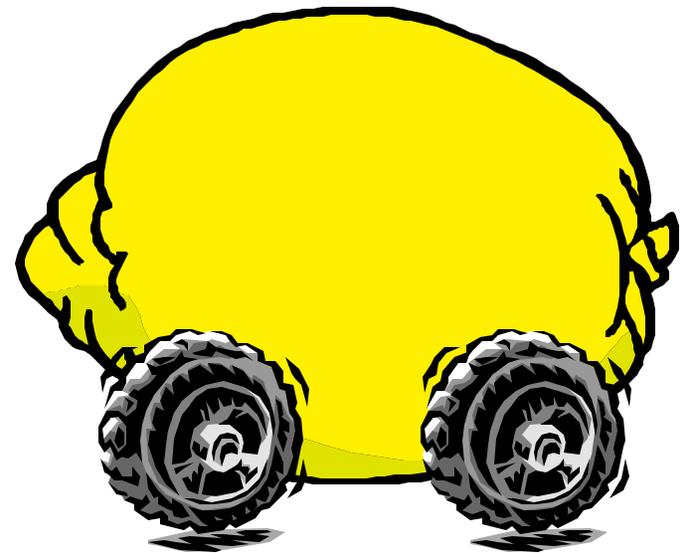


A Guide to New York State's Lemon Law



**NYS Consumer Protection Board
5 Empire State Plaza
Suite 2101
Albany, New York 12223-1556**

1-800-697-1220

www.consumer.state.ny.us

**New York State
Consumer Protection Board**

George E. Pataki, Governor

The Lemon Owner's Manual

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New York State Consumer Protection Board

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The Used Lemon Owner's Manual

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Updated 1987, 1989, 1993, 2000

Note: This booklet is current as of the date of publication and is meant only as general information for consumers on this topic. Legal advice or the services of an attorney may be necessary.

Lemon Chronology

Date	Mileage	Problem/symptom	Repair/replacement made

Notes

Dear fellow New Yorker:

In our mobile society, having access to a dependable vehicle is a critical need for many consumers. But what happens if the new or used car you purchased turns out to be a problem-prone vehicle that needs repair again and again?

Fortunately, New York State has a “Lemon Law” covering both new and used vehicles. New York State’s Consumer Protection Board wants to help you understand your rights and responsibilities under the Lemon Law, and arm you with the strategies you may need to obtain a fair resolution.

Precisely which strategy is the right one for you depends on a number of factors, including how quickly the vehicle’s problems become obvious, whether you want to let the dealer correct them, and whether you want to keep the vehicle.

As Governor, I want to ensure that New York’s consumers find fairness whenever they enter the marketplace, regardless of whether you purchase smaller-priced items or make a much more expensive purchase - such as an automobile. This guide will provide you with valuable information on New York’s New Car Lemon Law and Used Car Lemon Law.

To further help you, the New York State Consumer Protection Board operates a telephone Consumer Hotline. You can contact the agency toll-free by dialing 1-800-697-1220.

I hope you find this information useful, and wish you the best in resolving any consumer problems you may have.

Sincerely,

Governor George E. Pataki

TABLE OF CONTENTS

The New Car Lemon Owner's Manual

Keeping Records	5
Routing Your Complaint.....	5
Strategies	6
The New Car Lemon Law.....	6
Qualifications	7
Definitions	8
Remedies	9
Process to Follow.....	9
Arbitration	10
Revoking Acceptance.....	11
Rejecting the Lemon	12
Suing for Damages.....	12

The Used Car Lemon Owner's Manual

Legal Rights of Used Vehicle Buyers.....	13
Qualifications	13
Warranty Provided.....	14
What the Dealer Should Do.....	15
The Warranty of Fitness	15
Advertisements and Oral Statements	17
Odometer.....	17
Minors.....	18
The Contract.....	18
Buyer's Guide	18
Vindicating Your Rights.....	19
The Department of Motor Vehicles	19
Other Agencies and Organizations	19
Arbitration	20

Additional Lemon Law Information

Getting Legal Advice	21
Legal Strategies	21
Rejection and Revocation of Acceptance	21
Suing for Damages.....	21
Conclusion.....	23
Useful Addresses	24
Manufacturer's Complaint Offices	25
Automotive Consumer Action Programs.....	30
Better Business Bureau.....	30
Lemon Chronology	32

Lemon Chronology

Date	Mileage	Problem/symptom	Repair/replacement made

Lemon Chronology

Date	Mileage	Problem/symptom	Repair/replacement made

THE NEW CAR LEMON OWNER'S MANUAL

Keeping Records

Regardless of whether your automotive headache involves a “new” or “used” (or “pre-owned”) vehicle, resolving Lemon Law complaints can be accomplished much more easily if a consumer has maintained records. Here is a checklist of various records you should maintain:

1. A copy of the bill of sale, contract, and warranty;
2. Signed work orders for routine servicing or repair;
3. Copies of all correspondence to or from the dealer, manufacturer's factory service representative, insurance agency or finance company and consumer complaint agency (always send letters by first class certified mail to protect yourself and your investment);
4. Notes on your conversations with the dealer, mechanic or factory service representative (include the date, name of the persons you spoke with and any promises or agreements made);
5. Keep a list of the general maintenance work that you perform, like oil changes, tire rotations, etc.; and
6. Keep a list of the vehicle's defects and the date and mileage they became apparent (to help you we have provided a place for you to record the repair chronology on pages 32-34 of this guide).

Routing Your Complaint

Your first step in resolving your complaint should be to talk to the dealer. Contact the dealer as soon as a problem becomes apparent and see if you can work out a satisfactory solution.

Notes

If your problem involves a new vehicle, you should review the terms of the manufacturer's written warranty after you receive the dealer's assessment of the problem. Every new automobile comes with a manufacturer's warranty explaining your rights and the manufacturer's duties regarding repairs.

The warranty gives certain guarantees for a limited period of time. State and federal law also provide you with an implied warranty which gives you the right to a safe automobile.

If you are not satisfied after talking with the dealer, you should contact the manufacturer's closest regional office. Contact information for each of the major auto manufacturers begins on page 25 of this guide if you wish to obtain additional information or file a complaint.

Strategies

If the vehicle remains defective after you have complained to the dealer and the manufacturer, you still have several options provided you satisfy certain legal requirements. Strategy One is using the Lemon Law. Strategy Two is arbitration, a less expensive and faster route. Strategy Three is revoking acceptance - essentially, obtaining a refund. Strategy Four is rejecting the lemon - or returning the vehicle to the seller. Lastly, Strategy Five is suing for damages.

In any case, it is possible that you may end up in court - either with you suing the dealer or manufacturer, or the dealer or financing agency suing you for the payments due (if you have defaulted). You may wish to seek advice from an attorney before you begin any strategy.

The New Car Lemon Law

In New York State, a consumer who buys or leases a new vehicle from a dealer or certain auctions may find relief through the New Car Lemon Law (NY General Business Law §198-a). Under the New Car Lemon Law, if a new vehicle does not conform to all the terms in its express warranty or the defect or condition substantially

Automotive Consumer Action Programs **(AUTOCAPS)**

Arbitration panels sponsored by the National Automobile Dealers Association

National Auto Dealers Association

8400 Westpark Drive
McLean, VA 22102
1-703-821-7144

Niagara Frontier Auto Dealers Association

P.O. Box 9019
Williamsville, NY 14231
1-716-631-8510

NYS Auto Dealers Association

P.O. Box 7347
Albany, NY 12224
1-518-463-1148

Greater New York Auto Dealers Association

18-10 Whitestone Expressway
Whitestone, NY 11357
Toll free: 1-800-522-3881

NYS AUTOCAP Unit

Toll free: 1-800-342-9208

Better Business Bureau

www.bbb.org (Fee may be applicable based on usage.)

BBB Auto Line

Council of BBBs, Inc.

4200 Wilson Blvd., Suite 800
Arlington, VA 22203-1804
Toll free: 1-800-955-5100

(Third-party dispute resolution program administered by the Council of Better Business Bureaus, Inc.)

BBBs

BBB of Metropolitan NY, Inc.

257 Park Avenue South
New York, New York 10010-7384
1-212-533-6200

Better Business Bureau, Inc.

741 Delaware Avenue
Buffalo, New York 14209-2201
1-716-881-5222

impairs its value and cannot be fixed, it may be a “lemon.” Such conditions include transmission problems, engine trouble, excessive vibration or rattling in the chassis.

The New Car Lemon Law protects consumers who purchase “motor vehicles” including cars, light vans, and trucks. Motorcycles and “off-road” vehicles (such as dirt bikes) are not covered. The Lemon Law also protects consumers who purchase motor homes, except against any “residential” defects (such as damage to the appliances and furnishings).

Qualifications

Your vehicle should be covered under the New Car Lemon Law if:

1. It is primarily used by you for personal purposes; and
2. It was covered by the manufacturer's new car warranty at the time of original delivery to the first consumer who owned it; and
3. It was purchased, leased or transferred by you within either the first 18,000 odometer miles or two years from the date of the original delivery to the first consumer who owned it, whichever comes first (even if it was “used” (or “pre-owned”) from the dealer); and
4. It was either (a) purchased, leased or transferred by you in New York, or (b) is presently registered in New York.; and
5. You report the defect or condition to the dealer within either the first 18,000 odometer miles or two years from the date of the original delivery to the first consumer who owned it, whichever comes first (even if it was “used” (or “pre-owned”) from the dealer).

As long as the above conditions are met, your vehicle will be covered, even if you bought the vehicle “new,” “used” (or “pre-owned”). For example, a “demonstrator” with 10,000 odometer miles at purchase, when you purchased from a New York dealer and then

registered in another state, is covered. Similarly, a “used” (or “pre-owned”) vehicle received as a gift which was less than two years old and had less than 18,000 miles at the time the gift was received is covered, provided you register it in New York State. Motor vehicles bought at auction are covered by the New Car Lemon Law.

Definitions

What does the phrase “primarily used for personal purposes” mean?

A vehicle is primarily used for personal purposes when its principal use is for personal, family or household purposes. Such purposes include, for example, using the vehicle for household errands or to drive to and from work. A vehicle may be used for both personal and business use provided that the personal use is predominant (more than 50% of the usage).

Are all leased vehicles covered?

The law covers only those leased vehicles where the lessee is responsible for repairs of the vehicle.

Are vehicles owned or leased by businesses covered?

Yes, provided the vehicle is primarily used for personal, family or household purposes.

What is the manufacturer’s duty to repair?

With respect to those covered vehicles sold and registered in New York, the law imposes a duty upon the manufacturer to repair, free of charge and without any deductible, any defect covered by warranty if the consumer notifies the manufacturer or its authorized dealer of such defect within the first 18,000 miles of operation or two years from the original delivery date, whichever comes first. Once timely notice of the defect is given, the manufacturer may not charge for the repairs, regardless of when the repairs are performed. Any consumer who has been charged for such repairs or a deductible during this period should contact the New York State Consumer Protection Board.

Toyota

Toll free: 1-800-331-4331

TDD toll free: 1-800-443-4999

Customer Assistance Center
Toyota Motor Sales USA, Inc.
Department A102
19001 South Western Avenue
Torrance, CA 90509-2991
Web site: www.toyota.com

Volkswagen

Toll free: 1-800-822-8987

Customer Relations Department
World Wide Volkswagen Corp.
3800 Hamlin Road
Auburn Hills, MI 48326

Volvo

Toll free: 1-800-458-1552

Customer Service
Volvo Cars of North America
P.O. Box 915
7 Volvo Drive, Building A
Rockleigh, NJ 07647-0915
Web site: www.volvocars.com

Notes

Mercedes Benz

Toll free: 1-800-222-0100

Toll free: 1-800-367-6372

Customer Assistance Center
**Mercedes Benz of North America,
Inc.**

1 Glenview Road
Montvale, NJ 07645

Mitsubishi

Toll free: 1-800-222-0037

Toll free: 1-800-556-4878

Customer Relations
**Mitsubishi Motor Sales of America,
Inc.**

6400 West Katella Avenue
Cypress, CA 90630-0064

Nissan

Toll free: 1-800-647-7261

Nissan Motor Corp. in USA
P.O. Box 191
Gardena, CA 90248-0191

Peugeot

Toll free: 1-800-345-5549

National Customer Relations Manager
Peugeot Motors of America, Inc.
Overlook at Great Notch
150 Clove Road
Little Falls, NJ 07424
Web site: www.peugeot.com

Porsche

Toll free: 1-800-545-8039

Manager, Owner Relations
**Porsche Cars North America,
Inc.**

100 West Liberty Street
P.O. Box 30911
Reno, NV 89520-3911
Web site: www.porsche.com

Saab

Toll free: 1-800-955-9007

Customer Assistance Center
Saab Cars USA, Inc.
4405-A International Bend
Norcross, GA 30093
Web site: www.saabusa.com

Subaru

Toll free: 1-800-782-2783

National Customer Service
Center
Subaru of America, Inc.
Subaru Plaza
P.O. Box 6000
Cherry Hill, NJ 08034-6000
Web site: www.subaru.com

Suzuki

Toll free: 1-800-934-0934

Customer Relations Department
**American Suzuki Motor
Corp.**
P.O. Box 1100
Brea, CA 92822-1100
Web site: www.suzuki.com

If your motor vehicle is not covered by the New Car Lemon Law, you still may be protected under the Used Car Lemon Law. See **The Used Car Lemon Owner's Manual**, beginning on page 13 for more information.

Under the New Car Lemon Law, if a problem covered by your new car warranty develops you should report it to the manufacturer or dealer who must then repair it free of charge. As long as you report the defect before the vehicle is two years old or has been driven 18,000 miles (whichever comes first), the repair must be made free of charge, even if the actual work is done after this period.

Remedies

The New Car Lemon Law only provides a remedy if:

1. The dealer has not corrected the same defect after four attempts; or
2. The vehicle is out of service for repair of one or more defects for 30 or more days.

The usual remedy for a new vehicle "lemon" is a replacement vehicle or refund of the purchase price, plus taxes and fees. If you have leased a lemon, you can obtain a refund of your down payment, plus the total of your lease payments, minus service fees.

Process to Follow

The law provides you with a simple remedy if you report the defect and the dealer refuses to make repairs. You need only wait seven days after informing the dealer of the defect. After seven days, if you inform the manufacturer directly by certified mail, return receipt requested that the dealer refused to make the repairs, the manufacturer has twenty days to begin the requested repairs. If the manufacturer fails to begin the repairs within this timeframe, you are entitled to the refund or replacement remedy.

Refunds may be reduced (or pro-rated) only in cases where the vehicle's odometer is in excess of 12,000 miles or for damage unrelated to normal use.

Under the New Car Lemon Law, in disputes where the manufacturer has a non-binding arbitration program, you must participate in that program to receive a remedy. If you remain unsatisfied after arbitration, you can then go to court (you may be entitled to attorney's fees if you prevail).

Arbitration

You may be able to use arbitration as a mechanism to resolve a dispute, whether you seek a remedy based on the New Car Lemon Law, breach of contract, or breach of warranty. Under the New Car Lemon Law, once the consumer accepts an arbitrator's award, the manufacturer must comply within thirty days or face fines.

If you seek a New Car Lemon Law solution, the arbitration must conform with the federal Magnuson-Moss Warranty Act and be approved by the New York State Department of Law. The Automotive Consumer Action Program ("AUTOCAP"), a program sponsored by automobile dealers, does not satisfy such requirements.

At an arbitration, you should be able to explain the events that led to your hearing. Make a chronological chart which states the date, nature of the problem, work done, time in the shop, and any cost for service (use the handy chart at the back of this guide). Take all relevant documents with you.

Manufacturers must ensure that arbitrators are trained in arbitration procedures and the New York Lemon Law. When a consumer requests arbitration, the manufacturer must provide a notice entitled "NEW CAR LEMON LAW BILL OF RIGHTS."

Examples of arbitration programs are:

1. AUTOCAP, an arbitration panel sponsored by the National Automobile Dealers Association, handles complaints against

Regional Office: NYS exc. NYC, it's five boroughs, L.I., Westchester Co.

Toll free: 1-800-999-1009

Customer Relations Department
American Honda Motor Co., Inc.
New England Zone 9
555 Old Country Road
Windsor Locks, CT 06096-0465

Regional Office: NYC, it's five boroughs, L.I., Westchester Co.
Toll free: 1-800-999-1009

Customer Relations Department
American Honda Motor Co., Inc.
Northeast Zone
115 Gaither Drive
Moorestown, NJ 08057-0337

Hyundai

Toll free: 1-800-392-3673

Consumer Affairs
Hyundai Motor America
10550 Talbert Avenue
P.O. Box 20850
Fountain Valley, CA 92728-0850

Isuzu

Headquarters:
Toll free: 1-800-255-6727

Customer Relations Department
American Isuzu Motors, Inc.
2300 Pellisier Place
P.O. Box 995
Whittier, CA 90608
Web site: www.isuzu.com

Regional Office:
Toll free: 1-800-255-6727

Customer Relations Manager
American Isuzu Motors, Inc.
Northeast Regional Office
3 Stewart Court
Denville, NJ 07834

Jaguar

Toll free: 1-800-452-4827

U.S. National Headquarters
Customer Relations Department
Jaguar Cars, Inc.
555 MacArthur Blvd.
Mahwah, NJ 07430-2327
Web site: www.jaguarcars.com

Jeep/Eagle - See Chrysler Corp.

KIA

Toll free: 1-800-333-4542

Customer Assistance
KIA Motor Corp.
P.O. Box 52410
Irvine, CA 92619-2410

Mazda

Toll free: 1-800-222-5500

Customer Relations Manager
Mazda Motor of America, Inc.
P.O. Box 19734
Irvine, CA 92713-9734
Web site: www.mazdausa.com

General Motors Corp.

Buick

Toll free: 1-800-521-7300

TDD toll free: 1-800-832-8425

Consumer Assistance Center

Buick Motor Division

General Motors Corp.

902 East Hamilton Avenue

Flint, MI 48550

Web site: www.buick.com

Cadillac

Toll free: 1-800-458-8006

TDD toll free: 1-800-833-2622

Consumer Assistance Center

Cadillac Motor Car Division

General Motors Corp.

P.O. Box 436004

Pontiac, MI 48343-6004

Web site: www.cadillac.com

Chevrolet/Geo

Toll free: 1-800-222-1020

TDD toll free: 1-800-833-2438

Consumer Assistance Center

Chevrolet/Geo Motor Division

General Motors Corp.

P.O. Box 7047

Troy, MI 48007-7047

Web site: www.chevrolet.com

GMC Truck

Toll free: 1-800-462-8782

TDD toll free: 1-800-462-8583

Consumer Assistance Center

GMC Truck Division

General Motors Corp.

P.O. Box 436008

Pontiac, MI 48343-6008

Oldsmobile

Toll free: 1-800-442-6006

TDD toll free: 1-800-833-6537

Consumer Assistance Center

Oldsmobile Division

General Motors Corp.

P.O. Box 436006

Lansing, MI 48343-6006

Web site: www.oldsmobile.com

Pontiac

Toll free: 1-800-762-2737

TDD toll free: 1-800-833-7668

Consumer Assistance Center

Pontiac Division

General Motors Corp.

Mail Code 483-631-730

P.O. Box 436008

Pontiac, MI 48343-6008

Web site: www.pontiac.com

Saturn

Toll free: 1-800-553-6000

TDD toll free: 1-800-833-6000

Saturn Consumer Assistance Center

Saturn Corp.

Division of General Motors Corp.

100 Saturn Parkway

Spring Hill, TN 37174

Web site: www.saturn.com

Honda

Corporate Office:

Toll free: 1-800-999-1009

Consumer Affairs Department

American Honda Motor Co., Inc.

1919 Torrance Blvd.

Torrance, CA 90501-2746

Web site: www.honda.com

dealers and manufacturers. AUTOCAP does not handle New Car Lemon Law complaints that are not part of this arbitration process.

2. The Better Business Bureau ("BBB") administers arbitration programs for several manufacturers. Information can be obtained from your local BBB (a fee may be charged).
3. The Department of Law's arbitration program is available upon paying a filing fee. Contact the nearest office of the state Attorney General for more information.

Revoking Acceptance

After you have agreed to purchase a motor vehicle from a dealer there is an enforceable contract between you and the dealer. The law provides that if one party to a contract fails to fulfill an obligation under the contract, the other party may decide to accept the original terms of the contract.

Revocation of acceptance is a serious alternative which can develop into a complex legal proceeding. Even if your vehicle's defects become obvious immediately, you may prefer to work with the dealer and revoke acceptance later if necessary. We recommend you consult an attorney before you act.

Revocation of acceptance involves several steps. Give the dealer a reasonable number of chances to fix the vehicle's defects. If the dealer does not correct the problem, take the vehicle to a reputable repair shop for an independent examination. Get a written statement from the mechanic describing the problem and the solution, or indicating the defect is so serious that the vehicle must be replaced.

If the dealer still does not correct the problem, contact the manufacturer's factory service representative or zone representative in your area. The representative can mediate and may authorize the repair.

Rejecting the Lemon

When you reject a vehicle, you are saying to the dealer that you did not receive what you ordered and paid for - a safe and defect-free automobile. If you bought your vehicle based on a description in an advertisement, and you told the dealer when you ordered the vehicle that you were relying on that description, you can reject the vehicle if it does not match the description or if there is a defect (NY UCC §2-608).

Rejection includes canceling your contract, returning the defective merchandise, demanding your money back, and possibly suing the dealer and manufacturer in court. Before you attempt to reject your automobile you should consult an attorney.

Suing for Damages

Before you sue, consult an attorney. As with revocation, you may be able to bring suit under both state law and the federal Magnuson-Moss Act (Federal Trade Commission Improvements Act, 15 USCA §2308) so that a court will be permitted to order the dealer or manufacturer to pay your costs and attorney's fees if you win. These may include the cost of repairs, the difference in value between a new vehicle and your repaired lemon, and any charges you incurred for towing or a rental vehicle while your lemon was in the shop.

If the dealer refuses to reimburse you, you may want to sue for damages. Ask your attorney whether you should sue the vehicle's manufacturer or distributor as well.

You may use your local Small Claims Court if the damages add up to less than an amount set by law (\$3,000 limit). Check your local phone directory for your nearest small claims court (also called City, Town, Village, District, or Justice Court). You should also contact the New York State Consumer Protection Board, your city or county bar association, local consumer agency or the New York State Department of Law to find out the court you should use.

Manufacturer's Complaint Offices

Acura

Toll free: 1-800-382-2238

Customer Relations Department
Acura
1919 Torrance Blvd.
Torrance, CA 90501-2746
Web site: www.acura.com

Chrysler Corporation

Toll free: 1-800-992-1997

Chrysler Customer Center
Chrysler Corp.
P.O. Box 21-8004
Auburn Hills, MI 48321-8004
Web site: www.chryslercorp.com

Alfa-Romeo

1-407-856-5000

Owner Relations Manager
**Alfa-Romeo Distributors of
North America, Inc.**
6220 W. Orange Blossom Trail,
Suite 606
Orlando, FL 32809

Daihatsu

Toll free: 1-800-777-7070

Consumer Affairs Department
Daihatsu America, Inc.
4422 Corporate Center Drive
Los Alamitos, CA 90720

Ferrari

1-201-816-2652

Director of Service and Parts
Ferrari North America, Inc.
250 Sylvan Avenue
Englewood Cliffs, NJ 07632

Audi

Toll free: 1-800-822-2834

Customer Relations 2F02
Audi of American, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326
Web site: www.audiusa.com

Ford

Toll free: 1-800-392-3673
TDD toll free: 1-800-232-5952

BMW

Toll free: 1-800-831-1117

National Customer Relations
Manager
BMW of North America, Inc.
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07675
Web site: www.bmwusa.com

Consumer Assistance Center
Ford Motor Co.
300 Renaissance Center
P.O. Box 43360
Detroit, MI 48243
Web site: www.ford.com

Useful Addresses

New York State Agencies

Consumer Protection Board

5 Empire State Plaza, Suite 2101
Albany, New York 12223-1556

Toll free: 1-800-697-1220

www.consumer.state.ny.us

Dept. of Motor Vehicles

Bureau of Consumer & Facility
Services

P.O. Box 2700

Empire State Plaza

Albany, New York 12220-0700

1-518-474-8943

www.nydmv.state.ny.us

Department of Law

(Attorney General's Office)

Consumer Frauds & Protection

Justice Building, D-10 Annex

Empire State Plaza

Albany, New York 12224

Toll free: 1-800-771-7755

Federal Agencies

National Highway Traffic

Safety Administration

U.S. Dept. of Transportation

400 Seventh Street SW

Washington, DC 20590

Toll free: 1-800-424-9393

Www.nhtsa.dot.gov

Federal Trade Commission

Bureau of Consumer Protection

CRC-240

Washington, DC 20580

Toll free: 1-877-382-4357

Public Interest Group

Center for Auto Safety

(CAS)

2001 S Street, NW

Suite 410

Washington, DC 20009

1-202-328-7700

(CAS advocates on behalf of consumers in auto safety and quality, fuel efficiency, emissions and related issues. For advice on specific problems, CAS requests that consumers write: include a brief statement of the problem or question; include the year, make, model of the vehicle, and a stamped self-addressed envelope.)

THE USED CAR LEMON OWNER'S MANUAL

Legal Rights of Used Vehicle Buyers

If you buy or lease a "used" (or "pre-owned") car, light van or truck from a dealer in New York State, state law provides you with protection if the vehicle turns out to be a lemon.

Qualifications

The Used Car Lemon Law (NY General Business Law § 198-b) provides consumers with two significant rights: (1) a minimum warranty, and (2) the right to receive a refund or comparable vehicle if certain conditions are met.

To qualify for Used Lemon Law protection, your vehicle must meet all of the following conditions:

1. It must be used primarily for personal purposes;
2. It must have over 18,000 and less than 100,000 odometer miles at the time you purchase or leased it (if under 18,000 miles, use *The New Car Lemon Owner's Manual* on page 5); and
3. Its purchase or lease value must have been at least \$1,500.

One of the most important features of the Used Car Lemon Law is the minimum warranty protection which requires dealers to repair or, at the dealer's election, reimburse consumers for repairing certain covered parts. You must be given a written warranty if you meet these qualifications.

The length of the warranty depends on the mileage of the motor vehicle at the time of purchase or lease.

Warranty Provided

If your vehicle had 36,000 miles or less when you acquired it, your vehicle comes with a warranty of 90 days or 4,000 miles, whichever comes first. Vehicles with more than 36,000 miles but less than 80,000 miles must be provided with a warranty of 60 days or 3,000 miles. And vehicles with at least 80,000 miles but not more than 100,000 miles must be provided with a warranty of 30 days or 1,000 miles.

The warranty must cover the following parts: engine, transmission, drive axle, brakes, radiator, steering, alternator, generator, starter and the ignition system (excluding the battery).

If you detect a problem with a part covered by the warranty, report it immediately to the dealer who then must repair it free of charge. As long as you report the defect before the warranty expires, the repair must be made at no cost to you (even if the actual work is done after the warranty period is up).

The Used Car Lemon Law entitles you to a refund or replacement remedy if:

1. The dealer has not corrected the same defect after three or more attempts; or
2. The vehicle is out of service for repairs or defects for a total of 15 or more days (45 cumulative days if parts were unavailable).

You are entitled to a comparable replacement vehicle or a refund of the purchase price plus taxes and fees. If you lease a “used” (or “pre-owned”) lemon, you are entitled to the refund of all lease payments.

In case of a dispute, should the dealer participate in a non-binding arbitration program whose procedures satisfy the requirements of the federal Magnuson-Moss Warranty Act, you must first use that program.

1. The difference between the price you paid and the price for which you sold the vehicle;
2. The cost of repairs;
3. The difference in value between the repaired vehicle and a vehicle in the condition in which you were supposed to receive it; and
4. Any towing charges or payments you made for a rented vehicle or other transportation while your vehicle is in the shop.

If the seller refuses your request for reimbursement, you may consider taking legal action. Small Claims Court is designed to enable a consumer, without an attorney, to recover for claims quickly and inexpensively. The only restrictions on when you can use Small Claims Court are the dollar maximum (currently \$3,000) and that the seller must either live or have a place of business within the court’s jurisdiction.

If your total damages exceed the limits of Small Claims Court, or if the seller is not within the court’s jurisdiction, call the New York State Consumer Protection Board, your city or county bar association, or the New York State Department of Law to determine which court you should use. You may wish to consult an attorney before you take formal legal action.

Conclusion

The legal strategies outlined in this book are serious and should not be taken lightly or without consulting an attorney. At the same time, a new or used vehicle is, for most of us, one of the most expensive investments we make. Accordingly, the New York State Consumer Protection Board is here to assist you as you decide which remedies are appropriate for you to fix your lemon.

whether you want to keep the vehicle. An attorney can help you determine your best strategy if legal action is necessary.

Rejection and Revocation of Acceptance

One strategy involves returning the vehicle to the seller. This is otherwise known as “rejection.” Another strategy involves obtaining a refund of your purchase price, this is known as “revocation of acceptance.” Both of these options are very serious and require that certain steps be taken. You should consider consulting an attorney before choosing either of these strategies.

If you financed the vehicle through a bank or credit union - **CONTINUE MAKING YOUR PAYMENTS.** Such loans are considered a separate legal contract with your lender and your legal duty to pay continues despite your problems with the vehicle.

Suing for Damages

If you would prefer either to repair and keep the vehicle or sell it and sue to recover your expenses, you may consider suing for damages.

The first thing you must do is bring the vehicle back to the seller for repair and give the seller a reasonable number of chances to fix it (usually three). If you remain dissatisfied, you may consider one of the following options: (1) having your vehicle repaired by an independent mechanic or (2) selling the vehicle.

If you have it repaired, tell the mechanic in advance that you want any replaced parts returned to you (you have this right under New York State law whenever you have repairs done on your vehicle other than work by a dealer pursuant to a written warranty). When the repairs are finished, pay the bill and get a signed, itemized receipt. Alternatively, you can sell the vehicle at its fair market value, considering, of course, its defects.

After the vehicle is sold or repaired, you may want to ask the seller to reimburse you for your damages, which may include:

What the Dealer Should Do

The dealer (defined in General Business Law § 198-b (a) (3)) should:

1. Tell you if the vehicle may still be covered under your vehicle’s original manufacturer’s warranty. Your dealer should be able to tell you the extent of coverage, if any;
2. Inspect the vehicle before selling it to make sure it gives satisfactory service. This is called a “Used Vehicle Certification,” which is a warranty of serviceability. The NYS Department of Motor Vehicles has the authority to enforce the Used Vehicle Certification. The Used Vehicle Certification cannot be waived. It applies to all used vehicles bought from dealers - even if the contract says you are buying the vehicle “as is”;
3. Give you a statement on your bill of sale stating that the vehicle, at the time of delivery, *is in condition and repair to render, under normal use, satisfactory and adequate service*; and/or
4. Provide a written statement on the contract of sale at the time of the sale, if the vehicle was ever used as a taxicab, police vehicle, driver education vehicle or rental vehicle. A written notice must also be provided to you if the vehicle was previously returned for not conforming to its warranty. You may want to ask the dealer about these items.

The Warranty of Fitness

There is a more specialized warranty in the law called the “Warranty of Fitness” for a particular purpose. If you can show that such a warranty exists, then the seller will be liable if the

vehicle is not fit for its particular purpose. You will usually need the assistance of an attorney to prove a “Warranty of Fitness” claim. This is often a very difficult warranty to prove. To show that this warranty does apply to your purchase, you must show four facts:

- 1. When you bought the vehicle, you had a “particular purpose” in mind.** If the reason you bought the vehicle was clearly out of the ordinary, such as sport/recreational use, that would be a “particular purpose.” If you did not have an unusual purpose, you could claim that your “particular purpose” for buying the vehicle was the ordinary purpose of transportation;
- 2. You relied on the seller’s skill or judgment to sell you a vehicle which you could use for your particular purpose.** For example, it might help to prove that the dealer or private seller you bought from had more knowledge and experience with automotive vehicles than you did;
- 3. The seller knew about both the particular purpose and your reliance.** You do not have to prove that the seller actually knew - just that under the circumstances of the sale the seller had reason to know; and
- 4. You did not agree in writing to waive the protection of the fitness warranty.** Unlike the serviceability warranty, the fitness warranty can be signed away if you are not careful - by a contract that says “as is,” “with all faults,” “seller makes no warranty express or implied of merchantability, fitness, or otherwise,” or similar language. The waiver must be clear and conspicuous, not hidden away in the body of the contract. **Be Careful!**

ADDITIONAL LEMON LAW INFORMATION

Getting Legal Advice

If arbitration of your complaint has not been resolved to your satisfaction, you may want to consider contacting an attorney. Having an attorney to consult with can be very helpful in resolving your used vehicle complaint, especially if you are planning to follow an option which is likely to result in a lawsuit. An attorney may be able to help you negotiate a satisfactory settlement with the seller without going to arbitration or to court at all.

If you cannot afford to pay for an attorney, you may wish to contact Legal Aid, seek Pro Bono assistance, or you should consider the following:

- 1.** If your vehicle was manufactured after July 4, 1975 and you bought the vehicle from a dealer, you can sue under the federal Magnuson-Moss Act. This law permits the court to order the dealer to pay your costs and attorney’s fees if you win the case on the ground that a warranty provision was violated; and
- 2.** If you have been the victim of false advertising or a deceptive practice by the seller, New York State law permits the court to order the seller to pay your attorney’s fees if you win.

The New York State Bar Association (Department of Pro Bono Affairs) may be able to help. You can contact them by calling 518-487-5641 or via e-mail at probono@NYSBA.org

Legal Strategies

Whether or not you decide to go to an arbitration program, there are a variety of strategies you can follow. The best one for you depends on whether you are willing to let the seller try to correct the problems, how soon after delivery the vehicle’s problems become obvious, how serious the problems are, and

already in progress. Sometimes a telephone call or letter from an agency can put pressure on the seller to resolve your problem.

For your convenience, the names and addresses of some of the agencies to contact are listed on pages 24 & 30 of this guide.

Arbitration

You may be able to use arbitration as a mechanism for resolving your dispute, whether you are seeking a remedy based on breach of contract, breach of warranty, or the Used Car Lemon Law. If you are seeking a solution under the Used Car Lemon Law, the arbitration program must satisfy the requirements of the Magnuson-Moss Warranty Act and be approved by the Attorney General.

AUTOCAP is an arbitration panel established and sponsored by the National Automobile Dealers Association. It will hear complaints against automobile dealers and manufacturers who have agreed to participate in the program. Both auto dealers and consumer representatives sit on this panel. AUTOCAP will propose a solution to your dispute. If you are not satisfied with their proposal, you can still pursue the other remedies suggested in this guide. The dealer, however, will be bound by the panel's decision.

You may also be able to use an arbitration program sponsored by the New York State Department of Law to resolve your Used Car Lemon Law dispute. This program is available upon payment of a filing fee. You should contact the nearest office of the Attorney General for more information about this program.

There may be some situations where you have a choice of programs, i.e. AUTOCAP or the manufacturer's (and dealer's) program.

If you are seeking an arbitration solution to a used vehicle problem under the Used Car Lemon Law, you should determine if the program you chose has satisfied the requirements of Magnuson-Moss and is approved by the Attorney General before participating.

Advertisements and Oral Statements

If you bought the vehicle because of information contained in an advertisement, the vehicle may have to live up to the advertised claims.

Similarly, oral statements and any promises made by the seller may be regarded as warranties and the seller can be liable if the statements are not true. (Caution: if you do not have the statements and promises in writing they may be difficult to prove.)

In order for a warranty to have been created by either an advertisement or an oral statement, you must be able to prove the following five facts:

1. A statement of fact or promise was made by the seller;
2. The natural tendency of that statement would be to induce a buyer to purchase the vehicle;
3. You did, in fact, rely on the statement in purchasing the vehicle;
4. The promise was broken or the fact was untrue; and
5. The vehicle is not worth as much as it was purported to be worth.

Odometer

You have the right to know how many miles the vehicle you purchase has been driven. In fact, the odometer reading of a motor vehicle must appear on the automobile's New York State inspection sticker. Every seller must tell the buyer the cumulative mileage on the odometer (including whether the vehicle has exceeded 99,999 miles) and whether the seller knows the mileage shown is accurate.

Minors

If you bought your lemon before your 18th birthday, you may be able to rescind the contract based on your age. This right exists only until a “reasonable” time after you turn 18. New York State law is unclear about exactly how long “reasonable” is, so you should notify the seller that you intend to rescind the contract either before your 18th birthday or as soon as possible after you turn 18.

The Contract

Be sure you read the contract concerning the sale of a motor vehicle very carefully. It may give you additional warranty protection (covering extra parts, lasting for a longer time period, or both) or limit your warranty. It is important that you understand what it says and what the duties and responsibilities of the parties are.

Buyer’s Guide

The dealer must post a “Buyer’s Guide” on the window of each “used” (or “pre-owned”) vehicle offered for sale, and must attach such window sticker to your purchase contract. This guide becomes part of the sales contract. The “Buyer’s Guide” should include: a statement that spoken promises are difficult to enforce and that consumers should get promises in writing; any warranties provided by the dealer; the availability and terms of any service contract; a suggestion that consumers ask if the vehicle may be inspected by an independent mechanic; and a statement identifying the major mechanical and safety systems and some major defects that may occur in used cars.

Under the “Buyer’s Guide” you may have additional rights, but it cannot diminish your rights in any way, as provided by the Used Vehicle Certification of the Used Car Lemon Law.

The New York State Consumer Protection Board assists the Federal Trade Commission and the New York State Department of Law with their enforcement of the law.

Vindicating Your Rights

To resolve your complaints, you should talk to the dealer as soon as the problem is apparent and see if you can work out a satisfactory solution. If you are dissatisfied with the response, you may then want to contact the New York State Consumer Protection Board, the New York State Department of Motor Vehicles, the New York State Department of Law or a private agency that handles consumers’ automobile complaints, like the Better Business Bureau.

The Department of Motor Vehicles

If you bought your used vehicle from a dealer and you have a complaint, you should call the New York State Department of Motor Vehicles’ (“DMV”) complaint number at 518-474-8943 if the dealer is of no help. Trained mechanics from the DMV will investigate your complaint. If they determine that the Used Vehicle Certification, or some other right arising from the sale has been violated, they will recommend to the dealer that the vehicle be repaired at no cost to you. If the vehicle is beyond repair, they will recommend that the dealer take it back and return your purchase price.

The DMV does not have the authority to force the dealer to follow their recommendations. However, the DMV has the power to conduct a hearing as to a possible suspension or revocation of the dealer’s registration and impose a civil fine. The threat of such a hearing usually helps convince dealers to make a satisfactory repair or refund. If the dealer refuses and you sue in court, the DMV can appear as a witness on your behalf.

Other Agencies and Organizations

There are other governmental agencies and local consumer protection organizations you may wish to contact. While most agencies cannot take action in private contractual matters such as warranty disputes, they can provide useful information about safety-related problems or specific lawsuits or investigations