



Florida Department of Agriculture and Consumer Services
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MEMORANDUM NO 753

TO: All Pest Control Business licensees and other interested parties

FROM: *for* T. Wayne Gale, Chief *TWG*
Bureau of Entomology and Pest Control

DATE: April 23, 2003

SUBJECT: Changes to Section 482.227 Guarantees and warranties
Effective October 1, 2003

This memorandum is being distributed to advise all licensees of the changes that occurred to Section 482.227, Florida Statutes, concerning guarantees and warranties that will take effect on October 1, 2003.

The language of Section 482.227 was changed substantially by the 2002 Florida Legislature. Part of that substantial change goes into effect October 1, 2003. The current language, and the language that goes into effect October 1, 2003 is provided below. Licensees should review their wood destroying organisms contracts to ensure that they will be in compliance with this section.

Licensees should note that, in contracts issued before October 1, 2003, the words "full" and "unlimited" must be used together with the term "guarantee" or "warranty" if the licensee promises to repair property damaged by termites, whereas, after October 1, 2003 it will be illegal to use the terms "full" or "unlimited" in conjunction with the terms "guarantee" or "warranty" in a contract that promises to repair termite damage, if there are any limitations or exclusions included as terms of the contract.

Please review your wood destroying organisms contracts to ensure compliance with Chapter 482, F.S.

Current language (in effect since July 1, 2002)

482.227 Guarantees and warranties.--

(1) The Legislature finds that the terms "guarantee" and "warranty" are common in contracts for the treatment of wood-destroying organisms and intends to clarify that the purpose of this section is to assure that the consumer understands whether a contract contains a "guarantee" or "warranty" for repair and retreatment or for retreatment only or contains no guarantee. Unless the contract for treatment of wood-destroying organisms indicates conspicuously on the front page whether the guarantee or warranty is for repair and retreatment or for retreatment only or that no guaranty or warranty is offered, the term "guarantee" or "warranty" may be used in a contract for treatment of wood-destroying organisms only in the following circumstances:



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(a) If the licensee promises to repair any property damaged by wood-destroying organisms during a specified period after the treatment, the term "full" or "unlimited" must be used together with the term "guarantee" or "warranty" wherever that term occurs other than in a disclaimer under subsection (2).

(b) If the licensee promises only to provide additional treatment if infestation occurs during a specified period after treatment, the term "limited" must be used with the term "guarantee" or "warranty" wherever that term occurs other than in a disclaimer under subsection (2).

→ (c) If the licensee does not promise to repair the property or provide additional treatment, the term "guarantee" or "warranty" may not be used except in a disclaimer under subsection (2).

(2) A disclaimer indicating that no guarantee or warranty is offered under the contract must appear in conspicuous type on the face of the contract.

History.--ss. 13, 15, ch. 82-229; ss. 53, 59, ch. 92-203; ss. 20, 21, ch. 2002-295.

¹**Note.**--Section 21, ch. 2002-295, amended s. 482.227, effective October 1, 2003, to read:

Language that goes into effect and applicable to contracts issued after October 1, 2003.

482.227 Guarantees and warranties; contracts executed after October 1, 2003.--

(1) The Legislature finds that the terms "guarantee" and "warranty" are common in contracts for the treatment of wood-destroying organisms. The purpose of this section is to assure that contract language describing a "guarantee" or "warranty" is clear and easily identifiable for the protection of consumers and licensees. Therefore the following provisions shall apply to each new contract for the treatment of wood-destroying organisms issued by the licensee and signed by the customer after October 1, 2003.

(2) Any contract for treatment of wood-destroying organisms must specify on the first page in bold print that it is offered for repair and retreatment or for retreatment only or that no warranty or guarantee is offered.

(3) The contract for treatment of wood-destroying organisms must specify on the first page in bold print whether there are any disclaimers, limitations, conditions, or exclusions on the licensee's obligation to repair or re-treat the property. Contract sections describing disclaimers, limitations, conditions, or exclusions applicable to the licensee's obligation to repair or re-treat the property must contain headings in bold print.

(4) If a contract for treatment of wood-destroying organisms contains a disclaimer, limitation, condition, or exclusion applicable to the licensee's obligation to repair or re-treat the property, the term "full" or "unlimited" may not be used together with the term "guarantee" or "warranty."



FACTS FROM DACS

If you operate in the category of "Termites and other wood-destroying organisms" (WDO), this article contains important information that you need to be aware of. By the time you read this article, you should have received Memorandum No. 753, dated April 23, 2003, mailed to you by the Department. The memorandum pertains to changes in Chapter 482, Florida Statutes that go into effect on October 1, 2003. The changes relate directly to WDO contractual requirements. In many and perhaps most cases, it will be necessary for pest control licensees to draw up new contracts to begin use with on October 1.

It has become apparent over the past few months that many pest management professionals performing termite work were completely unaware that these significant changes were coming up soon. It will be illegal after October 1, to execute a written contract with a new customer that is not in compliance with Section 482.227, Florida Statutes. These changes were actually passed into law by the 2002 Legislature.

The Legislature determined the purpose of the new section is to assure that contract language describing a "guarantee" or "warranty" is clear and easily identifiable for the protection of consumers and licensees.

Current law requires that when the term "guarantee" or "warranty" is used in the contract it must be prefaced by the term "full" or "unlimited" if the licensee promises to repair property damaged by WDO's. If the licensee promises to perform retreatment only, then the term "guarantee" or "warranty" must be prefaced by the term "limited". The law also requires that if no guarantee or warranty is offered then a disclaimer to that effect must appear in conspicuous type on the face of the contract.

Now, let's look at what goes into effect on October 1, 2003, and applies to each new WDO contract that you issue.

- Must state on the first page in bold print that coverage is

for either (1) repair and retreatment or (2) retreatment only or (3) no warranty or no guarantee.

- Must state on the first page in bold print whether the contract contains any disclaimers, limitations, conditions, or exclusions as to the licensee being responsible for repairs or retreatment.
- Sections of the contract that describe the disclaimer, limitation, condition or exclusion must be set forth under a heading that is in bold print. This does not have to be on the first page of the contract.
- If the contract contains a disclaimer, limitation, condition, or exclusion pertaining to the firm's obligation to repair or retreat (which most contracts do) then you may not use the term "full" or "unlimited" with the term "guarantee" or "warranty". For example, a repair contract with any level of monetary cap is still a limited guarantee. If there is a deductible of any amount, this would also be considered a limited guarantee. If there is language pertaining to wood to ground contact or moisture problems which release the firm from an obligation to repair or retreat, it would be considered a limited guarantee.

Remember, the law does not require you to use the term "guarantee" or "warranty" in your WDO contracts. However, if you do, then the requirements of law apply. Some pest control firms prefer to use terms i.e., "Service Plan" or "Service Agreement" instead.

I would not be surprised that after October 1, we see very few new contracts that offer a "Full" or "Unlimited" guarantee.

As always, please do not hesitate to contact our Bureau Headquarters in Tallahassee or call me personally at 386-418-5500 or (e-mail: helsetp@doacs.state.fl.us) if you have any questions or concerns about these changes.

P.S. I forgot to mention that Department inspectors would be reviewing WDO contracts for the required changes subsequent to October 1.