

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



NEW YORK'S
USED CAR LEMON LAW
A GUIDE FOR CONSUMERS



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New York's Used Car Lemon Law: A Guide for Consumers

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Used Car Lemon Law Questions and Answers

1. WHAT IS THE PURPOSE OF THE USED CAR LEMON LAW?

The Used Car Lemon Law provides a legal remedy for buyers or lessees of used cars that turn out to be lemons. The law requires dealers to give you a written warranty. Under this warranty, a dealer must repair, free of charge, any defects in covered parts or, at the dealer's option, reimburse you for the reasonable costs of such repairs. If the dealer is unable to repair the car after a reasonable number of attempts, you are entitled to a full refund of the purchase price. No used car covered by this law can be sold by a dealer "as is." (A copy of the law may be found at the back of this book.)

2. WHICH USED CARS ARE COVERED BY THE LEMON LAW?

Under the law, a used car is one which satisfies all the following five conditions:

- (1) It was purchased, leased or transferred after the earlier of (a) 18,000 miles of operation or (b) two years from the date of original delivery; and
- (2) It was purchased or leased from a New York dealer; and
- (3) It had a purchase price or lease value of at least \$1,500; and
- (4) It had been driven 100,000 miles or less at the time of purchase or lease; and
- (5) It is primarily used for personal purposes.

3. ARE MOTORCYCLES, MOTOR HOMES AND OFF-ROAD VEHICLES COVERED?

Effective September 1, 2004, used motorcycles are covered vehicles. Motor homes, off-road vehicles, and "classic" cars registered under section 401 of the vehicle and traffic law, are not covered.

4. WHAT DOES THE PHRASE "PRIMARILY USED FOR PERSONAL PURPOSES" MEAN?

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

5. WHO ELSE IS PROTECTED BY THE USED CAR LEMON LAW?

Any person to whom a used car was transferred by the purchaser during the used car lemon law warranty period is covered.

6. ARE PRIVATE SALES COVERED?

No. If you bought your car from a private individual (rather than from a dealer) you are not protected by the Used Car Lemon Law. You should consult a lawyer for advice as to other possible remedies. If the purchase price was \$3,000 or less, you may wish to pursue your claim in Small Claims Court.

7. ARE CARS OWNED OR LEASED BY BUSINESSES COVERED?

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

8. WHICH USED CAR DEALERS ARE INCLUDED?

Under the Used Car Lemon Law, a dealer is any person or business which sells or leases a used car after selling or leasing three or more used cars in the previous twelve month period. Banks or other financial institutions, except in the case of a lease, are not included. Others excluded are: a business selling a used car to its own employee; a regulated public utility which sells at public auction cars used in the ordinary course of its operations; a lessor selling a leased car to the lessee, a member of the lessee's family or the lessee's employee; and the state and local government or any of their agencies.

9. ARE CARS PURCHASED AT AUTO AUCTIONS COVERED?

Yes. If you buy a used car at a retail auto auction, the auction company must be a used car dealer registered with the Department of Motor Vehicles and it must provide you with your lemon law rights.

10. WHAT DOES THE LAW REQUIRE THE DEALER TO DO?

A dealer who sells or leases you a used car is required to give you a written warranty, the terms of which are specified in the law. The warranty may be referred to at times as a lemon law warranty because it is required by the "lemon law" and must be honored by the dealer. This warranty must specify that while it is in effect the dealer or his agent will repair, free of charge, any part covered by the warranty. The dealer may elect to reimburse you for the reasonable cost of repairing any covered part.

11. WHEN MUST THE LEMON LAW WARRANTY BE GIVEN?

The dealer must give you a copy of the lemon law warranty at or before the time you sign the sales contract or lease.

12. HOW IS THE LEMON LAW WARRANTY GIVEN?

The lemon law warranty may be included in the sales contract or lease or on a separate sheet of paper. If it is part of the sales contract or lease, it must be separated from the other contract provisions and headed by a conspicuous title.

13. WHAT IF THE DEALER DOES NOT GIVE THE LEMON LAW WARRANTY?

If a dealer fails to give you the written lemon law warranty, the dealer is nevertheless considered to have given the warranty and you are entitled to all the protections under the law.

14. HOW LONG IS THE LEMON LAW WARRANTY PROTECTION?

| Miles at time of Purchase or Lease | Duration of Warranty (the earlier of: |
|------------------------------------|---------------------------------------|
| 18,001 to 36,000 | 90 days or 4,000 miles |
| 36,001 to 79,999 | 60 days or 3,000 miles |
| 80,000 to 100,000 | 30 days or 1,000 miles |

15. WHAT PARTS ARE COVERED?

Covered parts must include at least:

Engine --All lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings and flywheel.

Transmission -- The transmission case, internal parts, and the torque converter.

Drive Axle -- Front and rear axle housings and internal parts, axle shafts, propeller shafts and universal joints.

Brakes -- Master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings and disc brake calipers.

Steering -- The steering gear housing and all internal parts, power steering pump, valve body, piston and rack.

Radiator, Alternator, Generator, Starter, Ignition System (excluding battery).

16. CAN A DEALER LIMIT COVERAGE OF THE LEMON LAW WARRANTY?

Yes. The law permits a dealer to add language to the lemon law warranty to exclude coverage for the following:

- (a) For a failure of a covered part caused by a lack of customary maintenance.
- (b) For a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.).
- (c) If the odometer has been stopped or altered such that the car's actual mileage cannot be readily determined, or if any covered part has been altered such that a covered part was thereby caused to fail.

(d) For maintenance services for the parts used in connection with such services such as seals, gaskets, oil and grease unless required in connection with the repair of a covered part.

(e) For a motor tune-up.

(f) For a failure resulting from racing or other competition.

(g) For a failure caused by towing a trailer or another vehicle unless the used car is equipped for this as recommended by the manufacturer.

(h) If the used car is used to carry passengers for hire.

(i) If the used car is rented to someone else.

(j) For repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear.

(k) To the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part.

(l) To the extent otherwise permitted by law, for loss of the use of the used car, loss of time, inconvenience, commercial loss or consequential damages.

17. CAN YOUR RIGHTS UNDER THE USED CAR LEMON LAW BE WAIVED?

No. Any contract clause which seeks to waive your rights under the Used Car Lemon Law is void.

18. CAN A DEALER GIVE ADDITIONAL WARRANTY PROTECTION?

Yes. A dealer may agree, as part of the sale or lease, to give you more warranty protection than the law requires. The lemon law warranty sets only minimum obligations for dealers.

The dealer may offer to sell you an extended service contract which provides protection beyond the lemon law warranty. The price of such extended service contract may be negotiated with the dealer.

19. WHAT SHOULD YOU DO IF YOU BECOME AWARE OF A PROBLEM WITH YOUR USED CAR?

You should immediately report any malfunction or defect of a covered part to the dealer and request the necessary repairs. As long as you have notified the dealer of a problem within the lemon law warranty period, the warranty remains in effect.

20. SHOULD YOU CONTINUE TO MAKE YOUR PAYMENTS WHILE YOU ARE PURSUING YOUR RIGHTS UNDER THE LEMON LAW?

Yes. Unless otherwise advised by your lawyer, if the car is financed or leased, you should continue to make your monthly payments. Failure to do so may result in a repossession which may lead to your being unable to return the car to qualify for a refund under the law.

21. DO REPAIR DAYS EXTEND THE WARRANTY PERIOD?

Yes. The lemon law warranty period is extended for each day that the car is in the shop for repairs.

22. WHAT ARE YOUR RIGHTS IF THE DEALER DOES NOT REPAIR THE CAR?

If the dealer fails to repair the problem after a reasonable period of time, and if the problem substantially impairs the value of the used car to you, the dealer must accept the return of the car and make a refund.

23. DOES THE LAW SPECIFY WHAT CONSTITUTES A "REASONABLE PERIOD OF TIME" TO REPAIR THE CAR?

Yes. It is presumed that the dealer has had a reasonable opportunity to repair a problem if, during the lemon law warranty period, either: (a) the same problem has been subject to repair three or more times and the problem continues to exist at the end of the third repair attempt; or (b) the car was out of service by reason of repair or malfunction for a cumulative total of 15 or more days for one or more problems.

You, or the dealer, may rebut this presumption by demonstrating that fewer, or more, than three repair attempts or 15 days out-of-service due to repairs, is reasonable under the circumstances.

24. HOW DO YOU CALCULATE THE 15 DAYS?

When calculating the 15-day total, the days during which repairs could not be completed due to the unavailability of necessary parts are not included. However, the dealer is required to exercise due diligence in attempting to get the necessary parts and there is an absolute 45-day limit.

25. CAN YOU STILL OBTAIN A REFUND OR A REPLACEMENT CAR IF THE DEFECT HAS BEEN REPAIRED?

Yes. You may still be entitled to relief under the law, provided all other statutory requirements are met, if a defect continued to exist at the end of the third repair attempt, or if the car was out-of-service for a total of at least 15 days, notwithstanding that the defect was subsequently repaired.

For example, your transmission was defective and the problem continued to exist after 15 days out-of-service due to repairs but was finally repaired on the 18th day in the repair shop.

Nevertheless, since it was not repaired by the end of the 15th day, you have met the presumption that the dealer had a reasonable opportunity to correct the defect and you may be entitled to relief.

25. WHAT CONSTITUTES A SUBSTANTIAL IMPAIRMENT OF VALUE?

It will depend on the facts in each case. In general, your complaint must be about a serious problem. For example, a defect in the engine which makes the car inoperable is clearly substantial. Some courts have found that the cumulative effect of numerous lesser defects may add up to a substantial impairment of value.

26. HOW CAN YOU PROVE YOU OWN A LEMON?

You must be able to establish the necessary repair attempts or days out-of-service due to repairs. Therefore, it is very important to keep careful records of all complaints, copies of all work orders, repair bills, correspondence, and telephone and email communications. To help document the duration the car is out of service, it is advisable to notify the dealer of any problem in writing.

A dealer is required by Department of Motor Vehicles (DMV) regulations to provide a legible and accurate written work order, upon your request, each time any repair work is performed on a car, including warranty work. You may contact the DMV in Albany at 518-474-8943 if you have a problem in obtaining your repair orders.

27. WHAT IS TO BE INCLUDED IN THE REFUND TO THE CONSUMER?

The refund must include the full purchase price. The dealer may deduct a reasonable amount for any damage beyond normal wear or use. An adjustment may also be made for any modification to the car which either increases or

decreases its market value. There is no deduction for mileage. Other expenses or charges, such as finance charges, rental and storage charges, loss of use or loss of time, are not included.

28. DOES A SUCCESSFUL CONSUMER RECOVER SALES TAX?

Yes. State and local sales taxes are refunded directly by the New York State Commissioner of Taxation and Finance who will determine the appropriate amount to be refunded. You must complete and submit an "Application for Refund of State and Local Sales Tax" (Form AU-11) to the New York State Department of Taxation and Finance, Central Office Audit Bureau - Sales Tax, State Campus, Albany, N.Y. 12227. (This form may be obtained from the Commissioner of Taxation and Finance.)

29. IF A TRADE-IN WAS INVOLVED, HOW IS THE REFUND DETERMINED?

The dealer need not include in the refund the value of the trade-in car as listed in the sales contract. The dealer can choose either to return any car traded-in by you at the time of the sale or lease of the used car (together with a refund of whatever moneys you paid), or, to include in your refund the wholesale value of the car when it was traded-in. The wholesale value must be determined by referring to the "NADA Used Car Guide".

However, the New York State Department of Motor Vehicles is authorized to approve the use of an alternative guidebook. An adjustment in the listed value may be taken for mileage, improvements or major defects that existed at the time of the trade-in.

30. MUST DEALERS NOTIFY YOU HOW TRADE-IN VALUES ARE CALCULATED?

Yes. Dealers must inform you, by means of a written notice, of the method of calculating the value of any trade-in car which is not returned to you. The notice must be given at or before the time you sign the sales contract or lease. The notice may be on the sales contract or lease or on a separate sheet of paper. If it is on the sales contract or lease, it must be separated from the other contract provisions and headed by a conspicuous title.

31. IF THE CAR IS FINANCED, HOW IS THE REFUND DIVIDED?

The refund by the dealer is the same whether the car was financed or not. However, when the car is financed, instead of the entire refund going to you, the refund is usually divided between you and the lender (the bank or finance company). Generally, the lender will calculate how much is still owed by you and apply the refund to that amount. The balance of the refund will then go to you.

If, however, the amount you owe the lender is more than the refund from the dealer, the dealer must notify you in writing, by registered or certified mail, that you have 30 days to pay the additional amount owed to the lender. The notice must also contain a conspicuous warning that the failure to pay the additional amount to the lender within 30 days will terminate the dealer's obligation to provide a refund.

32. IF THE CAR WAS LEASED, HOW IS THE REFUND CALCULATED?

When the car is leased, the refund due you consists of all payments made under the lease.

33. IF THE CAR IS LEASED, DOES A DETERMINATION THAT THE CAR IS A LEMON TERMINATE THE LEASE?

Yes. Once a determination has been made under the lemon law, either by a court or an arbitrator, that a car is a lemon, the lease is terminated. As a result, no early termination penalties under the lease may be collected.

34. CAN THE DEALER PROVIDE YOU WITH A REPLACEMENT CAR INSTEAD OF A REFUND?

Yes, provided you are willing to accept a replacement instead of a full refund. The decision to offer a replacement car rests with the dealer and the decision to accept or decline such an offer rests with you. If the dealer offers a replacement car and you agree, you must negotiate between yourselves any adjustments in price.

35. ARE THERE ANY EXCEPTIONS TO THE DEALER'S DUTY TO MAKE A REFUND OR OFFER A REPLACEMENT CAR?

Yes. The dealer does not have to make a refund (or provide a replacement car) if: (a) the problem does not substantially impair the value of the car to the consumer, or (b) the problem is the result of abuse, neglect or unreasonable alteration of the car.

36. HOW CAN YOUR RIGHTS UNDER THE LEMON LAW BE ENFORCED?

You have the choice of either participating in an arbitration program or suing the dealer directly in court. Any action or arbitration under the lemon law must be commenced within four years of the date of original delivery to you.

37. IF YOU WIN IN COURT, CAN YOU ALSO RECOVER ATTORNEY'S FEES?

Yes. The law authorizes the court to award reasonable attorney's fees if you are successful.

38. WHAT IS AN ARBITRATION PROCEEDING?

An arbitration proceeding is much less complicated, time consuming and expensive than going to court. The arbitration hearing is informal and strict rules of evidence do not apply. Arbitrators, rather than judges, listen to each side, review the evidence and render a decision.

39. WHAT ARBITRATION PROGRAMS ARE AVAILABLE TO YOU IN NEW YORK?

You may participate in the New York State Used Car Lemon Law Arbitration Program (the "New York Program"), provided by the Used Car Lemon Law. The New York Program is administered by the New York State Dispute Resolution Association ("NYSDRA") under regulations issued by the Attorney General. (A copy of the regulations may be found in the back of this booklet.) Decisions under the New York Program are binding on both parties.

You may also choose to participate in any arbitration program established by the auto dealer. Decisions under dealer programs are not binding on you. Therefore, if you have gone through the dealer's program and are not satisfied with the outcome, you may still apply for arbitration under the New York Program. However, any prior arbitration award may be considered at any subsequent arbitration hearing or court proceeding.

If a dealer has established an arbitration procedure which complies with federal regulations and New York's Used Car Lemon Law, the dealer may refuse to provide a refund until you first

participate in such procedure or in the state-run arbitration program.

40. HOW DO YOU PARTICIPATE IN THE NEW YORK PROGRAM?

You must first complete a "Request for Arbitration" form, which may be obtained from the Attorney General's website, www.oag.state.ny.us, or from any of the Attorney General's regional offices. (A list of the Attorney General's regional offices may be found at the end of this booklet). The completed form must be returned to the Attorney General's Used Car Lemon Law Arbitration Unit, New York State Attorney General's Office, 120 Broadway, New York, New York 10271.

41. HOW DOES THE NEW YORK PROGRAM OPERATE?

The Attorney General's office will review the "Request for Arbitration" form to determine whether your claim is eligible under the Used Car Lemon Law to be heard by an arbitrator. If accepted, the form will be forwarded to the Administrator for processing. The Administrator will then ask you to pay the required filing fee. Upon receiving the filing fee, the Administrator will appoint an arbitrator and schedule a hearing to be held within 35 days.

If rejected, the form will be returned to you together with an explanation for the rejection.

A complete step-by-step description of the New York Program may be found later in this booklet.

42. WHO ARE THE ARBITRATORS?

The arbitrators are volunteers who have been trained in the Used Car Lemon Law and in arbitration procedures by the Attorney General's Office and the Administrator.

43. ARE YOU ENTITLED TO AN ORAL, IN PERSON, HEARING?

Yes. You have an absolute right to an oral hearing. At an oral hearing, both you and the dealer's representative will have the opportunity to present your side of the case in person before an arbitrator.

You may also elect to have a hearing on documents only by indicating this preference on the "Request for Arbitration" form. In a "documents only" hearing, both sides must present their positions in writing. If you request a "documents only" hearing, the dealer may object, in which case an oral hearing will be scheduled.

44. CAN YOU REQUEST AN ADJOURNMENT OF A HEARING?

Yes. Either party may apply to the arbitrator, through the Administrator, for a reasonable adjournment of the hearing date. Upon the finding of good cause, the arbitrator will reschedule the hearing.

45. MAY A STENOGRAPHIC RECORD OR TAPE RECORDING BE MADE OF THE HEARING?

Both parties to the arbitration may arrange, on their own, for a stenographic record or a tape recording of the hearing at their own expense even if the other party objects. If a stenographer or tape recorder will be used, reasonable prior notice, through the Administrator, must be given to the other party.

46. DO YOU NEED AN ATTORNEY FOR THE ARBITRATION HEARING?

No. The New York Program is designed to be accessible to you without the need for an attorney. Both parties may use an attorney (some dealers are represented by an attorney) or any other person to assist you if you so choose. However, the law does not provide for recovery

of attorneys fees for representation in an arbitration proceeding.

47. HOW SHOULD YOU PREPARE FOR THE HEARING?

You should keep a copy of your "Request for Arbitration" form to use as a guide in preparing for the hearing. The form contains much of the information needed at the hearing. In addition, you are advised to:

(a) Gather documents: Bring to the hearing records of everything pertaining to the purchase and the problem, including a copy of the purchase contract (invoice), all correspondence, work orders, and warranty.

(b) Organize records: Keep records in chronological order. This will serve as a guide in presenting the history of the problem.

(c) Prepare an outline: This will help you to present and remember relevant information.

(d) Prepare questions to ask the dealer: This will assure that no important question is omitted.

(e) Arrange for witnesses: The presence of witnesses, especially car mechanics, or their sworn statements, is helpful to document the problem.

48. WHAT IF YOU DO NOT HAVE ALL THE DOCUMENTS?

Upon payment of the filing fee and anytime prior to the hearing, you or the dealer may make a written request to the arbitrator, through the Administrator, to direct the other party to provide any necessary documents or other information. Either party may also request the arbitrator to subpoena documents or witnesses to appear at the hearing.

For example, you may request that the dealer furnish a copy of missing work orders and the dealer may request that you produce a copy of relevant tax information to determine whether you took a deduction on your taxes for business use.

A sample letter requesting documents may be found later in this booklet.

49. MAY THE ARBITRATOR DIRECT THAT THE CAR BE MADE AVAILABLE AT THE HEARING?

Yes. The arbitrator may direct you to make the car available, if possible, at the hearing. The arbitrator has the discretion to examine or ride in the car in the presence of both parties.

50. HOW SHOULD YOU PRESENT YOUR CASE AT THE HEARING?

At the hearing, you should present your case in a clear, organized and concise manner. Consumers are advised to:

- (a) State the specific nature of the problem.
- (b) State any conversations with the dealer.
- (c) Describe and document each repair attempt.
- (d) Describe and document any new developments which may have occurred since the "Request for Arbitration" form was submitted.
- (e) Offer proof of each point, especially those the dealer may dispute.
- (f) Present any witness that can provide relevant information.
- (g) State the relief requested.
- (h) At the end of the presentation, briefly summarize the facts discussed.

51. WHAT HAPPENS IF EITHER PARTY FAILS TO APPEAR AT THE HEARING?

Unless the hearing has been properly rescheduled, if either the dealer or you fail to appear at an oral hearing, the arbitrator will nevertheless conduct the hearing and issue a decision based upon the evidence presented and any documents contained in the file.

52. WHEN CAN YOU EXPECT A DECISION?

You may expect a decision, generally, within 10 days of the hearing. Sometimes, however, the arbitrator requests that additional documents or information be submitted, in which case the decision may be delayed.

53. CAN YOU RECOVER THE FILING FEE?

Yes. If you are successful, the arbitrator's decision in your favor must include the return of the filing fee. Also, if you settle the case any time before a decision is rendered, you should seek to recover the filing fee.

54. WHEN MUST A DEALER COMPLY WITH AN ARBITRATOR'S DECISION?

Within thirty days from the date you notify the dealer of your acceptance of the arbitrator's decision. In most cases, the dealer should contact you within this period to arrange for the return of the car in exchange for either a refund or a replacement car.

Failure of the dealer to comply within this time period entitles you to recover an additional \$25 for each business day of noncompliance, up to \$500. If the dealer does not voluntarily pay any applicable penalty, you may sue to recover this penalty in Small Claims Court. However, this deadline and penalty are not applicable where you have requested a particular replacement car or otherwise made compliance impossible.

55. HOW IS A RETURN OF THE CAR IMPLEMENTED?

The common procedure is to have both parties -- you and the dealer -- meet at an agreed time and place to execute the necessary papers to exchange the car for a refund or replacement.

56. WHAT HAPPENS IF THE DEALER DOES NOT COMPLY WITH THE ARBITRATOR'S AWARD?

If the dealer does not comply, you can enforce the arbitrator's decision through the courts by bringing an action to confirm the award. This action must be commenced within one year of receipt of the decision. You should consult a private attorney if you wish to pursue this remedy. If you are successful, the Court will convert the arbitrator's award into a court judgment and may award you reasonable attorney's fees. The court may also award reasonable attorney's fees incurred to enforce the collection of the award.

57. WHAT OTHER REMEDIES ARE THERE IF THE DEALER FAILS TO HONOR THE AWARD?

You may complain to the Department of Motor Vehicles. If the DMV determines that the dealer deliberately failed to pay the award which was not stayed or appealed, within 60 days, it may revoke, suspend or refuse to renew a dealer's registration. The Administrator now sends out a notice to the parties with each award issued in favor of the consumer that advises the parties of this remedy.

The Bureau of Consumer and Facility Services of the New York State Department of Motor Vehicles, P.O. Box 2700-Empire State Plaza, Albany NY, 12220-0700 is authorized to take appropriate enforcement action.

58. UNDER WHAT CIRCUMSTANCES CAN AN ARBITRATOR'S DECISION BE MODIFIED?

The grounds for modification are very limited. Generally, awards may be modified only to correct a miscalculation or a technical mistake in the award. For example, a modification may be requested where the filing fee was omitted from the refund.

59. WHEN MUST A REQUEST FOR MODIFICATION BE MADE?

Either party may seek a modification by the arbitrator of the award by written application to the Administrator within 20 days of receiving the award. The other party will be given the opportunity to object to the modification. The arbitrator must rule on all such requests within 30 days after the request is received. To modify an award after 20 days, an application to a court may be necessary.

60. CAN AN ARBITRATOR'S DECISION BE CHALLENGED?

Either party may commence a lawsuit to challenge an arbitrator's award within 90 days of receipt of the award. However, the grounds for such challenges are limited by law. Generally, the courts will uphold an arbitrator's award if it is supported by evidence and is grounded in reason. Reasonable attorneys fees may be awarded by the court if you are successful in challenging or defending an arbitration award.

61. WHAT ROLE WILL THE ATTORNEY GENERAL'S OFFICE OR THE ADMINISTRATOR PLAY IF AN AWARD IS CHALLENGED IN COURT?

Neither the Attorney General's Office nor the Administrator is authorized to represent an individual consumer in such a challenge; this is the responsibility of your own attorney. The role of the Administrator ends when the arbitrator's award is sent to the parties.

62. DOES THE LEMON LAW LIMIT ANY OF THE OTHER LEGAL REMEDIES ALREADY AVAILABLE TO YOU?

No. The Used Car Lemon Law adds to your arsenal of existing legal remedies. These legal remedies can be explained by your attorney.

The most important of these remedies is the warranty of serviceability (Vehicle and Traffic Law, section 417). This warranty cannot be waived by the buyer. No car can be sold by a dealer to you "as is." The warranty of serviceability requires the dealer to certify to you that the car is in condition and repair to render, under normal use, satisfactory and adequate service at the time of delivery.

In addition, specified safety equipment must be in good working order. If the dealer fails to honor this duty, complain to the Department of Motor Vehicles, Division of Vehicle Safety Services, Empire State Plaza, Albany, NY 12228.

63. HOW ARE YOU PROTECTED WHEN BUYING A USED CAR PREVIOUSLY REPURCHASED UNDER THE LEMON LAW?

You must be given a written, conspicuous disclosure statement by the dealer reading:

IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED BY NEW YORK LAW.

This disclosure must also be printed on the car's certificate of title by the New York State Department of Motor Vehicles.

64. WHERE CAN YOU GET HELP OR FURTHER INFORMATION REGARDING THE LEMON LAW?

A consumer may contact any of the offices of Attorney General Eliot Spitzer listed at the end of this booklet or consult a lawyer for further information.

SAMPLE REQUEST FOR DOCUMENTS

Your Name
Address
City, State, Zip

New York State Dispute Resolution Association
[Fill in Specific Dispute Center's address]

Attention: Arbitrator [fill in name]

Re: Lemon Law Arbitration # _____
Request for Documents

Dear Arbitrator:

Pursuant to section 300.9 of the New York Lemon Law Arbitration Regulations, I am requesting that you direct the dealer to obtain and forward to the Case Administrator legible copies of the following documents and information no later than three days before the scheduled hearing date:

1. Each and every repair order for work performed on my car.
2. Any service bulletin issued that may relate to the problem of: [describe your problem, for example, stalling, lack of power on acceleration, etc.]
3. Any report or correspondence regarding my car's problems.
4. Any other documents or information that may relate directly to this arbitration.

Your prompt attention to this request is greatly appreciated.

Very truly yours,

Using the New York State Arbitration Program

The New York Program's dispute resolution process can be summarized in ten steps as follows:

| | | | |
|------|----|---|--|
| Step | 1 | - | Consumer's Completion of Request-for-Arbitration Form |
| | 2 | - | Attorney General's Review |
| | 3 | - | Request for Filing Fee by Administrator |
| | 4 | - | Filing Date; Appointment of Arbitrator; Schedule of Hearing |
| | 5 | - | Notice of Claim Sent to Dealer; Dealer's Response; Consumer's Reply |
| | 6 | - | Pre-Hearing Discovery |
| | 7 | - | Hearing |
| | 8 | - | Decision |
| | 9 | - | Administrator's Review of Decision Form |
| | 10 | - | Modification and Appeal |

Step 1. Consumer's Completion of Request-For-Arbitration Form

A consumer can seek redress under the New York Program by obtaining a Request-for-Arbitration form from the Attorney General's website: www.oag.state.ny.us or any office of the Attorney General. The consumer completes and returns this form, together with copies of all relevant supporting documents (including the bill of sale, repair work orders and any correspondence relating to the claim) to the Attorney General's Used Car Lemon Law Unit located at 120 Broadway, New York, NY 10271.

Step 2. Attorney General's Review

The form and documents are reviewed promptly by the Attorney General's Lemon Law Unit. The review is for screening purposes only -- to determine whether the claim may be heard by an arbitrator. For example, to be eligible for acceptance into the New York Program the car must have been purchased from a dealer in New York State. Based on this review, the Request-for-Arbitration form is either accepted or rejected. If rejected, the form is returned to the consumer with a letter indicating the reason(s) for the rejection. In many instances, a consumer is able to correct the cause for rejection and successfully resubmit the form. If the form is accepted, the consumer is advised in writing that the matter is being forwarded to the Administrator for further processing.

Step 3. Request for Filing Fee by Administrator

Upon receipt of the form, the Administrator writes to the consumer to request the payment of the filing fee. If, after 30 days, the Administrator has not received the filing fee from the consumer, it sends a second notice. If the fee is still not received within another 30 days, the Request-for-Arbitration form is returned and the consumer is advised that the case has been closed.

Step 4. Filing Date; Appointment of Arbitrator; Schedule of Hearing

The date the Administrator receives the filing fee from the consumer is considered the case "filing date." This date marks the official beginning of the arbitration process. At this juncture, the Administrator appoints an arbitrator and schedules a hearing for a specific date no later than 35 days from the "filing date." Oral-in person hearings are scheduled to accommodate the needs of the consumer, both geographically and as to time-of-day. The consumer elects on the Request-for-Arbitration form the most convenient site for the hearing from the over-50 locations available.

Step 5. Notice of Claim Sent to Dealer (and Third Party, if any); Dealer Responds; Consumer's Reply

Within five days of the filing date, Administrator sends a copy of the consumer's Request-for-Arbitration form, together with all attachments, to the dealer. If the car was financed or leased, the finance company or bank to which the consumer makes his/her payments or the leasing company is also notified of the consumer's claim and of the scheduled hearing date and is requested to submit relevant financial information prior to the hearing date. The dealer is given 15 days from the filing date to respond to the consumer's claim. If the consumer has requested a hearing on documents only, the dealer may object and an oral hearing will be scheduled. Administrator mails any response received to the consumer, who may reply before day 25. Administrator mails a copy of the consumer's reply, if any, to the dealer.

Step 6. Pre-Hearing Discovery

Prior to the hearing, either party may request the arbitrator to direct the production of specified documents (such as repair orders) or information, or request that a witness be subpoenaed. Under the regulations, an arbitrator may draw a negative inference concerning any issue for which documents or witnesses were requested but not provided.

Step 7. The Hearing

At the hearing, the consumer presents evidence and then the dealer presents its evidence. Each party, as well as the arbitrator, may question the other party or any witness. The arbitrator administers an oath or affirmation to each individual who testifies. Formal rules of evidence do not apply and the parties are afforded a full and equal opportunity to present their case. Typically, a hearing lasts between one and two hours.

The arbitrator has the discretion to examine and/or ride in the consumer's car, and both parties are afforded the opportunity to be present and accompany the arbitrator on any examination or ride.

Step 8. The Decision

Regardless of the type of hearing -- oral (in person) or on documents only -- the arbitrator must render a decision within 5 days following the hearing date (unless additional time was allowed for the submission of requested documents) which is to be no more than 40 days from the filing date.

Each decision must be signed and certified by the arbitrator, contain a summary of both the issues in dispute and the evidence presented by each side, include the arbitrator's findings and indicate whether or not the arbitrator, based on the stated findings, found that the consumer qualifies for relief under the lemon law. If the arbitrator finds that the consumer is entitled to relief, the arbitrator must award a refund.

The decision must contain a calculation of the award, where applicable, in accordance with the law. A refund of the prescribed filing fee must also be included as part of every award in favor of the consumer. The dealer must comply with the award within 30 days from the date the consumer notifies the dealer of his or her acceptance of the decision.

Step 9. Administrator's Review of Decision Form

Once rendered, the decision is sent to the Administrator which reviews it for technical completeness and accuracy and to eliminate arithmetic or typographical errors. The Administrator must obtain the approval of the arbitrator for any corrections. Once finalized, the Administrator mails a copy of the decision to each of the parties and the Attorney General's Office within 45 days of the filing date. The date of mailing becomes the official date of issuance from which the 30-day period for compliance begins.

Step 10. Modification and Appeal

Where a party believes a mistake was made, he or she may seek a modification within 20 days of the receipt of the award. Such a request for modification must be acted upon by the arbitrator within 30 days. The grounds for modification are limited by law (CPLR §7511(c)).

The decision is binding on both parties but may be subject to judicial review as permitted pursuant to CPLR Article 75. Either party may commence a court proceeding to vacate or modify an award within 90 days of its receipt (CPLR §7511(b)).

**THE USED CAR
LEMON LAW**

General Business Law, section 198-b. Sale or Lease of Used Motor Vehicles

- a. Definitions. As used in this section, the following words shall have the following meanings:
1. "Consumer" means the purchaser, or lessee, other than for purposes of resale, of a used motor vehicle primarily used for personal, family, or household purposes and subject to a warranty, and the spouse or child of the purchaser or the lessee if either such motor vehicle or the lease of such motor vehicle is transferred to the spouse or child during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;
 2. "Used motor vehicle" means a motor vehicle, excluding motor homes and off-road vehicles, which has been purchased, leased, or transferred either after eighteen thousand miles of operation or two years from the date of original delivery, whichever is earlier;
 3. "Dealer" means any person or business which sells, offers for sale, leases or offers for lease a used vehicle after selling, offering for sale, leasing or offering for lease three or more used vehicles in the previous twelve month period, but does not include:
 - (a) a bank or financial institution except in the case of a lease of a used motor vehicle,
 - (b) a business selling a used vehicle to an employee of that business,
 - (c) a regulated public utility which sells at public auction vehicles used in the ordinary course of its operations, provided that any advertisements of such sales conspicuously disclose the "as is" nature of the sale,
 - (d) the sale of a leased vehicle to that vehicle's lessee, a family member of the lessee, or an employee of the lessee, or
 - (e) or the state, its agencies, bureaus, boards, commissions and authorities, and all of the political subdivisions of the state, including the agencies and authorities of such subdivisions;
 4. "Warranty" means any undertaking in connection with the sale or lease by a dealer of a used motor vehicle to refund, repair, replace, maintain or take other action with respect to such used motor vehicle and provided at no extra charge beyond the price of the used motor vehicle;
 5. "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used motor vehicle and provided at an extra charge beyond the price of the used motor vehicle or of the lease contract for the used motor vehicle;

6. "Repair insurance" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used motor vehicle and which is regulated by the insurance department.
- b. Written Warranty required; terms.
1. No dealer shall sell or lease a used motor vehicle to a consumer without giving the consumer a written warranty which shall at minimum apply for the following terms:
 - (a) If the used motor vehicle has thirty-six thousand miles or less, the warranty shall be at minimum ninety days or four thousand miles, whichever comes first.
 - (b) If the used motor vehicle has more than thirty-six thousand miles, but less than eighty thousand miles, the warranty shall be at minimum sixty days or three thousand miles, whichever comes first.
 - (c) If the used motor vehicle has eighty thousand miles or more but no more than one hundred thousand miles, the warranty shall be at a minimum thirty days or one thousand miles, whichever comes first.
 2. The written warranty shall require the dealer or his agent to repair or, at the election of the dealer, reimburse the consumer for the reasonable cost of repairing the failure of a covered part. Covered parts shall at least include the following items:
 - (a) Engine. All lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings and flywheel.
 - (b) Transmission. The transmission case, internal parts, and the torque converter.
 - (c) Drive axle. Front and rear drive axle housings and internal parts, axle shafts, propeller shafts and universal joints.
 - (d) Brakes. Master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings and disc brake calipers.
 - (e) Radiator.
 - (f) Steering. The steering gear housing and all internal parts, power steering pump, valve body, piston and rack.
 - (g) Alternator, generator, starter, ignition system excluding the battery.
 3. Such repair or reimbursement shall be made by the dealer notwithstanding the fact that the warranty period has expired, provided the consumer notifies the dealer of the failure of a covered part within the specified warranty period.

4. The written warranty may contain additional language excluding coverage:
 - (a) for a failure of a covered part caused by a lack of customary maintenance;
 - (b) for a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.);
 - (c) if the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered such that a covered part was thereby caused to fail;
 - (d) for maintenance services and the parts used in connection with such services such as seals, gaskets, oil or grease unless required in connection with the repair of a covered part;
 - (e) for a motor tuneup;
 - (f) for a failure resulting from racing or other competition;
 - (g) for a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;
 - (h) if the used motor vehicle is used to carry passengers for hire;
 - (i) if the used motor vehicle is rented to someone other than the consumer as defined in paragraph one of subdivision a of this section;
 - (j) for repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear;
 - (k) to the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part; and
 - (l) to the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss or consequential damages.

c. Failure to honor warranty.

1. If the dealer or his agent fails to correct a malfunction or defect as required by the warranty specified in this section which substantially impairs the value of the used motor vehicle to the consumer after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the consumer and refund to the consumer the full purchase price, or in the case of a lease contract all payments made under the contract, including sales or compensating use tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and adjustment for any modifications which either increase or decrease the market value of the vehicle or of the lease contract, and in the case of a lease contract, shall cancel all further payments due from the consumer under the lease contract. In determining the purchase price

to be refunded or in determining all payments made under a lease contract to be refunded, the purchase price, or all payments made under a lease contract, shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle, or for the lease contract, plus, if the dealer elects to not return any vehicles traded-in by the consumer, the wholesale value of any such traded-in vehicles as listed in the National Auto Dealers Association Used Car Guide, or such other guide as may be specified in regulations promulgated by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects in the traded-in vehicle at the time of trade-in. The dealer selling or leasing the used motor vehicle shall deliver to the consumer a written notice including conspicuous language indicating that if the consumer should be entitled to a refund pursuant to this section, the value of any vehicle traded-in by the consumer, if the dealer elects to not return it to the consumer, for purposes of determining the amount of such refund will be determined by reference to the National Auto Dealers Association Used Car Guide wholesale value, or such other guide as may be approved by the commissioner of motor vehicles, as adjusted for mileage improvements, and any major physical or mechanical defects, rather than the value listed in the sales contract. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. If the amount to be refunded to the lienholder will be insufficient to discharge the lien, the dealer shall notify the consumer in writing by registered or certified mail that the consumer has thirty days to pay the lienholder the amount which, together with the amount to be refunded by the dealer, will be sufficient to discharge the lien. The notice to the consumer shall contain conspicuous language warning the consumer that failure to pay such funds to the lienholder within thirty days will terminate the dealer's obligation to provide a refund. If the consumer fails to make such payment within thirty days, the dealer shall have no further responsibility to provide a refund under this section. Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with such adjustment in price as the parties may agree to. The consumer shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section. It shall be an affirmative defense to any claim under this section that:

- (a) The malfunction or defect does not substantially impair such value; or
 - (b) The malfunction or defect is the result of abuse, neglect or unreasonable modifications or alterations of the used motor vehicle.
2. It shall be presumed that a dealer has had a reasonable opportunity to correct a malfunction or defect in a used motor vehicle, if:
- (a) The same malfunction or defect has been subject to repair three or more times by the selling or leasing dealer or his agent within the warranty period, but such malfunction or defect continues to exist; or
 - (b) The vehicle is out of service by reason of repair or malfunction or defect for a cumulative total of fifteen or more days during the warranty period. Said period shall not include days when the dealer is unable to complete the repair because of the unavailability of necessary repair parts. The dealer shall be required to exercise due diligence in attempting to obtain necessary repair parts. Provided, however, that if a vehicle has been out of service for a cumulative total of forty-five days, even if a portion of that time is

attributable to the unavailability of replacement parts, the consumer shall be entitled to the replacement or refund remedies provided in this section.

3. The term of any warranty, service contract or repair insurance shall be extended by any time period during which the used motor vehicle is in the possession of the dealer or his duly authorized agent for the purpose of repairing the used motor vehicle under the terms and obligations of said warranty, service contract or repair insurance.
4. The term of any warranty, service contract or repair insurance, and the fifteen day out-of-service period, shall be extended by any time during which repair services are not available to the consumer because of a war, invasion or strike, fire, flood or other natural disaster.

d. Waiver void.

1. Any agreement entered into by a consumer for the purchase or lease of a used motor vehicle which waives, limits or disclaims the rights set forth in this article shall be void as contrary to public policy. Further, if a dealer fails to give the written warranty required by this article, the dealer nevertheless shall be deemed to have given said warranty as a matter of law.
2. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.
3. Notwithstanding paragraph one of this subdivision, this article shall not apply to used motor vehicles sold for, or in the case of a lease where the value of the used motor vehicle as agreed to by the consumer and the dealer which vehicle is the subject of the contract is, less than one thousand five hundred dollars, or to used motor vehicles with over one hundred thousand miles at the time of sale or lease if said mileage is indicated in writing at the time of sale or lease. Further, this article shall not apply to the sale or lease of historical motor vehicles as defined in section four hundred one of the vehicle and traffic law.

e. Time of delivery, location of warranty and notice. The written warranty provided for in subdivision b of this section and the written notice provided for in subdivision c of this section shall be delivered to the consumer at or before the time the consumer signs the sales or lease contract for the used motor vehicle. The warranty and the notice may be set forth on one sheet or on separate sheets. They may be separate from, attached to, or a part of the sales or lease contract. If they are part of the sales or lease contract, they shall be separated from the other contract provisions and each headed by a conspicuous title.

f. Arbitration and enforcement.

1. If a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of part seven hundred three of title sixteen of the code of federal regulations the provisions of this article concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure. Dealers utilizing informal dispute settlement procedures pursuant to this subdivision shall insure that arbitrators participating in such informal dispute settlement procedures are familiar with the provisions of this section and shall provide to arbitrators and consumers who seek arbitration a copy of the provisions of this section together with the following notice in conspicuous ten point bold face type:

USED CAR LEMON LAW BILL OF RIGHTS

1. If you purchase a used car for more than one thousand five hundred dollars, or lease a used car where you and the dealer have agreed that the car's value is more than one thousand five hundred dollars, from anyone selling or leasing three or more used cars a year, you must be given a written warranty.
2. If your used car has 18,000 miles or less, you may be protected by the new car lemon law.
3.
 - (a) If your used car has more than 18,000 miles and up to and including 36,000 miles, a warranty must be provided for at least 90 days or 4,000 miles, whichever comes first.
 - (b) If your used car has more than 36,000 miles but less than 80,000 miles, a warranty must be provided for at least 60 days or 3,000 miles, whichever comes first.
 - (c) If your used car has 80,000 miles or more but no more than 100,000 miles, a warranty must be provided for at least 30 days or 1,000 miles, whichever comes first. Cars with over 100,000 miles are not covered.
4. If your engine, transmission, drive axle, brakes, radiator, steering, alternator, generator, starter, or ignition system (excluding the battery) are defective, the dealer or his agent must repair or, if he so chooses, reimburse you for the reasonable cost of repair.
5. If the same problem cannot be repaired after three or more attempts, you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.
6. If your car is out of service to repair a problem for a total of fifteen days or more during the warranty period you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.
7. A dealer may put into the written warranty certain provisions which will prohibit your recovery under certain conditions; however, the dealer may not cause you to waive any rights under this law.
8. A dealer may refuse to refund your purchase price, or the payments made under your lease contract, if the problem does not substantially impair the value of your car, or if the problem is caused by abuse, neglect, or unreasonable modification.

9. If a dealer has established an arbitration procedure, the dealer may refuse to refund your purchase price until you first resort to the procedure. If the dealer does not have an arbitration procedure, you may resort to any remedy provided by law and may be entitled to your attorney's fees if you prevail.
 10. As an alternative to the arbitration procedure made available through the dealer you may instead choose to submit your claim to an independent arbitrator, approved by the attorney general. You may have to pay a fee for such an arbitration. Contact your local consumer office or attorney general's office to find out how to arrange for independent arbitration.
 11. If any dealer refuses to honor your rights or you are not satisfied by the informal dispute settlement procedure, complain to the New York State Attorney General, Executive Office, Capitol, Albany, N.Y. 12224.
2. A dealer shall have up to thirty days from the date of notice by the consumer that the arbitrator's decision has been accepted to comply with the terms of such decision. Provided, however, that nothing contained in this subdivision shall impose any liability on a dealer where a delay beyond the thirty day period is attributable to a consumer who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.
 3. Upon the payment of a prescribed filing fee, a consumer shall have the option of submitting any dispute arising under this section to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the attorney general. Upon application of the consumer and payment of the filing fee, the dealer shall submit to such alternate arbitration.

Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by or under regulations established by the attorney general. Such mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules; provided, however, that notwithstanding paragraph (i) of subdivision (a) of section seventy-five hundred two of the civil practice law and rules, special proceedings brought before a court pursuant to such article seventy-five in relation to an arbitration hereunder shall be brought only in the county where the consumer resides or where the arbitration was held or is pending..

The notice required by paragraph one of this subdivision, entitled Used Car Lemon Law Bill of Rights, shall be provided to arbitrators and consumers who seek arbitration under the subdivision.

A dealer shall have thirty days from the date of mailing of a copy of the arbitrator's decision to such a dealer to comply with the terms of such decision. Failure to comply within the thirty day period shall entitle the consumer to recover, in addition to any other recovery to which he may be entitled, a fee of twenty-five dollars for each business day beyond thirty days up to five hundred dollars; provided however, that nothing in this subdivision shall impose any liability on a dealer where a delay beyond the thirty day period is attributable to a consumer who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.

The commissioner of motor vehicles or any person deputized by him may deny the application of any person for registration under section four hundred fifteen of the vehicle and traffic law and suspend or revoke a registration under such section or refuse to issue a renewal thereof if he or such deputy determines that such applicant or registrant or any officer, director, stockholder, or partner, or any other person directly or indirectly interested in the business has deliberately failed to pay an arbitration award, which has not been stayed or appealed, rendered in an arbitration proceeding pursuant to this paragraph for sixty days after the date of mailing of a copy of the award to the registrant. Any action taken by the commissioner of motor vehicles pursuant to this paragraph shall be governed by the procedures set forth in subdivision nine of section four hundred fifteen of the vehicle and traffic law.

4. In no event shall a consumer who has resorted to an informal dispute settlement procedure be precluded from seeking the rights or remedies available by law.
 5. In an action brought to enforce the provisions of this article, the court may award reasonable attorney's fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to paragraph three of this subdivision. In the event a prevailing plaintiff is required to retain the services of an attorney to enforce the collection of an award granted pursuant to this section, the court may assess against the dealer reasonable attorney's fees for services rendered to enforce collection of said award.
 6. Any action brought pursuant to this article shall be commenced within four years of the date of original delivery of the used motor vehicle to the consumer.
- g. Notice of consumer rights. At the time of purchase or lease of a used motor vehicle from a dealer in this state, the dealer shall provide to the consumer a notice, printed in not less than eight point bold face type, entitled "Used Car Lemon Law Bill of Rights". The text of such notice shall be identical with the notice required by paragraph one of subdivision f of this section.

Title 13 NYCRR Chap. VIII
Part 300

New York New and Used Car
Lemon Law Arbitration
Program Regulations

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Section 300.1 Purpose

(a) These regulations are promulgated pursuant to the "New York Lemon Law", General Business Law ("GBL") section 198-a, as amended by Chapter 799 of the Laws of 1986, and section 198-b, as amended by Chapter 609 of the Laws of 1989. They set forth the procedures for the operation of an alternative arbitration mechanism (the "Programs") as required by GBL §198-a(k) and GBL §198-b(f)(3).

(b) These regulations are designed to promote the independent, speedy, efficient and fair disposition of disputes concerning defective new and used motor vehicles.

Section 300.2 Definitions

(a) Unless otherwise stated, terms used in these regulations are as defined in GBL §198-a or GBL §198-b.

(b) The term "Administrator" shall mean a professional arbitration firm or individual appointed by the Attorney General to administer the Program.

Section 300.3 Appointment of Administrator

(a) The Attorney General shall appoint an Administrator or Administrators to a definite term not to exceed two years. The term shall be renewable.

(b) The following criteria shall be considered in the selection of an Administrator: capability, objectivity, non-affiliation with a manufacturer's arbitration program, reliability, experience, financial stability, extent of geographic coverage, and fee structure.

(c) The Attorney General shall give appropriate public notice at least 60 days prior to the expiration of an Administrator's term inviting any interested qualified party to apply in writing for the position of Administrator within 30 days from the date of the public notice.

(d) Upon a vacancy occurring prior to the expiration of an Administrator's term, the time periods in subdivision (3) shall not apply and the Attorney General shall take appropriate steps to assure the continued administration of the Program.

Section 300.4 Consumer's Request for Arbitration

(a) The Attorney General shall prescribe and make available "Request for Arbitration" forms for both GBL §198-a and GBL §198-b claims. To apply for arbitration under the Program, a consumer shall obtain, complete and submit the appropriate form to the Attorney General.

(b) Those consumers wishing a hearing on documents only shall so indicate on the form.

(c) For a GBL §198-a claim, the consumer shall indicate on the form his/her choice of remedy (i.e., either refund or comparable replacement vehicle), in the event the arbitrator rules in favor of the consumer. Such choice shall be followed by the arbitrator unless the consumer advises the Administrator in writing of a change in his/her choice of remedy prior to the arbitrator's rendering of a decision.

(d) Upon receipt, the Attorney General shall date-stamp and assign a case number to the form.

(e) The Attorney General shall review the submitted form for completeness and eligibility and shall either accept it or reject it.

(f) If the form is rejected by the Attorney General, the Attorney General shall promptly return the form, notifying the consumer in writing of the reasons for the rejection and, where possible, inviting the consumer to correct the deficiencies.

(g) If the form is accepted by the Attorney General, he shall refer it to the Administrator for processing. The Attorney General shall promptly notify the consumer in writing of the acceptance of the form and of its referral to the Administrator. Such notice shall also advise the consumer to pay the prescribed filing fee directly to the Administrator.

(h) If, after 30 days from the date of the notice of acceptance, the Administrator fails to receive the prescribed filing fee, the Administrator shall promptly advise the consumer in writing that unless such fee is received within 60 days from the date of the first notice, the form will be returned and the case marked closed. After such time, if the consumer wishes to pursue a claim under the Program, (s)he must submit a new form to the Attorney General.

(i) Participation in any informal dispute resolution mechanism that is not binding on the consumer shall not affect the eligibility of a consumer to participate in either Program.

Section 300.5 Filing Date

On the day the Administrator receives the prescribed filing fee, the Administrator shall date stamp the "Request for Arbitration" form. Such date shall be considered the "filing date".

Section 300.6 Assignment of Arbitrator

(a) After the filing date, the Administrator shall assign an arbitrator to hear and decide the case. Notice of assignment shall be mailed to the arbitrator and the parties along with a copy of these regulations and GBL §198-a or GBL §198-b, whichever is applicable.

(b) The arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale or manufacture of motor vehicles.

(c) Upon a finding by the Administrator, at any stage of the process, of grounds to disqualify the arbitrator, the Administrator shall dismiss the arbitrator and assign another arbitrator to the case.

(d) If any arbitrator should resign, die, withdraw or be unable to perform the duties of his/her position, the Administrator shall assign another arbitrator to the case and the period to render a decision shall be extended accordingly.

(e) Arbitrators shall undergo training established by the Administrator and the Attorney General. This training shall include procedural techniques, the duties and responsibilities of arbitrators under the Programs, and the substantive provisions of GBL §198-a for those arbitrators hearing GBL §198-a claims, and the substantive provisions of GBL §198-b for those arbitrators hearing GBL §198-b claims.

Section 300.7 Scheduling of Arbitration Hearings

(a) Each manufacturer of cars sold in New York shall notify the Attorney General in writing, within 10 days after the effective date of these regulations, of the name, address and telephone number of the person designated to receive notices under the GBL §198-a Program. Such information shall be presumed correct unless updated by the manufacturer.

(b) The arbitration shall be conducted as an oral hearing unless the consumer has requested, on the "Request for Arbitration" form, a hearing on documents only and both parties agree to a documents only hearing; provided, however, that the parties may mutually agree in writing to change the consumer's selection of the mode of hearing. Upon such change, the parties shall notify the Administrator who shall comply with the request and, where necessary, such request shall waive the 40 day limit in which a decision must be rendered.

(c) Within 5 days of the filing date, the Administrator shall send the manufacturer's designee or the dealer, as appropriate, a copy of the consumer's completed form along with a notice that it may respond in writing. Such response shall be sent in triplicate, within 15 days of the filing date, to the Administrator, who shall promptly forward one copy to the consumer.

(d) The consumer may respond in writing to the manufacturer's or dealer's submission within 25 days of the filing date. Such response shall be sent in triplicate to the Administrator, who shall promptly forward a copy to the manufacturer or the dealer.

(e) An oral hearing, where appropriate, shall be scheduled no later than 35 days from the filing date, unless a later date is agreed to by both parties. The Administrator shall notify both parties of the date, time and place of the hearing at least 8 days prior to its scheduled date.

(f) Hearings shall be scheduled to accommodate, where possible, time-of-day needs of the consumer and the manufacturer or the dealer, including evening and weekend hours.

(g) Hearings shall also be scheduled to accommodate geographic needs of the consumer. Regular hearing sites shall be established at locations designated by the Administrator, including in the following areas: Albany, Binghamton, Buffalo, Nassau County, New York City, Plattsburgh, Poughkeepsie, Rochester, Suffolk County, Syracuse, Utica, Watertown, and Westchester. No hearing site established by the Administrator shall be discontinued without the approval of the Attorney General. In addition, where a regular site is more than 100 miles from the consumer's residence, a hearing must be scheduled at the request of the consumer at a location designated by the Administrator within 100 miles of the consumer's residence.

(h) In unusual circumstances, a party may present its case by telephone, provided that adequate advance notice is given to the Administrator and to the other party. In such cases, the arbitrator and both parties shall be included and the party requesting the telephonic hearing shall pay all costs associated therewith.

Section 300.8 Adjournments

Either party may make a request to reschedule the hearing. Except in unusual circumstances, such request shall be made to the Administrator orally or in writing at least two business days prior to the hearing date. Upon a finding of good cause, the arbitrator may reschedule the hearing. In unusual circumstances, the arbitrator may reschedule the hearing at any time prior to its commencement.

Section 300.9 Request for Additional Information or Documents

(a) A party, by application in writing to the Administrator, may request the arbitrator to direct the other party to produce any documents or information. The arbitrator shall, upon receiving such request, or on his/her own initiative, direct the production of documents or information which (s)he believes will reasonably assist a party in presenting his/her case or assist the arbitrator in deciding the case. The arbitrator's direction for the production of documents and information shall allow a reasonable time for the gathering and production of such documents and information.

(b) All documents and information forwarded in compliance with the arbitrator's direction shall be legible and received no later than three business days prior to the date of the hearing. Each party shall bear its own photocopying costs.

(c) Upon failure of a party to comply with the arbitrator's direction to produce documents and/or information, the arbitrator may draw a negative inference concerning any issue involving such documents or information.

(d) The term "documents" in this section shall include, but not be limited to, relevant manufacturer's service bulletins, dealer work orders, diagnoses, bills, and all communications relating to the consumer's claim.

(e) At the request of either party or on his/her own initiative, the arbitrator, when (s)he believes it appropriate, may subpoena any witnesses to appear or documents to be presented at the hearing.

Section 300.10 Representation by Counsel or Third Party

Any party may be represented by counsel or assisted by any third party.

Section 300.11 Interpreters

Any party wishing an interpreter shall make the necessary arrangements and assume the costs for such service.

Section 300.12 Hearing Procedure

(a) The conduct of the hearing shall afford each party a full and equal opportunity to present his/her case.

(b) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(c) Formal rules of evidence shall not apply; the parties may introduce any relevant evidence.

(d) The arbitrator shall receive in evidence a decision rendered in a previous arbitration which was not binding on the consumer and give it such weight as the arbitrator deems appropriate.

(e) The arbitrator shall receive relevant evidence of witnesses by affidavit, and such affidavits shall be given such weight as the arbitrator deems appropriate.

(f) The arbitrator shall have discretion to examine or ride in the consumer's vehicle. Both parties shall be afforded the opportunity to be present and accompany the arbitrator on any such examination or ride.

(g) The consumer shall first present evidence in support of his/her claim, and the manufacturer or the dealer, as applicable, shall then present its evidence. Each party may question the witnesses called by the other. The arbitrator may question any party or witness at any time during the hearing.

(h) The arbitrator shall maintain decorum at the hearing.

(i) The arbitrator may request additional evidence after the closing the hearing. All such evidence shall be submitted to the Administrator for transmission to the arbitrator and the parties.

Section 300.13 Hearing on Documents Only

If the hearing is on documents only, all documents shall be submitted to the Administrator no later than 30 days from the filing date. The arbitrator shall render a timely decision based on all documents submitted.

Section 300.14 Defaults

(a) Upon the failure of a party to appear at an oral hearing, the arbitrator shall nevertheless conduct the hearing and render a timely decision based on the evidence presented and documents contained in the file.

(b) If neither party appears at the hearing, the arbitrator shall return the case to the Administrator who shall close it and so notify the parties.

(c) In a documents-only hearing, where the manufacturer or the dealer, fails to respond to the claim, the arbitrator shall render a decision based upon the documents contained in the file.

Section 300.15 Withdrawal or Settlement Prior to Decision

(a) A consumer may withdraw his/her request for arbitration at any time prior to decision. If the Administrator is notified by the consumer of his/her request to withdraw the claim within seven business days of the filing date, the Administrator shall refund the filing fee.

(b) If the parties agree to a settlement more than seven business days after the filing date but prior to the issuance of a decision, they shall notify the Administrator in writing of the terms of the settlement. Upon the request of the parties, the arbitrator shall issue a decision reflecting the settlement.

Section 300.16 The Decision

(a) The arbitrator shall render a decision within 40 days of the filing date which shall be in writing on a form prescribed by the Administrator and approved by the Attorney General. The decision shall be dated and signed by the arbitrator.

(b) In his/her decision, the arbitrator shall determine whether the consumer qualifies for relief pursuant to GBL §198-a or GBL §198-b, as appropriate. If the arbitrator finds that the consumer qualifies, (s)he shall award the specific remedies prescribed by the applicable statute.

(c) The decision shall specify the monetary award where applicable. A calculation of the amount, in accordance with GBL §198-a or GBL §198-b, as applicable, shall be included in the decision. The decision shall also award the prescribed filing fee to a successful consumer.

(d) The decision shall, where applicable, require that any action required by the manufacturer or the dealer, be completed within 30 days from the date the Administrator notifies the manufacturer or the dealer, of the decision.

(e) The Administrator shall review the decision for technical completeness and accuracy and advise the arbitrator of any suggested technical corrections, such as computational, typographical or other minor corrections. Such changes shall be made only with the consent of the arbitrator.

(f) After review, the Administrator shall, within 45 days of the filing date, mail a copy of the final decision to both parties, the arbitrator, and the Attorney General. The date of mailing to the parties shall be date-stamped by the Administrator on the decision as the date of issuance.

(g) Failure to mail the decision to the parties within the specified time period or failure to hold the hearing within the prescribed time shall not invalidate the decision.

(h) The arbitrator's decision is binding on both parties and is final, subject only to judicial review pursuant to CPLR, Article 75. The decision shall include a statement to this effect.

Section 300.17 Record Keeping

(a) The Administrator shall keep all records pertaining to each arbitration for a period of at least two years and shall make the records of a particular arbitration available for inspection upon written request by a party to that arbitration, and shall make records of all arbitrations available to the Attorney General upon written request.

(b) The Administrator shall maintain such records and statistics for both Programs as are required by GBL §198-a(m)(3).

Section 300.18 Miscellaneous Provisions

(a) All communications between the parties and the arbitrator, other than at oral hearings, shall be directed to the Administrator.

(b) If any provision of these regulations or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of these regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

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Additional free copies of "New York's Used Car Lemon Law: A Guide for Consumers" are available from the New York State Department of Law, State Capitol, Albany, NY 12224 or from any office of Attorney General Eliot Spitzer. The Guide may also be downloaded from the Attorney General's web site: www.oag.state.ny.us

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04/06