

Smart Spending

Did you ever buy a product that didn't work or was defective, or that somehow did not live up to the dealer's promises or your expectations?

New Brunswick's *Consumer Product Warranty and Liability Act (CPWALA)* gives you rights as a consumer. *CPWALA* applies to any consumer product supplied by someone who deals in products of that kind – for example, a coffee table sold by a furniture retailer. It does not apply, however, to private sales, including yard sales, classified ads or buying from a friend or neighbour.

When you buy a product in New Brunswick, the distributor **makes an important promise to stand behind the product. It's called a warranty***.



Consumer product: Any tangible personal property, new or used, of a kind that is commonly used for personal, family or household purposes. Examples: used car, exhaust system in a used car, heat pump, kitchen appliances, clothing, custom drapes, even a pet hamster.

Distributor: Person who supplies consumer products as part of his regular business, including, but not limited to a producer, processor, manufacturer, importer, wholesaler, retailer or dealer. Everyone in the chain of distribution is equally responsible to the consumer.

Your rights are based on two types of warranties:

Express warranties: Express warranties are the promises or statements made by a distributor that you rely on when making your purchase decision. These promises or statements can be verbal or written in contracts, or written on product packaging, signs or other accompanying product documents.

Tip: It's always a good idea to get any verbal promises in writing. If a dispute arises, it may be easier to prove a written statement.

Implied warranties: They cover title, quality and fitness for purpose. They apply in every case regardless of whether the distributor promises or says anything. The distributor is not normally responsible for defects that are known to you or disclosed to you before the contract is made. If you are purchasing a used product, and have examined the product before purchase, the distributor would not be responsible for any defects that your examination should have revealed.

When you buy a product from a distributor, you can assume that:

- The distributor has the right to sell the product and you can own the product without a third party making a claim on it, unless you knew about the claim before the contract was made.
- The product you buy will comply with health, safety and quality standards.
- The product is fit for its normal use or purpose, taking into account the distributor's description.
- The product is fit for any special use or purpose that you make known to the distributor before you buy. You can rely on the distributor's skill or judgment.
- The product is new and unused, unless the distributor states that it is used.
- The product does what it is supposed to do. For example, a steak knife will cut steak.
- The goods and any of its parts will be **reasonably** durable. Circumstances that should be considered when determining reasonable durability include:
 - type of product
 - new or used
 - use as contemplated by buyer or distributor at time of sale
 - actual use
 - proper maintenance

Your rights are based on a reasonable expectation of a product's durability. For example, a two-year-old car that has been regularly maintained is reasonably expected to work as intended. In comparison, a 12-year-old car that hasn't had an oil change in several years should not be expected to be in perfect condition.



Consumer complaints

I'm not happy with the product... now what do I do?

CPWALA protects consumers against goods that fall short of reasonable expectations and is enforced through the courts. A judge ultimately decides how the Act should be applied in each case.

As a consumer, you have two options:

- Negotiate a resolution with the distributor.
- Take the distributor to court (typically [small claims court](#) for matters up to \$20,000).

Remedies

If you are unhappy with a product, you can pursue these typical remedies with the distributor:

- repair
- replace
- rejection and refund*



* This option is available in some cases of a major breach of warranty. For example, if you buy a new car and the speaker doesn't work, you likely won't be able to reject the product and get a refund. But if that same new car's brakes failed during a drive on the highway, it may be considered a major breach of warranty and you may be entitled to reject the product and get a refund.

The consumer must give a distributor a reasonable opportunity to correct a breach of warranty unless the breach is major or if providing the opportunity to correct would cause the consumer to suffer significant inconvenience. If the distributor refuses or is unable to correct the problem in a reasonable time, consumers may be able to recover the cost of damages and other expenses related to the breach of warranty, such as the cost of returning the product to a repair shop or the cost of having the damages repaired by another party.

Making a complaint

CPWALA only applies to the purchase of consumer products, but you can use the tips below to make a complaint about any product or service that fell short of your expectations.

- **Don't wait:** Bring the issue to the distributor's attention as soon as possible. It is much easier to return a product within the return period set by the distributor's return policy. Always be sure to check the return policy before you buy.
- **Explain the problem:** Tell the distributor or service provider why you are not satisfied with the product or service.
- **Keep records (and include details in your complaint):** Keep all receipts and make a note of any details relevant to your complaint, such as:
 - receipt of purchase
 - receipts for repairs
 - the product's serial number
 - account numbers
 - the date the issue was discovered
 - dates of inquiries made to the retailer
 - correspondence with the retailer or service provider
 - photographs, etc.
- **Give the distributor a chance to solve the problem:** If your issue cannot be resolved by the distributor, you may need to escalate your complaint to their head office.
- **Be calm and respectful:** Making a complaint can be frustrating. Raising your voice, insulting the distributor and being aggressive will make it difficult to communicate the problem and focus on a solution.
- **Always have a solution:** Ask specifically for what you want. Do you want to return the product? Or do you want a discount for services performed?
- **Put it in writing:** Writing a complaint letter provides a record of your complaint. Use our sample complaint letter on the next page to write your own.

Sample complaint letter:

[Your street address]
[Your city, province or territory, postal code]
[Your email address]

[Date]

[Name of contact person, if available]
[Title, if available]
[Company name]
[Street address]
[City, province or territory, postal code]

Dear [Contact person]

Re: [Account number]

On [date], I purchased [name of the product and/or service]. I am unhappy with [my purchase/this service] because [detail the problem and include key dates, such as when the problem was discovered and any past inquiries or service requests made]. Please find enclosed all relevant records to support this claim. [Enclose copies of any record that supports your claim, such as photographs; past correspondence with the retailer or service provider; receipts of purchase; and receipts for repairs.]

To resolve this problem, I am requesting [detail the solution you are seeking, for example: refund, replacement, discount, repair, etc.].

Please provide a response to my request within 10 business days. I can be contacted at the above address or by telephone at [your phone #]. I trust that you will honour the solution I have requested.

Sincerely,

[Your signature]
[Your name]

Enclosure(s): [List attached documents and photographs]



Exchanges, returns and refunds

Many of us assume that we have the right to return a product if we change our mind within 30 days, but that's a myth. In New Brunswick, distributors are not required to offer refunds, returns or exchanges if a consumer changes their mind. Distributors have the right to set their own return and exchange policies, decide how long a consumer has to return a product, and whether the consumer's refund will be given in cash or a store credit.

Before making a purchase, ask the distributor what their exchange policy is and be sure to receive a copy of the policy when making a purchase. The return policy can usually be found on the back of your receipt.

Tip: Receipts fade quickly. Photocopy or take a picture of your receipt!