



# UNDERSTANDING YOUR LIMITED WARRANTY



RESIDENTIAL  
WARRANTY PROGRAM  
[www.luxwarranty.com](http://www.luxwarranty.com)





## BRIEF OVERVIEW

A frank explanation so you can best protect your interest. *Not part of the actual coverage or warranty certificate.*

### Canadian warranty programs provide homeowner protection in 5 main areas.

- #1 Insuring builders possess the competence to build homes.
- #2 Define a minimum warranty standard for defect repairs. (Similar to the National building Code , the warranty performance standards are common to the entire industry).
- #3 Provide a dispute resolution service/mediator. This service is primarily an inspector insuring the industry warranty performance standards for any particular circumstance is properly defined.
- #4 Protecting against builder defaults. During the first 12 months the builder is responsible for warranty servicing at least to the minimum standards on latent defects. If the builder cannot or refuses to complete repairs in an appropriate time the warranty program will do so. "Note subject to properly filing for a claim to the warranty program during the first 373 days."
- #5 **Major Structural Defects (MSD)**  
What is known by industry as Major Structural Defect coverage is protection to the home against Severe or Major damage to the structural components or damage to structural components that could lead to structural failure. Although not numerous they are common.

## WHAT'S NOT COVERED? Industry warranty limitations to keep in mind

- #1 **Patent defects** - contractual items, (no warranty) they are imperfections visible at possession that you either except or make arrangements for.
- #2 **First year** industry warranty performance standards have **limitations** and can be found at [Luxwarranty.com](http://Luxwarranty.com)
- #3 **After year 1.** "Major Structural Defects" warranty will apply, "**leaks are not covered**" the coverage is meant for severe structural problems and not for foundation wall leaks, roof leaks, etc.

## UNIQUE TO LUX Additional consumer benefits & coverage

- "**Leaks can be covered**" : Foundation wall **water penetration coverage (5 to 10 yrs)** is available with the use of an approved foundation wall drainage board. Ask your builder, or call the Lux office.
- **Extended first year warranty** type coverage's for 1 to 5 additional years is available directly to homeowners, from Lux.
- Canada's 1st consumer help line. For prompt, friendly service.
- Free homeowner inspection assistance and technical support.
- Canada's 1st same day and online registrations and transfers.
- Free consumer home claim inspections

## HOW TO PROCEED

### First year

For defects and service 1st contact your builder immediately for water penetration or defects that can cause additional damage. For typical items like significant nail pops etc. request your builder provide you with an appointment (often near the end of the 1st yr term). Note if the matter does not get resolved, you must formally advise Lux during the first 373 days.

### Anytime

We are here to assist you with technical questions, clarification on industry standards etc. During the first year if you cannot obtain the service required from your builder simply send us a help request on our homeowner helpline at [luxwarranty.com](http://luxwarranty.com). You will not be charged for any inspections that may be required.

### After year one

Uniquely, you will not be required to hire an engineer for a major structural defect report. You are not charged for a qualified inspection service. Simply contact Lux through the help line.

## “KEEP A EYE ON”

### Moisture

Balance is key. From summer to winter Atlantic Canada has large swings in moisture levels. Floors and other wood elements need to have a constant moisture level between 40 - 65%. A \$10. hygrometer will allow you to monitor moisture levels. Your (HRV) ventilator provides outside air to the home, this air could be too dry in winter or too moist in the summer. Videos on such items will soon be available at luxwarranty.com.

### Insure you have a warranty

You must first obtain a warranty certificate from the warranty program to have warranty coverage. Insure yours is in place within 30 days of your home possession.

## LIMITED WARRANTY - TERMS AND CONDITIONS

In each instance, the Builder or Lux responsibilities for warranty coverage under this program are subject to the following:

- Prior to a claim Lux must have issued a Lux warranty Certificate, and the Homeowner must have provided proper notice as outlined in the Lux Limited Warranty Terms and Conditions.
  - In the event of a warranty claim, the decision of whether to repair or replace a defective item is solely the Builder's or Lux, as applicable.
  - Financial Liability. The maximum aggregate liability to Lux is for the Latent Defect Warranty and the Major Structural Defect Warranty only and shall not exceed a total of \$35,000. per home or condo. The total aggregated amount for any condo building is \$35,000. per unit up to \$500,000. per building and \$35,000 for common areas.
  - In the first year, if the builder does not fulfill its obligations under this agreement, the warranty program warrantor will be responsible for the builder's obligations of latent defects subject to a one time deductible of \$100. In years 2 to expiry the program warrantor will be responsible for Major Structural Defects as defined by the warranty program, subject to a deductible of \$300 per claim. Each instance is subject to the warranty program obtaining proper notice of the defects as outlined in the Lux Limited Warranty Terms and Conditions. The deductibles may be required to be paid in advance.
  - Action taken to repair defects will not extend the periods of coverage specified in the Agreement.
  - Prior to the Builder or the warranty Program Warrantor repairing or replacing a defective item, the Homeowner may be required to sign and deliver to the Builder or Lux, as the case may be, a full and unconditional release, in recordable form, of all legal obligations with respect to the defect and any conditions arising from the defect. However, the repairs or replacement item will continue to be covered by the Agreement.
  - In the event the Builder or the Program Warrantor repairs or replaces, any item covered by the Agreement, the Builder and the Program Warrantor shall have subrogation rights to all the Homeowner's rights of recovery therefore against any person or entity (including the Builder if its obligations hereunder have been performed by Lux) and the Homeowner agrees to execute and deliver any and all instruments and papers and to take any and all other actions necessary to secure such rights, including, but not limited to, assignment of the proceeds of any other insurance or warranties to the Builder or Lux, as appropriate. The Homeowner shall do nothing to prejudice such rights of subjugation.
  - In the event that the Homeowner, Builder and or the Program Warrantor are in the process of a dispute resolution and the Builder fails to make repairs ordered by Lux, Lux will undertake to cause the related warranty obligation to be resolved as set in the program to be immediately repaired. As all decisions of Lux are binding on all parties, Lux is to be fully compensated for all work performed with respect to said dispute by the culpable party. This warranty agreement is an important document, as such, Lux advises you to review its contents carefully and consult with a professional if required.
  - If a Major Structural Defect arises in the Homeowners Home during years two through expiry of the Agreement, Lux at its sole option will repair or replace the defective item. The responsibilities of Lux as set forth herein, will be limited to such actions as are necessary to restore load-bearing capability to the load-bearing component of the Home and to repair those elements of the Home damaged by the Major Structural Defect which make the Home physically unsafe.
- (1)** Major structural defects are defined as defects resulting in failure of the load bearing portions of the home, which virtually affects the use of the home for residential purposes. Load bearing components include: piles, footings, foundation walls, grade beams, tele-posts, bearing walls, floor joists, posts, beams and roof trusses.
- (2)** Examples of non-load-bearing elements which will be deemed not to have Major Structural Defect potential are, (this list is not exhaustive): Non-load-bearing partitions and walls, wall tile or paper, plaster, laths, or dry wall, flooring and sub-flooring material, brick, stucco, stone, or veneer, exterior siding, patio decks, roof shingles, sheathing and tar paper, heating, cooling, ventilating, plumbing, electrical and mechanical systems, appliances, fixtures, or items of equipment and doors, trim, concrete shrinkage cracks, cabinets, hardware, insulation, paint and stains, drainage systems, water penetration or any kind of damage caused by water penetration.

## HOW TO MAKE A WARRANTY CLAIM

- a.** Carefully read and review the agreement and the performance standards to determine whether the defect is covered.
- b.** Year one: If you have a claim, which you believe is covered by this agreement and it arises during the warranty period as defined by this agreement, written notice of a defect covered during year one must be received by the Builder during the first year and no later than seven (7) calendar days following the expiration of the applicable warranty period. If notice to the Builder does not result in satisfaction within 30 days, written notice must be given to Lux as warrantor, you must send a notice to Lux, which is clear and describes the defect in detail along with the written notice provided to the builder and proof of delivery by registered mail. The notice to Lux should describe each defect in detail and should be forwarded by Registered Mail.
- c.** Conciliation and Arbitration: If the dispute cannot be successfully resolved between the Builder and homeowner, a third party conciliation/arbitration service shall be completed by Lux and delivered to the Homeowner and Builder as a means of dispute resolution between the respective parties. The findings of said conciliation/arbitration shall be binding on all parties.
- d.** Claims Contact: The Homeowner shall forward all claims in writing to the Lux Atlantic office at: Claims Department Lux Atlantic P.O. Box 27046 Dieppe, New Brunswick, E1A 6V3

## INSPECTION AND MEDIATION

During the first thirty (30) days following Lux's receipt of proper notice of a defect or claim, Lux will review and mediate the claim by communicating with the Builder, the Homeowner and any other individuals or entities who Lux believes possesses relevant information. Lux will issue a binding conciliation report to both the builder and homeowner.

- Lux, at any time following the receipt of proper notice of a claim against any of the coverage listed in this Agreement, may schedule an inspection of the defect or an appraisal acceptable to Lux. The homeowner must provide Lux, the Builder, or if applicable, the Lux consultants with reasonable weekday access during normal Business Hours in order to perform its obligations. Failure by the Homeowner to provide such access to the Builder or Lux will relieve the Builder or Lux of its obligations under this Agreement.

- Where a claim is filed that cannot be observed or determined under normal conditions, it is the Homeowner's responsibility to substantiate that the condition does exist. Any cost involved shall be paid by the Homeowner, and if properly substantiated, reimbursement shall be made by your Builder or Lux to a maximum of \$300. dollars.

- Remedial Action. When a defect has been identified, Lux will ensure that it is corrected by the Builder or themselves. Cash settlements would be contemplated only under very special circumstances. A decision in favor of a cash settlement may occur after negotiation with the homeowner and the approved lender.

## NOTICE OF MAJOR STRUCTURAL DEFECT CLAIM ARISING IN YEARS 2 THROUGH EXPIRY

If you have a claim as a result of a Major Structural Defect occurring during the second year through the expiry date of this Agreement, you must notify Lux. Lux will investigate the claim. All such claims must be presented in writing to: Lux Atlantic, P.O. Box 27046, Dieppe, New Brunswick, E1A 6V3, by Registered Mail, Return Receipt Requested within a reasonable time after the Major Structural Defect arises but in no event later than Seven (7) days after the expiration of the term of this Agreement. Claims received after that period will not be valid. Any such notice should describe the defect in as much detail as possible.

## CONTENT AND TIMING OF NOTICE TO LUX

Please note that Lux must receive a written notice of claim within 7 days after the expiration of the applicable warranty period. For example, if the defect is one which is covered under the Builder one year warranty period, notice must be received by Lux within seven (7) days of the end of the first year, or the notice will not be valid. Notice to the Builder does not constitute notice to Lux, nor will it be deemed to extend applicable coverage periods. This notice must contain the following information:

- The enrolment number and possession date
- The Builders name and address
- Your name, address, home and work phone number
- A specific description of the defect(s); and a copy of your written notice to the Builder.

## 30 DAY RESPONSE

You have an obligation to cooperate with Lux's inspection and investigation of your claim. From time to time, Lux may request information from you regarding your claim, including clarifications of hold back funds. Failure by you or your appointed representative to respond with the requested information within 30 days of the date of request shall result in the closing of your claim file.

**Rental Units:** Rental Units may only qualify for Major Structural Defect Coverage.

**Warranty Transferability:** The Warranties contained in this agreement shall automatically extend to the future registered purchasers of this home subject to any conditions applied by the original or subsequent owners.

## BUILDER'S RESPONSIBILITY AND PURCHASER'S RIGHTS:

If a latent defect in the Home arises due to nonconformity with the warranty standards during the first year of this Agreement the Builder will repair or replace the defective item. If a Major Structural Defect arises in a Home during the first year of this agreement, the Builder will repair or replace the defective item, limited to such actions as are necessary to restore load-bearing capability to the load-bearing components of a Home and to repair those elements of a Home damaged by the Major Structural Defect which make the Home physically unsafe.

### **Latent Defects in Workmanship and Defective Material:**

Latent Defects are defined as defects or imperfections which manifest themselves after possession or are not visible at the time of possession even with a reasonably and careful inspection.

### **Patent defects:**

Are defects or imperfections in the home which could be revealed before possession by way of a reasonable inspection. These items are considered contractual matters, not warranty items.

- **The following exceptions and exclusions apply to defects not covered under this Agreement:** Failure of the Builder to complete: construction, registration of the warranty or installation of the Home on or before the Effective Date or damages arising from such failure. An incomplete item is not considered a warranty defect hereunder, although a Builder is otherwise obligated to complete such items under contract to the homeowner.

Damage to property, chattels or bodily injury.

- Any act of terrorism or defect which does not result in actual physical damage.
- All consequential damages including, but not limited to, transportation, food, moving, storage, or other incidental expenses related to relocation during repairs.
- Any claim reported after an unreasonable delay, not reported to the builder for any reason or later than seven (7) days after the expiration of the applicable warranty period or any claim without proper notification to Lux.
- Loss or damage caused to a Home directly or indirectly by insects, birds, vermin, rodents, or animals.

- Defect which arises while a Home is used for non residential purposes, including renting, leasing etc. Any deficiencies in or damage caused by material or work supplied by anyone other than the Builder or its employees, agents, or subcontractors.
- Damages or losses not caused by a defect in construction of a Home by a builder or its employees, agents, or subcontractors, but resulting instead from acts or omissions of the purchaser, his agents, employees, invitees, accidents, riots, civil commotion, nuclear hazards, acts of God or nature, fire, explosion, blasting, smoke, water escape, windstorms, hail, lightning, falling trees, aircraft, vehicles, flood, mud slides, sinkholes, faults, crevices, earthquake, including land shock waves, tremors or volcanic eruptions.
- Loss or damage resulting from a Purchaser's failure - control of ice damming, excessive ice or snow accumulation, to perform routine maintenance, maintaining proper moisture levels in the home, landscape ground slopes to ensure surface water migrates away from the home and conducting periodic visual inspections of the home which would reveal water penetration issues.
- Loss or damage resulting from the Purchaser's failure to minimize or prevent such damage in a timely manner.
- Damage caused by soil movement, including subsidence of land around the Home or along the utility lines, expansion or lateral movement of the soil, to any Home or to any other Home in the surrounding area.
- Loss or damage to or resulting from defects in outbuildings including, but not limited to detached carports, swimming pools and any other recreational facilities, driveways, walkways, wells and pumps, patios, boundary and retaining walls, fences, landscaping (including sod, shrubs, trees and planting) French drains, septic systems, off-site improvements, or any other improvement not a part of a Home itself . A fence, utility line or similar union shall not cause an outbuilding to be considered attached.
- Loss or damage caused by, defects in any part of the foundation or the building, from the attachment of components, such as vents, fascia, skylights, or other such materials, accessories or machinery, the attachment of which is not made known to and approved by a Builder in writing or any other cause beyond the reasonable control of a Builder.
- Loss or damage to products or materials which are not supplied by the Builder except to the extent of the guarantee given by the actual Builder.
- Loss or damage to used materials or to materials repaired or replaced under this Agreement except to the extent of the remainder of the applicable warranty period (to repaired, repainted, replaced or used materials).
- Loss or damage to driveways, basement floors, garage floors, patios, sidewalks, decks, retaining walls, and all concrete constructions which are not load bearing.
- Loss or damage to any tires, axles, wheels, tie down straps, anchors, or any defects that occur to skirting, installation or anchoring device affixed to the foundation, from the structure of a Home.
- Loss or damage caused by condensation damage resulting from improper ground moisture retarder protection, or ventilation.
- Loss or any resultant damage caused by the failure of any appliance, system, or structure which may be covered under any Purchasers' insurance policy.
- Damage which would not have occurred, in whole or in part, but for the actual or alleged exposure to, existence of, or presence of, any fungi or bacteria on or within a building or structure, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such damage.
- Landscaping, septic beds, water sheds, foundation or any other drainage systems, tile beds.

Water Penetration of any kind after the first year of possession.

Loss or damage to any structural components not caused by the failure or defect of a structural load-bearing element of the home after the first year of possession.

- The Builder does not provide any warranty for work done or any materials provided by the Retailer, any installer or contractor or any other person, except where it has expressly so stated.