18, ¶ 2; CHOICE HOME WARRANTY, *supra* note 18, § F(15); HMS HOME WARRANTY, *supra* note 18, § V(15); HOME SECURITY AM., *supra* note 18, § F(16); HOME SERVICE CLUB, *supra* note 18, § H(21); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § A(1)(e); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.1.2.

¹¹³ See ALLIED HOME WARRANTY, *supra* note 49, § F(3); AM. HOME GUARD, *supra* note 18, ¶ 42(e); AM. HOME GUARDIAN, *supra* note 12, ¶ 8.4; AM. HOME SHIELD, *supra* note 9, § I(1)(e); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VI(1)(B); CHOICE HOME WARRANTY, *supra* note 18, § F(5); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § III(2); HOME SECURITY AM., *supra* note 18, § E(5); HOME SERVICE CLUB, *supra* note 18, § E(9); HOME WARRANTY OF AM., *supra* note 18, § IV(A); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at para. (1)(I); ONEGUARD HOME WARRANTIES, *supra* note 18, § F(2); SECURE HOME

Improper Maintenance ¹¹⁴	7
Unknown Pre-Existing Conditions ¹¹⁵	7
Mold ¹¹⁶	16
Flood ¹¹⁷	11
Roots ¹¹⁸	13
Acts of God ¹¹⁹	12
Rust or Corrosion ¹²⁰	8

WARRANTY, *supra* note 18, § V(Q); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.2.7; TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(3).

¹¹⁴ See AM. HOME GUARD, *supra* note 18, ¶ 42(d); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.2; TOTALPROTECT HOME WARRANTY, *supra* note 18, § I.

¹¹⁵ See ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(C); CHOICE HOME WARRANTY, *supra* note 18, § A(3); FIRST AM. HOME WARRANTY, *supra* note 18; HOME WARRANTY OF AM., *supra* note 18, § VII(O); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 7; SECURE HOME WARRANTY, *supra* note 18, § VII(O); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.1.1.

¹¹⁶ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. HOME GUARDIAN, *supra* note 12, ¶ 2.4; AM. HOME SHIELD, *supra* note 9, § I(3); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(N); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(F); CHOICE HOME WARRANTY, *supra* note 18, §§ F(7), (8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(11); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(3)(d); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 12; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹¹⁷ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(D); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(F); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 12, § V(3); HOME SERVICE CLUB, *supra* note 12, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(7); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(7); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.4; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹¹⁸ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. HOME GUARDIAN, *supra* note 12, ¶ 2.4; AM. RESIDENTIAL WARRANTY, *supra* note 18, § VI(2)(J); CHOICE HOME WARRANTY, *supra* note 18, § D(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § III(8); HOME SECURITY AM., *supra* note 18, § E(2); HOME SERVICE CLUB, *supra* note 18, § E(4); HOME WARRANTY OF AM., *supra* note 18, § IV(D); OLD REPUBLIC HOME PROTECTION, *supra* note 18, 8; ONEGUARD HOME WARRANTY, *supra* note 18, § F(4); SECURE HOME WARRANTY, *supra* note 18, § V(V); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.1.

¹¹⁹ See ALLIED HOME WARRANTY, *supra* note 49, § F(3); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); CHOICE HOME WARRANTY, *supra* note 18, § F(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(7); SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(7); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹²⁰ See AM. HOME GUARD, *supra* note 18, ¶ 42(d); AM. HOME GUARDIAN, *supra* note 12, ¶ 2.4; ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); CHOICE HOME WARRANTY, *supra* note 18, § F(1)(i); HOME SERVICE CLUB, *supra* note 18, § D; SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.2; TOTALPROTECT HOME WARRANTY,

Hazardous or Toxic Materials¹²¹	12
Insects or Pests¹²²	16
Freezing¹²³	13
Fire¹²⁴	14
Lightning¹²⁵	14
Earthquake¹²⁶	14

supra note 18, § I.

¹²¹ See ALLIED HOME WARRANTY, *supra* note 49, § F(3); AM. HOME GUARD, *supra* note 18, ¶ 42(b); AM. HOME SHIELD, *supra* note 9, § I(2); CHOICE HOME WARRANTY, *supra* note 18, § F(7); HMS HOME WARRANTY, *supra* note 18, § V(8); HOME SECURITY AM., *supra* note 18, § F(3); HOME SERVICE CLUB, *supra* note 18, § H(10); HOME WARRANTY OF AM., *supra* note 18, § VII(E); ONEGUARD HOME WARRANTIES, *supra* note 18, § H(3)(d); SECURE HOME WARRANTY, *supra* note 18, § VII(E); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.1; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(7).

¹²² See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. HOME GUARDIAN, *supra* note 12, ¶ 2.4; AM. HOME SHIELD, *supra* note 9, § I(3); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); CHOICE HOME WARRANTY, *supra* note 18, § F(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(1)(e)(8); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹²³ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); CHOICE HOME WARRANTY, *supra* note 18, § F(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(1)(e)(5); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹²⁴ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); CHOICE HOME WARRANTY, *supra* note 18, § F(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(1)(e)(5); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹²⁵ See AM. HOME GUARD, *supra* note 18, ¶ 38(f); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); CHOICE HOME WARRANTY, *supra* note 18, § F(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(1)(e)(5); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.3.4; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹²⁶ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); CHOICE HOME WARRANTY, *supra* note 18, § F(8); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SECURITY AM., *supra* note 18, § F(2); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION,

War ¹²⁷	8
Nuclear Explosion ¹²⁸	6
Riots ¹²⁹	9
Terrorism ¹³⁰	5
Theft ¹³¹	6
Vandalism ¹³²	6

Sole Right to Determine Provision: Home warranty contracts typically include a provision which grants the home warranty company the sole authority to make the decision on whether to repair, replace, or offer cash for a covered item or system.¹³³ A typical provision in a contract states language often similar to the following: “We have the sole right to determine whether a covered system, appliance or component will be repaired or replaced. . . . We reserve the right to provide **CASH IN LIEU** of repair or replacement in the amount of our actual cost.”¹³⁴ Nearly all of the contracts reviewed

supra note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(1)(e)(5); SECURE HOME WARRANTY, *supra* note 18, § VII(F); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹²⁷ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(7); SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(7); TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3.

¹²⁸ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SERVICE CLUB, *supra* note 18, § H(3); SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(7); TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3.

¹²⁹ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); SECURE HOME WARRANTY, *supra* note 18, § VII(F); TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.3.

¹³⁰ See HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SERVICE CLUB, *supra* note 18, § H(3); HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(7); SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(7); TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹³¹ See AM. HOME GUARD, *supra* note 18, ¶ 42(a); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(M); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § III(A)(3); HOME WARRANTY OF AM., *supra* note 18, § VII(F); SECURE HOME WARRANTY, *supra* note 18, § VII(F).

¹³² See AM. HOME GUARD, *supra* note 18, ¶ 42(a); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(I); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(3); HOME SERVICE CLUB, *supra* note 18, § H(3); TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(3).

¹³³ See, e.g., HMS HOME WARRANTY, *supra* note 18, §§ IV(7), (8); HOME SERVICE CLUB, *supra* note 18, § F(6); HOME WARRANTY OF AM., *supra* note 18, § VII(H); SECURE HOME WARRANTY, *supra* note 18, § VII(H).

¹³⁴ See OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 7.

(sixteen of seventeen) included this provision.¹³⁵

Covered Under Existing Warranty: Some contracts will exclude coverage altogether in the event a covered system or appliance is covered by an existing warranty.¹³⁶ In other such occasions where a warranty already exists, the home warranty coverage becomes secondary.¹³⁷ Twelve of the contracts analyzed included this type of provision.¹³⁸

Solar Exclusion: Millions of Americans throughout the United States today utilize residential photovoltaic solar systems in their homes.¹³⁹ The solar industry is soaring, with a reported ninety-five percent increase in the market last year.¹⁴⁰ The prevalence of solar exclusions in home warranty contracts creates a problem for homeowners who seek home warranty coverage for solar systems and appliances. Conversely it also creates an opportunity for a home warranty provider or providers to position themselves as “solar friendly” and furnish solar coverage. Nearly every home warranty contract reviewed (sixteen out of seventeen contracts) contained a solar exclusion.¹⁴¹

Improper Maintenance: A common and often problematic limitation for consumers in some home warranty contracts is the “improper maintenance” limitation.¹⁴² In essence, it provides an exclusion a home warranty company can utilize in the event a consumer does not strictly comply with the recommended

¹³⁵ See *supra* Table D.

¹³⁶ See, e.g., ASSURANT SOLUTIONS, *supra* note 18, ¶ 2.

¹³⁷ See, e.g., HMS HOME WARRANTY, *supra* note 18, at § V(15); THE HOME SERVICE CLUB, *supra* note 18, at § H(21); SECURE HOME WARRANTY, *supra* note 18, § VII(L); TOTALPROTECT HOME WARRANTY, *supra* note 18, at § IV(14).

¹³⁸ See *supra* Table D.

¹³⁹ See Nicole Rodriguez-Fierro, *Should the Federal Energy Regulatory Commission Intervene: With Varying State Policies on Net Energy Metering, What is the Future of Solar Distributed Generation in the United States?*, 29 TUL. ENVTL. L. J. 323, 324 (2017) (“The solar energy sector has boomed in the United States, with 21,300 megawatts of cumulative solar electric capacity in the first quarter of 2015. This growth is not restricted solely to numbers on a page, but can be seen every day on the roofs of millions of homeowners who have now installed their own residential photovoltaic solar energy systems. This increase in solar energy is the result of a combination of improvements in photovoltaic solar energy system technology and manufacturing processes, federal investment subsidies, and state policies that provide financial incentives to solar panel owners.”).

¹⁴⁰ See Mike Munsell, *US Solar Market Grows 95% in 2016, Smashes Records*, GREENTECH MEDIA (Feb. 15, 2017), <https://www.greentechmedia.com/articles/read/us-solar-market-grows-95-in-2016-smashes-records>.

¹⁴¹ See *supra* Table D.

¹⁴² See, e.g., AM. HOME GUARD, *supra* note 18, ¶ 42(d); AM. HOME SHIELD, *supra* note 9, § I(1)(a); FIRST AM. HOME WARRANTY, *supra* note 18, at 3; HOME SECURITY AM., *supra* note 18, § F(7); ONEGUARD HOME WARRANTIES, *supra* note 18, §§ B(1), H(1)(c), (d); SECURE HOME WARRANTY, *supra* note 18, § I(A)(5); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.2.

maintenance schedule of a particular system or appliance.¹⁴³ At least seven home warranty contracts reviewed included this exclusion.¹⁴⁴ In addition, at least two home warranty contracts placed a burden of producing maintenance records on the homeowner.¹⁴⁵ These contracts provided that the home warranty company has the right to request the prior three years of maintenance records, and if such records are not produced on a claim, the maximum payout on a covered claim on an appliance or system would be \$150.00.¹⁴⁶ A third company, Secure Home Warranty, provided in its sample contract (without a time frame for the records specified) that without maintenance records on a covered system or appliance the maximum payout would be \$150.00.¹⁴⁷ Despite these contracts, four sample contracts specifically noted that notwithstanding insufficient maintenance, coverage would still be available for a covered appliance or system.¹⁴⁸

Unknown Pre-Existing Conditions: Some home warranty contracts also exclude pre-existing conditions that are unknown to the consumer.¹⁴⁹ Seven sample home warranty contracts analyzed exclude coverage for damage even in situations involving unknown pre-existing conditions.¹⁵⁰

Mold Exclusion: Many home warranty contracts, similar to insurance contracts, exclude damages due to mold.¹⁵¹ Courts typically uphold mold exclusions.¹⁵² For example, in *Fiess v. State*

¹⁴³ See AM. HOME GUARD, *supra* note 18, ¶ 42(d); AM. HOME SHIELD, *supra* note 9, § I(1)(a); FIRST AM. HOME WARRANTY, *supra* note 18, at 3; HOME SECURITY AM., *supra* note 18, § F(7); ONEGUARD HOME WARRANTIES, *supra* note 18, §§ B(1), H(1)(c), (d); SECURE HOME WARRANTY, *supra* note 18, § I(A)(5); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.2.

¹⁴⁴ See *supra* Table D.

¹⁴⁵ See AM. HOME GUARD, *supra* note 18, ¶ 42(d); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.2.

¹⁴⁶ See AM. HOME GUARD, *supra* note 18, ¶ 42(d); SELECT HOME WARRANTY, *supra* note 18, ¶ 9.1.2.

¹⁴⁷ See SECURE HOME WARRANTY, *supra* note 18, § I(A)(5).

¹⁴⁸ See AM. HOME SHIELD, *supra* note 9, § A(2)(a); FIRST AM. HOME WARRANTY, *supra* note 18; HOME SECURITY AM., *supra* note 18, § A(1)(C); ONEGUARD HOME WARRANTIES, *supra* note 18, § F(1)(1).

¹⁴⁹ See, e.g., AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(4); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(C); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § II; SECURE HOME WARRANTY, *supra* note 18, § VII(O); SELECT HOME WARRANTY, *supra* note 18, ¶ 6.1.1.

¹⁵⁰ See *supra* Table D.

¹⁵¹ See *supra* Table D.

¹⁵² See Bryan Lake, *The Empire Strikes Back: The Insurance Industry Battles Toxic Mold*, 33 WM. MITCHELL L. REV. 1527, 1539–40 (2007) (“At least forty state insurance departments have approved mold exclusions or limitations in homeowners’ policies. The typical policy has an exclusion for ‘mold, fungus or wet rot.’ In general, this type of exclusion is applied in favor of insurance companies.”).

Farm Lloyds,¹⁵³ the homeowners incurred mold damage due to small roof and window leaks.¹⁵⁴ The homeowner's insurance policy at issue included a mold exclusion which specifically stated the following: "We do not cover loss caused by: . . . (2) rust, rot, mold or other fungi."¹⁵⁵ Interpreting this provision, the Texas Supreme Court held the provision unambiguously excluded coverage for mold, and further stated that if the political branches in Texas held the authority to mandate coverage for mold in insurance policies if it decided to take action to do so.¹⁵⁶ Nearly every contract analyzed (sixteen out of seventeen) specifically contained a mold exclusion.¹⁵⁷

Flood Exclusion: Standard homeowner's insurance policies exclude any damages due to flooding.¹⁵⁸ Essentially the only insurance available to a homeowner which provides coverage for damage due to flooding is an insurance policy through the National Flood Insurance Program.¹⁵⁹ Eleven of the seventeen home warranty contracts reviewed specifically excluded damage due to flooding.¹⁶⁰

Other Exclusions: As Table D indicates, a number of other exclusions are typical in home warranty contracts which often include natural events. Exclusions and limitations specifically noted include:

Roots: Thirteen home warranty contracts reviewed contained this exclusion.¹⁶¹

Acts of God: Twelve home warranty contracts reviewed contained this exclusion.¹⁶²

Rust or Corrosion: While eight home warranty contracts reviewed contained this exclusion,¹⁶³ six home warranty contracts analyzed

¹⁵³ *Fiess v. State Farm Lloyds*, 202 S.W.3d 744 (Tex. 2010).

¹⁵⁴ *See id.* at 750.

¹⁵⁵ *Id.* at 746.

¹⁵⁶ *Id.* at 753. ("Courts adhere to prior precedents for reasons of efficiency, fairness, and legitimacy. For more than a century this Court has held that in construing insurance policies 'where the language is plain and unambiguous, courts must enforce the contract as made by the parties, and cannot make a new contract for them, nor change that which they have made under the guise of construction.' If the political branches of Texas government decide that mold should be covered in Texas insurance policies, they have tools at their disposal to do so; Texas courts must stick to what those policies say, and cannot adopt a different rule when a 'crisis' arises.") (citations omitted).

¹⁵⁷ *See supra* Table D.

¹⁵⁸ *See* Chris Kissell, *6 Things Home Insurance Won't Cover*, BANKRATE (Sept. 4, 2013), <http://www.bankrate.com/finance/insurance/things-home-insurance-wont-cover-1.aspx>.

¹⁵⁹ *See* Christopher C. French, *Insuring Floods: The Most Common and Devastating Natural Catastrophes in America*, 60 VILL. L. REV. 53, 54 (2015).

¹⁶⁰ *See supra* Table D.

¹⁶¹ *See supra* Table D.

¹⁶² *See supra* Table D.

¹⁶³ *See supra* Table D.

included coverage for covered systems and/or appliances despite the presence of rust or corrosion.¹⁶⁴

Hazardous or Toxic Materials: Twelve home warranty contracts reviewed contained this exclusion.¹⁶⁵

Insects or Pests: Sixteen home warranty contracts reviewed contained this exclusion.¹⁶⁶

Freezing: Thirteen home warranty contracts reviewed contained this exclusion.¹⁶⁷

Fire: Fourteen home warranty contracts reviewed contained this exclusion.¹⁶⁸

Lightning: Fourteen home warranty contracts reviewed contained this exclusion.¹⁶⁹

Earthquake: Fourteen home warranty contracts reviewed contained this exclusion.¹⁷⁰

War: Eight home warranty contracts reviewed contained this exclusion.¹⁷¹

Nuclear Explosion: Six home warranty contracts reviewed contained this exclusion.¹⁷²

Riots: Nine home warranty contracts reviewed contained this exclusion.¹⁷³

Terrorism: Five home warranty contracts reviewed contained this exclusion.¹⁷⁴

Theft: Six home warranty contracts reviewed contained this exclusion.¹⁷⁵

Vandalism: Six home warranty contracts reviewed contained this exclusion.¹⁷⁶

Finally, some home warranty contracts include specific monetary maximum limitations for certain systems/appliances as well as

¹⁶⁴ See ALLIED HOME WARRANTY, *supra* note 49, § B(1)(a); AM. HOME SHIELD, *supra* note 9, § A(2)(a); FIRST AM. HOME WARRANTY, *supra* note 18; HOME SECURITY AM., *supra* note 18, § A(1)(C.1); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 7; ONEGUARD HOME WARRANTIES, *supra* note 18, § F(1).

¹⁶⁵ See *supra* Table D.

¹⁶⁶ See *supra* Table D.

¹⁶⁷ See *supra* Table D.

¹⁶⁸ See *supra* Table D.

¹⁶⁹ See *supra* Table D.

¹⁷⁰ See *supra* Table D.

¹⁷¹ See *supra* Table D.

¹⁷² See *supra* Table D.

¹⁷³ See *supra* Table D.

¹⁷⁴ See *supra* Table D.

¹⁷⁵ See *supra* Table D.

¹⁷⁶ See *supra* Table D.

aggregate limitations.¹⁷⁷ The aggregate limitations vary widely, from only \$1,500 for Choice Home Warranty in its sample contract¹⁷⁸ to \$10,000 for TotalProtect Home Warranty in its sample contract.¹⁷⁹

V. WAIVER OF DAMAGES/REMEDIES PROVISIONS IN HOME WARRANTY CONTRACTS

Home warranty contracts also typically contain contractual language limiting remedies as well as provisions limiting damages.¹⁸⁰ Home warranty contracts often contain arbitration clauses which attempt to limit the forum where a home warranty dispute can be heard.¹⁸¹ In addition, home warranty companies often include class action waiver and class arbitration waiver provisions in their contracts.¹⁸² Choice of law and choice of forum clauses are also typical.¹⁸³ Finally, home warranty contracts often include a provision waiving tort damages, consequential damages, and/or punitive damages.¹⁸⁴

Arbitration Clauses: Like many other types of standardized contracts, home warranty contracts often include an arbitration clause.¹⁸⁵ Arbitration is seen as an alternative to the traditional court system to resolve disputes and arbitration clauses typically require a plaintiff to waive his or her right to seek remedies in court.¹⁸⁶ Courts also tend to favor enforcement of arbitration clauses.¹⁸⁷ Nine out of seventeen home warranty contracts analyzed

¹⁷⁷ See, e.g., FIRST AM. HOME WARRANTY, *supra* note 18; CHOICE HOME WARRANTY, *supra* note 18, § G(3); TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(19).

¹⁷⁸ See CHOICE HOME WARRANTY, *supra* note 18, § G(3).

¹⁷⁹ See TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(19).

¹⁸⁰ See, e.g., HOME SECURITY AM., *supra* note 18, at §§ L(1), (2); ONEGUARD HOME WARRANTIES, *supra* note 18, § K; OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁸¹ See, e.g., HOME SECURITY AM., *supra* note 18, § L(1); ONEGUARD HOME WARRANTIES, *supra* note 18, § K; OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁸² See, e.g., HOME SECURITY AM., *supra* note 18, § L(2); ONEGUARD HOME WARRANTIES, *supra* note 18, § K; OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁸³ See, e.g., HOME SECURITY AM., *supra* note 18, § L(1); ONEGUARD HOME WARRANTIES, *supra* note 18, § K; OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁸⁴ See, e.g., AM. HOME GUARD, *supra* note 18, ¶ 34(ii); CHOICE HOME WARRANTY, *supra* note 18, § F(19); HOME SECURITY AM., *supra* note 18, § F(9).

¹⁸⁵ See Theodore Eisenberg et al., *Arbitration's Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts*, 41 U. MICH. J. L. REFORM 871, 871 (2008); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁸⁶ See Christopher R. Leslie, *The Arbitration Bootstrap*, 94 TEX. L. REV. 265, 266 (2015) ("Arbitration clauses require consumers and employees to waive their rights to bring litigation in court").

¹⁸⁷ See, e.g., *Curtis, Mallet-Prevost, Colt & Mosle, LLP v. Garza-Morales*, 762 N.Y.S.2d 607, 612 (N.Y. App. Div. 2003) ("New York's policy favoring arbitration should always be given primacy over a foreign country's policy disfavoring arbitration where, as here, the parties'

included a mandatory arbitration clause.¹⁸⁸ Nine of the contracts¹⁸⁹ designated that any arbitration be done in accordance with the rules of the American Arbitration Association (“AAA”).¹⁹⁰ One home warranty company, Old Republic Home Protection, provided in its contract that arbitration is mandatory in the event the claim asserted by the homeowner exceeded that of the jurisdiction’s small claims jurisdictional amount.¹⁹¹ The sample contracts of two companies permitted a consumer to choose between either pursuing a claim in the small claims court of the state in which the covered item is located or filing a claim in arbitration pursuant to AAA rules.¹⁹²

Class Action Waiver/Class Arbitration Waiver: A provision waiving a consumer’s right to pursue a legal action through a class action mechanism and/or a class arbitration proceeding can also be commonly found in a number of home warranty contracts.¹⁹³ In 2011 the United States Supreme Court in *AT&T Mobility LLC v. Concepcion*¹⁹⁴ invalidated a California rule allowing a private party to request class arbitration following an arbitration decision in situations involving a dispute under an adhesion contract.¹⁹⁵ In the wake of the *Concepcion* decision, one study by Professor Myriam Gilles found that nearly all of the consumer adhesion contracts analyzed included a class action waiver provision.¹⁹⁶ Following the

relationship was centered in New York, the parties have expressly agreed to arbitrate all disputes in New York, and the dispute involves only private parties.”).

¹⁸⁸ See ALLIED HOME WARRANTY, *supra* note 49, § G; AM. HOME GUARD, *supra* note 18, ¶ 15; AM. HOME SHIELD, *supra* note 9, § M; AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(15); ASSURANT SOLUTIONS, *supra* note 18, ¶ 26; CHOICE HOME WARRANTY, *supra* note 18, § G(2); HOME SECURITY AM., *supra* note 18, § L(1); HOME SERVICE CLUB, *supra* note 18, § I(9.1); ONEGUARD HOME WARRANTIES, *supra* note 18, § K.

¹⁸⁹ See AM. HOME GUARD, *supra* note 18, ¶ 15; AM. HOME SHIELD, *supra* note 9, § M; AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(15); ASSURANT SOLUTIONS, *supra* note 18, ¶ 26; CHOICE HOME WARRANTY, *supra* note 18, § G(2); HOME SECURITY AM., *supra* note 18, § L(1); HOME SERVICE CLUB, *supra* note 18, § I(9.1); ONEGUARD HOME WARRANTIES, *supra* note 18, § K; OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁹⁰ See *About the AAA and ICDR*, AM. ARBITRATION ASS’N, <https://www.adr.org/About> (last visited Nov. 19, 2017) (“The AAA role in the dispute resolution process is to administer cases, from filing to closing. The AAA provides administrative services in the U.S., as well as abroad through its International Centre for Dispute Resolution (ICDR). The AAA’s and ICDR’s administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with information on dispute resolution options, including settlement through mediation. Ultimately, the AAA aims to move cases through arbitration or mediation in a fair and impartial manner until completion.”).

¹⁹¹ See OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9.

¹⁹² See HMS HOME WARRANTY, *supra* note 18, § VIII(1); TOTALPROTECT HOME WARRANTY, *supra* note 18, § VII(1).

¹⁹³ See, e.g., Leslie, *supra* note 187, at 275–76.

¹⁹⁴ *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

¹⁹⁵ See *id.* at 352 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

¹⁹⁶ See Myriam Gilles, *Killing Them with Kindness: Examining “Consumer-Friendly”*

Concepcion decision, a number of commentators have criticized it.¹⁹⁷ Twelve of the seventeen home warranty contracts reviewed included either a class action waiver and/or class arbitration waiver provision.¹⁹⁸

Choice of Law/Choice of Forum Clause: Many contracts, both adhesion as well as arm's-length, contain either a choice of law clause or a choice of forum clause.¹⁹⁹ A choice of law clause designates that law that will be applied in the event of a contractual dispute.²⁰⁰ A

Arbitration Clauses After AT &T Mobility v. Concepcion, 88 NOTRE DAME L. REV. 825, 853 (2012) ("A few conclusions are worth noting at the forefront. First, all the clauses I examined contained class action waivers. While this is not surprising, it represents a clear increase in the popularity of these provisions over the past decade. Second, nearly all the clauses had been amended in the aftermath of *Concepcion*.").

¹⁹⁷ See, e.g., Aaron Blumenthal, Comment, *Circumventing Concepcion: Conceptualizing Innovative Strategies to Ensure the Enforcement of Consumer Protection Laws in the Age of the Inviolable Class Action Waiver*, 103 CALIF. L. REV. 699, 744 (2015) ("[U]ltimately the best solutions must come at the level of state legislative reform. For example, consumers can take individual action by crossing out arbitration agreements and using the 'battle of the forms' to remove such clauses from all adhesion contracts or by banding together in 'unions' to demand the removal of arbitration terms from consumer contracts. These approaches, however, put a great deal of onus on consumers to be aware of the terms in their contracts and to anticipate the potential need for litigation. If too few consumers are sufficiently motivated to combat arbitration clauses, these particular solutions will fail."); Nantiya Ruan, *What's Left to Remedy Wage Theft? How Arbitration Mandates That Bar Class Actions Impact Low-Wage Workers*, 2012 MICH. ST. L. REV. 1103, 1146 (2012) ("For low-wage workers who suffer wage theft, the dollars missing from their paychecks violate existing law and significantly impact the well-being of individuals, families, and communities. While this dire societal problem continues unabated, the Supreme Court continues 'closing the courtroom doors' by allowing employers to force workers both out of court and into private arbitration, while simultaneously prohibiting aggregate claims. Such tactics work in confluence to silence wage claims, leaving far too many claims unheard while unscrupulous employers gain direct advantage."); Jean R. Sternlight, *Tsunami: AT&T Mobility LLC v. Concepcion Impedes Access to Justice*, 90 OR. L. REV. 703, 727 (2012) ("*Concepcion* has caused a tsunami wave that is threatening to eliminate many consumers' and employees' abilities to enforce their substantive rights by participating in class actions. We must look primarily to Congress to take corrective action and to ensure that all persons continue to have access to justice.").

¹⁹⁸ See AM. HOME SHIELD, *supra* note 9, § M ("Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ('Class Action'). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator."); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(15); ASSURANT SOLUTIONS, *supra* note 18, ¶ 26; CHOICE HOME WARRANTY, *supra* note 18, § G(1); HMS HOME WARRANTY, *supra* note 18, § VIII(2); HOME SECURITY AM., *supra* note 18, § L(2); HOME SERVICE CLUB, *supra* note 18, § I(9.2); HOME WARRANTY OF AMERICA, *supra* note 18, § VIII(A)(5); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 9; ONEGUARD HOME WARRANTIES, *supra* note 18, § K; SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(5); TOTALPROTECT HOME WARRANTY, *supra* note 18, § VII(2).

¹⁹⁹ See, e.g., William J. Woodward, Jr., *Finding the Contract in Contracts for Law, Forum and Arbitration*, 2 HASTINGS BUS. L. J. 1, 1 (2006).

²⁰⁰ See Larry E. Ribstein, *From Efficiency to Politics in Contractual Choice of Law*, 37 GA. L.

choice of forum clause designates which forum or jurisdiction shall hear a dispute.²⁰¹ Seven contracts analyzed contained a choice of law clause, with three designating Texas,²⁰² two New Jersey,²⁰³ one Illinois,²⁰⁴ and one designated Pennsylvania.²⁰⁵ Three contracts contained a choice of forum clause,²⁰⁶ and two designated the jurisdiction in which the covered property is located.²⁰⁷

Waiver of Tort/Personal Injury, Punitive, and Consequential Damages: Finally, many home warranty contracts include a contractual provision waiving any recovery of tort/personal injury damages, punitive damages, as well as consequential damages.²⁰⁸ Punitive or exemplary damages are often awarded only in cases of severe or grave misconduct.²⁰⁹ Consequential damages are those that result beyond a plaintiff's general damages.²¹⁰ While eight of the seventeen contracts reviewed specifically include a separate

REV. 363, 366 (2003) ("Enforcing contract provisions that choose the law that applies to the contract can be efficient because these clauses reduce the uncertainty of vague conflict-of-laws default rules and help contracting parties avoid the application of inefficient mandatory rules").

²⁰¹ See Woodward, *supra* note 199, at 1–2 ("Absent an enforceable choice of forum clause, a party can shop for the most beneficial forum in which to litigate (by simply filing suit there) when the contractual relationship has broken down").

²⁰² See ALLIED HOME WARRANTY, *supra* note 49, § G; HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(4); SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(4).

²⁰³ See CHOICE HOME WARRANTY, *supra* note 18, § G(4); SELECT HOME WARRANTY, *supra* note 18, ¶ 15.

²⁰⁴ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(15).

²⁰⁵ See AM. HOME GUARD, *supra* note 18, ¶ 14.

²⁰⁶ See HOME WARRANTY OF AM., *supra* note 18, at § VIII(A)(2); SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(2); see also SELECT HOME WARRANTY, *supra* note 18, ¶ 15.

²⁰⁷ See HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(2); see also SECURE HOME WARRANTY, *supra* note 18, § VIII(A)(2).

²⁰⁸ See, e.g., ALLIED HOME WARRANTY, *supra* note 49, § F(3); HOME WARRANTY OF AM., *supra* note 18, § VIII(A)(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(14); HOME SECURITY AM., *supra* note 18, § F(9).

²⁰⁹ See, e.g., *Fabiano v. Philip Morris Inc.*, 862 N.Y.S.2d 487, 490 (N.Y. App. Div. 2008) (citation omitted) ("A claim for punitive damages may, of course, be rooted in personal injury, but for such a claim to succeed the injury must be shown to be emblematic of much more than individually sustained wrong. It must be shown to reflect pervasive and grave misconduct affecting the public generally").

²¹⁰ See Melvin Aron Eisenberg, *The Principle of Hadley v. Baxendale*, 80 CAL. L. REV. 563, 565 (1992) ("Special or consequential damages are the damages above and beyond general damages that flow from a breach as a result of the buyer's particular circumstances. Typically, consequential damages consist of lost profits (although other kinds of consequential damages may occur). In particular, consequential damages typically consist of the difference between the profits the buyer actually made in transactions with third persons and the profits he would have made if the seller had performed. For example, suppose a seller breaches a contract for the sale of a factor of production such as a die press, that the buyer plans to use rather than resell. The buyer's consequential damages are the difference between the profits he earned on his actual postbreach output and the profits he would have earned if the die press had been furnished as promised.").

provision waiving damages in personal injury or in tort,²¹¹ and four contracts waived recovery for punitive damages,²¹² all of the contracts (seventeen out of seventeen) included a specific provision waiving recovery for consequential damages.²¹³

VI. OTHER PROVISIONS IN HOME WARRANTY CONTRACTS

Finally, several home warranty companies also include uncommon provisions providing coverage or excluding coverage in certain situations.²¹⁴ Such provisions may influence the consumer choice of a certain home warranty provider.

A. Hotel Reimbursements and Food Loss Coverage

One of the consequences which may occur as a result of the failure of a heater or air conditioner, or the outage of the electrical system, is that a family may have to temporarily stay with other family members/friends or at a hotel. At least one home warranty company provides in its contract for a hotel reimbursement in some circumstances.²¹⁵ In the event the company cannot complete repairs within twenty-four hours, American Home Guardian provides in a sample contract that it will reimburse up to \$50.00 for up to three nights if there is a heating, cooling, or an electrical outage.²¹⁶

Most home warranty contracts exclude coverage for food spoilage or loss in the event of a refrigerator or electrical failure.²¹⁷ Thirteen

²¹¹ See AM. HOME GUARD, *supra* note 18, ¶ 34(ii); AM. HOME GUARDIAN, *supra* note 12, ¶ 6.1; AM. HOME SHIELD, *supra* note 9, § I(8); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(G); ASSURANT SOLUTIONS, *supra* note 18, ¶. 21(B); HOME SERVICE CLUB, *supra* note 18, § H(20); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; SELECT HOME WARRANTY, *supra* note 18, para. 12.

²¹² See AM. HOME GUARDIAN, *supra* note 12, ¶ 6.2; CHOICE HOME WARRANTY, *supra* note 18, § F(19); HMS HOME WARRANTY, *supra* note 18, § V(14) and TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(13).

²¹³ See ALLIED HOME WARRANTY, *supra* note 49, § F(3); AM. HOME GUARD, *supra* note 18, ¶ 52; AM. HOME GUARDIAN, *supra* note 12, ¶ 6.2; AM. HOME SHIELD, *supra* note 9, § I(8); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VII(11)(G); ASSURANT SOLUTIONS, *supra* note 18, ¶ 21(B); CHOICE HOME WARRANTY, *supra* note 18, § F(19); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(14); HOME SECURITY AM., *supra* note 18, § F(9); HOME SERVICE CLUB, *supra* note 18, § H(20); HOME WARRANTY OF AM., *supra* note 18, § VII(F); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 8; ONEGUARD HOME WARRANTIES, *supra* note 18, § J(1)(f); SECURE HOME WARRANTY, *supra* note 18, § VII(G); SELECT HOME WARRANTY, *supra* note 18, ¶ 12; TOTALPROTECT HOME WARRANTY, *supra* note 18, § IV(13).

²¹⁴ See, e.g., AM. HOME GUARDIAN, *supra* note 12, ¶¶ 20, 21; see ONEGUARD HOME WARRANTIES, *supra* note 18, §§ F(19), (20).

²¹⁵ See AM. HOME GUARDIAN, *supra* note 12, ¶ 20.

²¹⁶ *Id.*

²¹⁷ See, e.g., *id.* ¶ 6.3.

of the seventeen sample contracts reviewed contain such an exclusion.²¹⁸ However, at least one home warranty contract in its standard plan includes limited coverage for food loss.²¹⁹ Assurant Solutions provides coverage for up to \$100.00 per contract term for food loss due to a covered failure for a refrigerator or freezer, but excludes loss due to a loss or interruption of power.²²⁰ In addition, another home warranty company, American Residential Warranty, provides food spoilage coverage for up to \$250.00 per contract term as an additional option outside of its standard coverage.²²¹

A. Carpet Cleaning, Window Cleaning, Lawn Treatment, Termite Treatment and Pest Control Coverage

Another uncommon additional coverage in the standard contract of one home warranty company contract is carpet cleaning coverage and window cleaning coverage.²²² The standard contract of OneGuard Home Warranties provides in its standard coverage carpet cleaning for three rooms in the house (no more than 600 square feet) for the applicable service fee.²²³ In addition, OneGuard Home Warranties' sample contract also provides for window cleaning for up to fifteen exterior ground level windows for a service fee.²²⁴

Of the households throughout the United States that contract with lawn care professionals, it has been reported that these households will spend an average of approximately \$400 annually on lawn care, including fertilizers and weed control.²²⁵ OneGuard Home Warranties' sample contract also provides coverage for one annual lawn fertilization treatment between March 1 and September 30 with payment of a service fee.²²⁶ In addition, the sample contract also provides for lawn weed kill treatments from May through August for

²¹⁸ See *id.*; ALLIED HOME WARRANTY, *supra* note 49, § D(4); AM. HOME SHIELD, *supra* note 9, § I(8); AM. RESIDENTIAL WARRANTY, *supra* note 18, § VI(2)(D); CHOICE HOME WARRANTY, *supra* note 18, § D(3); FIRST AM. HOME WARRANTY, *supra* note 18; HMS HOME WARRANTY, *supra* note 18, § V(14); HOME SERVICE CLUB, *supra* note 18, § E(17); HOME WARRANTY OF AM., *supra* note 18, § VI(D); OLD REPUBLIC HOME PROTECTION, *supra* note 18, at 4; ONEGUARD HOME WARRANTIES, *supra* note 18, § H(1)(f); SECURE HOME WARRANTY, *supra* note 18, § V(I); TOTALPROTECT HOME WARRANTY, *supra* note 18, § II(1).

²¹⁹ See ASSURANT SOLUTIONS, *supra* note 18, ¶ 14.

²²⁰ *Id.*

²²¹ See AM. RESIDENTIAL WARRANTY, *supra* note 18, § VI(3).

²²² See, e.g., ONEGUARD HOME WARRANTIES, *supra* note 18, at sec. (F)(19)–(F)(20).

²²³ *Id.* § F(19).

²²⁴ *Id.* § F(20).

²²⁵ See Silvia Ascarelli, *10 Things Lawn Services Won't Tell You*, MARKETWATCH (Mar. 18, 2014), <http://www.marketwatch.com/story/10-things-lawn-services-wont-tell-you-2014-03-14>.

²²⁶ See ONEGUARD HOME WARRANTIES, *supra* note 18, § F(25).

the applicable service fee.²²⁷

One of the most critical typical inspections during the homebuying process is a termite/wood-destroying organisms inspection.²²⁸ The United States Environmental Protection Agency has reportedly noted that homeowners spend approximately \$2 billion each year to treat termites and wood-destroying organisms.²²⁹

The case law in New York is replete with cases involving allegations made of misrepresentations and/or fraud concerning alleged termite damage.²³⁰ One such example is the *McManus v. Moise*,²³¹ decided by the Second Department Appellate Division of the New York Supreme Court in 1999.²³² In the *Moise* case, the purchasers filed a lawsuit for fraud against the sellers of a house, alleging that the sellers fraudulently misrepresented the extent of termite damage in the home.²³³ However, the evidence in the case showed that the plaintiff had undertaken a professional termite inspection prior to the purchase of the house and the inspection

²²⁷ *Id.* at sec. (F)(26).

²²⁸ See Janet Thomson, *Home Inspections: What They Are and Why You Should Get One*, CURBED (May 24, 2017), <https://www.curbed.com/2017/5/24/15685220/home-inspector-inspection-tips; 10 Steps of the Home Buying Process – Contract to Closing>, FLICKLING & COMPANY, <https://www.flickling.com/contract-to-closing.html> (last visited Nov. 21, 2017).

²²⁹ See Jill Chodorov Kaminsky, *Lenders Are Cracking Down on Homes with Termite Infestation*, WASH. POST (Sept. 15, 2015), https://www.washingtonpost.com/news/where-we-live/wp/2015/09/15/lenders-are-cracking-down-on-homes-with-termite-infestation/?utm_term=.792129e5b38f.

²³⁰ See *Hecker v. Paschke*, 19 N.Y.S.3d 568, 569 (N.Y. App. Div. 2015) (upholding a summary judgment for sellers against claims of home purchasers for fraudulent misrepresentation and fraudulent concealment); *Killough v. Shiels*, 845 N.Y.S.2d 575, 576, 577 (N.Y. App. Div. 2007) (upholding a summary judgment for real estate agents against plaintiff's claims of negligence for not advising her to seek independent inspection for termite infestation); *Adamowicz v. Robbins*, 689 N.Y.S.2d 530, 531 (N.Y. App. Div. 1999) (citations omitted) (upholding the dismissal of a fraud claim where the court found the plaintiff had prior knowledge of termite damage); *Bando v. Achenbaum*, 651 N.Y.S.2d 74, 75–76 (N.Y. App. Div. 1996) (citations omitted) (upholding defendants' summary judgment where plaintiff's notice of a condition prior did not warrant misrepresentation by defendants since defendants did not have particular knowledge of the infestation); *Juliano v. McEntee*, 541 N.Y.S.2d 232, 233 (N.Y. App. Div. 1989) (upholding defendant's alleged fraud did not damage plaintiffs because plaintiffs did not notify the seller about termites within the agreed-upon 10-day period); *Sachs v. Fumex Sanitation, Inc.*, 426 N.Y.S.2d 817, 818 (N.Y. App. Div. 1980) (citation omitted) (holding defendant's complied with standard industry practice and cannot be held liable for plaintiffs failure to arrange for further termite inspection); *Taylor v. Heisinger*, 242 N.Y.S.2d 281, 286 (N.Y. Sup. Ct. 1963) ("In summary, the court finds, upon this record, that plaintiffs must be held as a matter of law to be estopped to claim reliance on defendants' alleged representations; that no affirmative representations with respect to the existence of termites were in fact made; that defendants had no demonstrated nor inferable knowledge of the condition complained of; that no intent to deceive has been shown.")

²³¹ *McManus v. Moise*, 691 N.Y.S.2d 166 (App. Div. 1999).

²³² *Id.*

²³³ See *id.* at 167.

revealed that the property had extensive structural damage due to termites.²³⁴ The purchase contract also included a rider which allowed the purchasers the option to receive a second termite inspection, and if the inspection revealed more than \$3,000 in damage to repair, the contract would be canceled.²³⁵ Under these facts, a New York appellate court upheld a trial court dismissal of the plaintiff's complaint and stated that it was the plaintiff's "own lack of diligence that is responsible for their current predicament."²³⁶

In addition to the standard coverages provided for carpet cleaning, window cleaning, and lawn treatments, the standard contract of OneGuard Home Warranties also contains coverage for a termite treatment for existing or pre-existing subterranean termites.²³⁷ However, the coverage is limited to subterranean termites and carpenter ants.²³⁸

As discussed earlier, while most home warranty contracts exclude coverage for damage due to pests, there are at least two home warranty companies that potentially provide for pest control.²³⁹ The standard contract of OneGuard Home Warranties provides coverage for a pest control treatment upon payment of the applicable service fee, which includes eradication of pests such as "ants, carpenter ants, roaches, crickets, spiders, ground beetles, earwigs, silverfish, millipedes, centipedes, pillbugs, sowbugs, [and] clover mites."²⁴⁰ However, the contract excludes "bed bugs, flying insects, ticks, fleas, German Roach infestations, [and] rats."²⁴¹

In addition, the sample contract of The Home Service Club also includes pest control coverage as a comprehensive coverage option.²⁴² The contract provides coverage for "[r]oaches; ants (except Fire, Pharaoh, and Carpenter varieties); Silverfish; Black Widow spiders; earwigs; Brown Recluse spiders; millipedes; mice - crickets; ground beetles; centipedes; pill bugs; sow bugs; [and] Clover Mites."²⁴³ The pest control coverage does not include "[t]ermites; fungus; mold; wood-boring beetles; [and] rats[.]" as well as any other unlisted

²³⁴ *See id.*

²³⁵ *See id.*

²³⁶ *See id.* at 168 (citing *Rodas v. Manitaras*, 552 N.Y.S.2d 618, 620 (N.Y. App. Div. 1990); *Bando v. Achenbaum*, 651 N.Y.S.2d 74, 76 (N.Y. App. Div. 1996) (citation omitted)).

²³⁷ *See* ONEGUARD HOME WARRANTIES, *supra* note 18, § F(17).

²³⁸ *See id.*

²³⁹ *See id.* §§ F(17), (18); HOME SERVICE CLUB, *supra* note 18, § E(24).

²⁴⁰ ONEGUARD HOME WARRANTIES, *supra* note 18, § F(18).

²⁴¹ *Id.*

²⁴² *See* HOME SERVICE CLUB, *supra* note 18, § E(24).

²⁴³ *Id.*

pests.²⁴⁴ There is an overall limitation of \$500 in pest control coverage per contract term.²⁴⁵

B. Ocean Coastline Property Exclusion

One of the challenges the insurance industry faces today is providing insurance coverage to coastal areas with the significant risk of hurricane exposure.²⁴⁶ The state of Florida is one market which faces peculiar challenges due to risk of hurricanes, and after the storms of the 2004-2005 hurricane season many private insurers went insolvent.²⁴⁷ Due to many private property insurers leaving the Florida market due to the risk of hurricane exposure, the Florida Legislature has established a state-run insurer (Citizen's Property Insurance Corporation) to provide windstorm and property insurance coverage as an insurer of last resort.²⁴⁸ Several other states, including Louisiana,²⁴⁹ Mississippi,²⁵⁰ Texas,²⁵¹ Alabama,²⁵² South

²⁴⁴ *Id.*

²⁴⁵ *See id.*

²⁴⁶ *See, e.g.,* Eliot Kleinberg, *Coastal Population Growth = Hurricane Exposure for Insurance Industry*, PALM BEACH POST (Apr. 2, 2015), <http://www.mypalmbeachpost.com/weather/hurricanes/coastal-population-growth-hurricane-exposure-for-insurance-industry/fZLeHX6cGCqdWOTOqIMrSL/>.

²⁴⁷ *See* Nancy Dahlberg, *Will Your Homeowner Insurance Protect You if the Big One Hits?*, MIAMI HERALD (Aug. 21, 2016), <http://www.miamiherald.com/news/business/biz-monday/article96929132.html>.

²⁴⁸ *See* FLA. STAT. §§ 627.351(6)(a)(1), (2) (2017) ("The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.").

²⁴⁹ *See* LA. STAT. ANN. § 22:2291 (2012) ("Therefore, the Louisiana Citizens Property Insurance Corporation, a nonprofit corporation, is hereinafter created, and such corporation shall operate insurance plans which shall function exclusively as residual market mechanisms to provide essential property insurance for residential and commercial property, solely for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market.").

²⁵⁰ *See* MISS. CODE ANN. § 83-34-3(2) (2017) (discussing the role of the Mississippi Windstorm Underwriting Association).

²⁵¹ *See* TEX. INS. CODE ANN. § 2210.001 (West 2009) ("The primary purpose of the Texas Windstorm Insurance Association is the provision of an adequate market for windstorm and hail insurance in the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and hail insurance may be obtained in certain designated portions of the seacoast territory of this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall: (1) function in such a manner as to not be a direct competitor in the private market; and (2) provide windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.").

²⁵² *See* ALA. CODE §§ 27-1-24(d), (e) (LexisNexis 2017) (discussing the role of the Alabama Insurance Underwriting Association).

Carolina,²⁵³ and North Carolina,²⁵⁴ have state-operated insurance plans or markets of last resort to provide property insurance coverage in the residual markets where private insurers have left.

At least one home warranty company has an exclusion in its standard contract for properties which are located near the coast.²⁵⁵ The sample contract of American Home Guardian states that “[c]overage does not apply to homes located within 3 miles of ocean coastline.”²⁵⁶ While obtaining private property insurance may be an issue for many residents along the southeast coast, it should be noted that the vast majority of home warranty companies do not include an exclusion for coastal properties.²⁵⁷

VII. CONCLUSION

Overall, there is quite a variation on the nature, scope and extent

²⁵³ See S.C. CODE ANN. § 38-75-330(A) (2017) (“There is created the South Carolina Wind and Hail Underwriting Association, an unincorporated association whose responsibilities, liability, and regulations are governed and defined by this article. The association shall function as a residual market mechanism to provide wind and hail insurance for residential and commercial property to applicants who are unable to procure this insurance in the coastal area.”).

²⁵⁴ See N.C. GEN. STAT. § 58-45-1(a) (2017) (“It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the beach and coastal areas of the State of North Carolina and that without such insurance the orderly growth and development of those areas would be severely impeded; that furthermore, adequate insurance upon property in the beach and coastal areas is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the beach and coastal areas, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the beach and coastal areas of North Carolina.”).

²⁵⁵ See AM. HOME GUARDIAN, *supra* note 12, ¶ 2.19.

²⁵⁶ See *id.*

²⁵⁷ Compare *id.* (excluding homes within 3 miles of the ocean), with AM. RESIDENTIAL WARRANTY, *supra* note 18, § III (providing several exclusions, but not excluding coastal properties); CHOICE HOME WARRANTY, *supra* note 18, § A(3) (providing several exclusions, but not excluding coastal properties); FIRST AM. HOME WARRANTY, *supra* note 18 (providing several exclusions, but not excluding coastal properties); HMS HOME WARRANTY, *supra* note 18, ¶ VI(1) (providing several exclusions, but not excluding coastal properties); HOME SECURITY AM., *supra* note 18, § A(2) (providing several exclusions, but not excluding coastal properties); HOME SERVICE CLUB, *supra* note 18, ¶ G(3) (providing several exclusions, but not excluding coastal properties); OLD REPUBLIC HOME PROTECTIONS, *supra* note 18, at 9 (providing several exclusions, but not excluding coastal properties); TOTALPROTECT HOME WARRANTY, *supra* note 18, 3 V(1) (providing several exclusions, but not excluding coastal properties).

of home warranty contractual provisions in the contracts of home warranty companies. The nature, scope and extent of provisions in a contract may even change from year to year. For instance, in 2014, American Home Shield changed its standard home warranty contracts which did not include common exclusions discussed earlier such as lack of maintenance, rust, corrosion, and undetectable pre-existing conditions.²⁵⁸

Similar to the case of insurance contracts,²⁵⁹ the meaning and enforceability of contractual provisions included within home warranty contracts have also been litigated.²⁶⁰ While most disputes that arise under a home warranty contract are smaller value claims, a number of class action lawsuits against home warranty companies have been filed on the basis of breach of contract and other grounds.²⁶¹ Future courts throughout the country are likely to see future litigation concerning the applicability and enforceability of home warranty contractual provisions.

While certain parts of the home buying process will likely take much attention, such as obtaining financing and passing through home inspections, consumers should not forget about the intricacies of a home warranty, if they obtain one, and should carefully read and

²⁵⁸ See *American Home Shield Launches New Real Estate Warranty Plans*, RISMEDIA, <http://rismedia.com/2014/10/16/american-home-shield-launches-new-real-estate-home-warranty-plans/#close> (last visited Nov. 21, 2017).

²⁵⁹ A number of commentators have published law review articles within the past three years in the area of insurance contract litigation. See Christopher C. French, *Understanding Insurance Policies as Noncontracts: An Alternative Approach to Drafting and Construing These Unique Financial Instruments*, 89 TEMP. L. REV. 535, 578 (2017); Daniel Schwarcz, *Coverage Information in Insurance Law*, 101 MINN. L. REV. 1457, 1459, 1527 (2017); Christopher Serkin, *Insuring Takings Claims*, 111 NW. U. L. REV. 75, 78–80 (2016); Jay M. Feinman, *The Regulation of Insurance Claims Practices*, 5 U.C. IRVINE L. REV. 1319, 1320 (2015); Leo P. Martinez, *The Restatement of the Law of Liability Insurance and the Duty to Settle*, 68 RUTGERS U. L. REV. 155, 156–157 (2015); Jeffrey W. Stempel, *Enhancing the Socially Instrumental Role of Insurance: The Opportunity and Challenge Presented by the ALI Restatement Position on Breach of the Duty to Defend*, 5 U.C. IRVINE L. REV. 587, 592 (2015); Ronald J. Gilson et al., *Text and Context: Contract Interpretation as Contract Design*, 100 CORNELL L. REV. 23, 28–29 (2014).

²⁶⁰ See, e.g., Louis Bolden, *Home Warranties are Falling Short, Central Florida Homeowners Say*, CLICKORLANDO.COM (May 20, 2017), <http://www.clickorlando.com/news/investigators/central-florida-consumers-say-home-warranties-arent-delivering-on-their-promises>.

²⁶¹ See, e.g., *Diaz v. First Am. Home Buyers Prot. Corp.*, 541 Fed. Appx. 773, 774 (9th Cir. 2013) (citations omitted); *In re First Am. Home Buyers Prot. Corp. Class Action Litig.*, 313 F.R.D. 578, 587 (S.D. Cal. 2016); *Carrera v. First Am. Home Buyers Prot. Co.*, No. 13-CV-01585, 2014 U.S. Dist. LEXIS 196755, at *6 (S.D. Cal. 2014) (citations omitted); *Colvin v. Am. Home Shield Corp.*, No. 2:12-CV-03008, 2014 U.S. Dist. LEXIS 193397, at *3–4 (W.D. Tenn. 2014) (citations omitted); *Campion v. Old Republic Home Prot. Co., Inc.*, 861 F. Supp. 2d 1139, 1142 (S.D. Cal. 2012) (citations omitted); *Kohl v. Am. Home Shield Corp.*, No. 11-CV-0700, 2011 U.S. Dist. LEXIS 94740, at *2 (S.D. Cal. 2011) (citations omitted); *Richardson v. Am. Home Shield of Tex., Inc.*, No. H-05-4029, 2006 U.S. Dist. LEXIS 31794, at *1 (S.D. Tex. 2006); *Hataishi v. First Am. Home Buyers Prot. Corp.*, 223 Cal. App. 4th 1454, 1457 (Cal. Ct. App. 2014).

analyze the contractual provisions of a home warranty contract.

APPENDIX I: HOME WARRANTY COMPANIES' SAMPLE CONTRACTS LISTING

1. **Allied Home Warranty.** *Available at:*
<https://www.alliedhomewarranty.com/alliedhomewarranty/CC1WarrantyOnePageBrochure?type=Current>
2. **American Home Guard.** *Available at:*
<https://www.americanhomeguard.com/termsandconditions>
3. **American Home Guardian.** *Available at:*
<http://www.ahghomewarranty.com/brochures/2009tx.pdf>
4. **American Home Shield.** *Available at:*
https://ahs.com/static-srvm/ahs/sample-contract.pdf?_ga=2.94872220.1866284913.1505846523-42195355.1505846523
5. **American Residential Warranty.** *Available at:*
http://americanresidentialwarranty.com/assets/images/TWG_T-C_Home_Service_Agreement8-15-15.pdf
6. **Assurant Solutions.** *Available at:*
<https://www.assurantsolutions.com/extended-warranty/what-you-get>
7. **Choice Home Warranty.** *Available at:*
http://www.choicehomewarranty.com/user_agreement.php
8. **First American Home Warranty.** *Available at:*
<http://coverage.firstam.com/images/samplecontracts/LL/LLTX.pdf>
9. **HMS Home Warranty.** *Available at:*
<https://www.hmsnational.com/landing-pages/hms-home-warranty-agreement>
10. **Home Security America.** *Available at:*
<http://www.onlinehsa.com/Images/Marketing/BHHSFR2015warrantybrochure.pdf>
11. **The Home Service Club.** *Available at:*
<https://www.hscwarranty.com/Documents/SampleContract/Version5/2017%20The%20Home%20Service%20Club%20TERMS%20AND%20CONDITIONS%20SAMPLE%20CONTRACT.pdf>

12. **Home Warranty of America.** *Available at:*
https://secure.hwahomewarranty.com/pdfs/DTC_NA_Sample_Coverage_Terms.pdf
13. **Old Republic Home Protection.** *Available at:*
<https://www.orhp.com/index.cfm?go=realEstatePros.viewPlanPDF&file=FL%5F5%5F1%5FBrochure%2Epdf>
14. **OneGuard Home Warranties.** *Available at:*
<https://common.oneguardhomewarranty.com/RealEstate/PlansAndPrices/TX>
15. **Secure Home Warranty.** *Available at:*
<https://securehomewarranty.com/terms-and-conditions.pdf>
16. **Select Home Warranty.** *Available at:*
<https://selecthomewarranty.com/termsconditions>
17. **TotalProtect Home Warranty.** *Available at:*
https://deals.totalprotect.com/Global/FileLib/SampleContract/TotalProtect_DTC.pdf