

STANDARDS OF THE NEW YORK LEMON LAW

New Car Lemon Law

The following is a brief explanation of most relevant provisions of the New York lemon law. The complete text of the lemon law can be found at N.Y. Gen. Bus. Law Section 198-a.

VEHICLES COVERED

The New York lemon law applies to motor vehicles that are subject to a manufacturer's express warranty at the time of original delivery and are either:

1. Purchased, leased or transferred in New York within the first 18,000 miles of operation or two years from date of original delivery, whichever is earlier; or
2. Registered in New York.

The lemon law does not cover motorcycles or off-road vehicles, and does not apply to the living facilities of motor homes.

CONSUMERS COVERED

The lemon law covers the following "consumers":

1. The purchaser, lessee or transferee, other than for purposes of resale, of a motor vehicle used primarily for personal, family or household purposes; or
2. Any other person entitled by the terms of the manufacturer's warranty to enforce its obligations, provided the person uses the motor vehicle primarily for personal, family or household purposes.¹

The lemon law also covers the subsequent transferee.

PROBLEMS COVERED

The lemon law covers any defect or condition that substantially impairs the value of the motor vehicle to the consumer. This is referred to as a *nonconformity*. The lemon law does not cover a defect or condition that is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle.

COVERAGE PERIOD OF THE NEW YORK LEMON LAW

The lemon law covers vehicles during the first 18,000 miles of operation or during the period of 2 years following the date of original delivery of the motor vehicle, whichever is the earlier date.

¹ *Volkswagen of America, Inc. v. Friedman*, 166 A.D.2d 709; 561 N.Y.S.2d 597 (1990).

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MANUFACTURER'S DUTY TO REPAIR A VEHICLE

The manufacturer's obligation to repair and remedies for refusal to repair are limited to a motor vehicle that was sold in New York and is registered in New York.

If a motor vehicle that is sold and registered in New York does not conform to all express warranties, the consumer must report the nonconformity to the manufacturer, its agent or its authorized dealer during the first 18,000 miles of operation or during the period of two years following the date of the motor vehicle's original delivery to a consumer, whichever is earlier. The manufacturer, its agent or its authorized dealer must correct the nonconformity at no charge to the consumer, even if the 18,000 miles/two years period has expired.

If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward the written notice within 7 days to the manufacturer by certified mail, return receipt requested, and must include in the notice a statement indicating whether repairs have been undertaken.

If the manufacturer's agent or authorized dealer refuses to undertake repairs within 7 days of receipt of the consumer's notice, the consumer may send written notice of this refusal to the manufacturer by certified mail, return receipt requested. The manufacturer has 20 days from receipt of this notice to commence the repairs. If within the 20 day period the manufacturer or its agent fails to commence repairs, then the manufacturer must, at the consumer's option either replace or repurchase the motor vehicle.

If an agent or authorized dealer of a motor home manufacturer, or a repair shop to which the manufacturer referred a consumer, refuses to undertake repairs within 7 days of receipt of notice by a consumer of a nonconformity within the first 18,000 miles of operation or during the period of two years following the date of the motor home's original delivery to the consumer, whichever is earlier, the consumer may send written notice of this refusal to the motor home manufacturer by certified mail, return receipt requested. The motor home manufacturer, its dealer or the referred repair shop has 20 days from receipt of this notice to commence the repairs. If within the 20 day period the motor home manufacturer, its dealer or the referred repair shop fails to commence repairs, then the motor home manufacturer must, at the consumer's option either replace or repurchase the motor vehicle.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer or its authorized dealers are unable to repair or correct any nonconformity after a reasonable number of attempts during the first 18,000 miles of operation or during the period of two years following the date of the motor vehicle's original delivery to a consumer, whichever is earlier, the manufacturer must, at the consumer's option, either replace or repurchase the motor vehicle.

The consumer has the option of returning the motor vehicle to the dealer or other authorized agent of the manufacturer who sold the vehicle to the consumer, or to the

dealer or other authorized agent who attempted to repair or correct the nonconformity that necessitated the return. The consumer cannot be subject to any further shipping charges.

If the motor vehicle is a motor home, and the motor home manufacturer, its agent or authorized dealer, or a repair shop to which the manufacturer referred a consumer is unable to repair or correct any covered nonconformity after a reasonable number of attempts within the first 18,000 miles of operation or during the period of two years following the date of the motor vehicle's original delivery to a consumer, whichever is earlier, the motor home manufacturer must, at the consumer's option, either replace or repurchase the motor vehicle.

For motor homes, a repair attempt will not be counted if the repair facility is not authorized by the applicable motor home manufacturer to perform warranty work on the identified nonconformity. It will count as only one repair attempt for a motor home if the same nonconformity is addressed a second time due to the consumer's decision to continue traveling and to seek repair of the same nonconformity at another repair facility rather than wait for the initial repair to be completed.

REASONABLE NUMBER OF REPAIR ATTEMPTS

In determining whether the manufacturer has had a reasonable number of attempts to repair or correct a nonconformity, the New York lemon law creates a *presumption* that a reasonable number of attempts have been made if, during the first 18,000 miles of operation or during the period of two years following the date of the motor vehicle's original delivery to a consumer, whichever is earlier, either of the following occurs:

1. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers, but the nonconformity, defect or condition continues to exist. The consumer does not have to establish that the defect continued to exist until the hearing date. Rather, the presumption obligates a consumer to establish that the vehicle was subject to repair at least four times and that the same defective condition remained unresolved after the fourth attempt²; or
2. The vehicle is out of service by reason of repair of one or more nonconformities for a cumulative total of thirty or more calendar days.

ADDITIONAL NOTICE PROVISIONS APPLYING TO A MOTOR HOME

If, during the first 18,000 miles of operation or during the period of two years following the date of the motor vehicle's original delivery to a consumer, whichever is earlier, the same covered nonconformity has been subject to repair two times or the motor home has been out of service by reason of repair for 21 days, the consumer must report this to the motor home manufacturer or its authorized dealer by certified mail, return receipt requested. After the motor home has been out of service by reason of three repair

² *Matter of DaimlerChrysler Corp. v. Spitzer*, 7 N.Y.3d 653 (2006).

attempts or for at least 36 days, the consumer may institute any proceeding or other action pursuant to the lemon law.

This special notification requirement will apply only if the manufacturer or its authorized dealer provides a copy of this requirement to the consumer and the consumer acknowledges receipt in writing. If the consumer has received notice and fails to comply with the special notification requirements, then additional repair attempts or days out of service will not be taken into account in determining whether the consumer is entitled to replacement or repurchase. But any additional repair attempts or days out of service that occur after the consumer complies with the special notification requirements will be taken into account.

A repair attempt will not be counted if the repair facility is not authorized by the applicable motor home manufacturer to perform warranty work on the identified nonconformity. It will count as only one repair attempt for a motor home if the same nonconformity is addressed a second time due to the consumer's decision to continue traveling and to seek repair of the same nonconformity at another repair facility rather than wait for the initial repair to be completed.

DISPUTE RESOLUTION

If a manufacturer has established an informal dispute settlement mechanism, the mechanism must comply with the provisions of the lemon law. The lemon law provisions requiring repurchase or replacement after an inability to repair do not apply to a consumer who has not first resorted to the mechanism.

The consumer has the option of submitting any dispute under the lemon law to an alternate arbitration mechanism administered by the New York Attorney General's Office.

TIME PERIOD FOR FILING CLAIMS

An action must be commenced within 4 years of the date of the motor vehicle's original delivery to the consumer.

REMEDIES UNDER THE NEW YORK LEMON LAW

REPURCHASE OF OWNED VEHICLES

The New York lemon law sets out the following amounts that a manufacturer must pay when it repurchases an owned vehicle under the lemon law:

1. The full purchase price (cash plus any trade-in allowance); and
2. Fees and charges, including all license fees, registration fees and any similar governmental charges;
3. Less an allowance for the consumer's use of the vehicle in excess of the first 12,000 miles of operation;
4. Less a reasonable allowance for any damage not attributable to normal wear and tear or improvements.

The manufacturer is not required to refund any sales tax paid by the consumer. The lemon law provides that the consumer may receive a refund of such sales tax by applying to the Commissioner of Taxation and Finance. In addition, information provided by the Attorney General's Office indicates the refund will not include other expenses or charges, such as loss of use, insurance premiums and finance charges.

The allowance for the consumer's use of the vehicle is to be determined in accordance with the "mileage deduction formula", defined as:

$$\text{Deduction} = \frac{\text{Mileage in excess of 12,000 miles}}{100,000} \times \text{purchase price}$$

Refunds are 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.

REPURCHASE OF LEASED VEHICLES

The New York lemon law sets out the following amounts that a manufacturer must pay when it repurchases a leased vehicle under the lemon law:

To the lessor –

1. The lease price, consisting of (a) the lessor's actual purchase cost, (b) the freight cost (if applicable), (c) the cost for accessories (if applicable), (d) any fee paid to obtain the lease, and (d) an amount equal to 5% of the actual purchase cost;
2. Less the aggregate deposit and rental payments paid to the lessor for the leased vehicle.

To the lessee –

1. The aggregate deposit and rental payments paid to the lessor;

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2. Any trade-in allowance; and
3. Fees and charges, including but not limited to all license fees, registration fees and any similar governmental charges;
4. Less “service fees” (defined below);
5. Less an allowance for the consumer’s use of the vehicle in excess of the first 12,000 miles of operation;
6. Less a reasonable allowance for any damage not attributable to normal wear and tear or improvements.

“Service fees” are defined as that portion of the lease payments attributable to:

1. Interest on the rental payments previously paid at an annual rate equal to two points above the prime rate in effect on the date of the lease execution; and
2. Any insurance or other costs paid by the lessor for the benefit of the lessee.

The allowance for the consumer’s use of the vehicle is to be determined in accordance with the “mileage deduction formula”, defined as:

$$\text{Deduction} = \frac{\text{Mileage in excess of 12,000 miles}}{100,000} \times \text{lease price}$$

The terms of the lease are deemed terminated contemporaneously with the date of the arbitrator’s decision, and no penalty for early termination is assessed.

REPLACEMENT

When replacing a vehicle under the New York lemon law, the manufacturer must replace the vehicle with a comparable motor vehicle, meaning a vehicle of comparable mileage, model year and value of the vehicle being returned³. The reasonable allowance for use does not apply to a replacement.

³ *Lyeth v. Chrysler Corp.*, 929 F.2d 891 (2d Cir. 1991); *Hynson v. American Motors Sales Corp.*, 164 A.D.2d 41 (1990); *Matter of Volvo N. Am. Corp. v DePaola*, 156 AD2d 40 (1990)

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The following notices must be given to consumers and arbitrators by informal dispute settlement mechanisms in New York:

NEW CAR LEMON LAW BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR NEW CAR, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST.

(2) YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER.

(3) UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.

(4) IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR OR MORE ATTEMPTS; OR IF YOUR CAR IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE MANUFACTURER OR ITS AGENT REFUSES TO REPAIR A SUBSTANTIAL DEFECT OR CONDITION WITHIN TWENTY DAYS OF RECEIPT OF NOTICE SENT BY YOU TO THE MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; THEN YOU MAY BE ENTITLED TO EITHER A COMPARABLE CAR OR A REFUND OF YOUR PURCHASE PRICE, PLUS LICENSE AND REGISTRATION FEES, MINUS A MILEAGE ALLOWANCE ONLY IF THE VEHICLE HAS BEEN DRIVEN MORE THAN 12,000 MILES. SPECIAL NOTIFICATION REQUIREMENTS MAY APPLY TO MOTOR HOMES.

(5) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE CAR.

(6) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE CAR OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR CAR.

(7) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE CAR OR REFUND YOUR PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.

(8) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEYS FEES IF YOU PREVAIL.

(9) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(10) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE

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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.

NEW MOTOR HOME LEMON LAW BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR NEW MOTOR HOME, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST. HOWEVER, THIS ADDITIONAL WARRANTY DOES NOT APPLY TO THE LIVING FACILITIES OF MOTOR HOMES, WHICH ARE THE PORTIONS THEREOF DESIGNED, USED OR MAINTAINED PRIMARILY AS LIVING QUARTERS AND SHALL INCLUDE, BUT NOT BE LIMITED TO THE FLOORING, PLUMBING SYSTEM AND FIXTURES, ROOF AIR CONDITIONER, FURNACE, GENERATOR, ELECTRICAL SYSTEMS OTHER THAN AUTOMOTIVE CIRCUITS, THE SIDE ENTRANCE DOOR, EXTERIOR COMPARTMENTS, AND WINDOWS OTHER THAN THE WINDSHIELD AND DRIVER AND FRONT PASSENGER WINDOWS.

(2) YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER.

(3) UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.

(4) IF, WITHIN THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION OR DURING THE PERIOD OF TWO YEARS FOLLOWING THE DATE OF ORIGINAL DELIVERY OF THE MOTOR VEHICLE TO SUCH CONSUMER, WHICHEVER IS THE EARLIER DATE THE MANUFACTURER OF A MOTOR HOME OR ITS AGENTS OR ITS AUTHORIZED DEALERS OR REPAIR SHOPS TO WHICH THEY REFER A CONSUMER ARE UNABLE TO REPAIR OR CORRECT ANY COVERED DEFECT OR CONDITION WHICH SUBSTANTIALLY IMPAIRS THE VALUE OF THE MOTOR HOME TO THE CONSUMER AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MOTOR HOME MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR HOME WITH A COMPARABLE MOTOR HOME, OR ACCEPT RETURN OF THE MOTOR HOME FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE AND ANY TRADE-IN ALLOWANCE, PLUS FEES AND CHARGES, AS WELL AS THE OTHER FEES AND CHARGES, INCLUDING BUT NOT LIMITED TO ALL LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENTAL CHARGES, LESS AN ALLOWANCE FOR THE CONSUMER'S USE OF THE VEHICLE IN EXCESS OF TWELVE THOUSAND MILES TIMES THE PURCHASE PRICE, OR THE LEASE PRICE IF APPLICABLE, OF THE VEHICLE DIVIDED BY ONE HUNDRED THOUSAND MILES, AND A REASONABLE ALLOWANCE FOR ANY DAMAGE NOT ATTRIBUTABLE TO NORMAL WEAR OR IMPROVEMENTS.

(5) SPECIAL NOTICE PROVISION: IF WITHIN EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST, THE SAME COVERED NONCONFORMITY, DEFECT OR CONDITION IN YOUR MOTOR HOME HAS BEEN SUBJECT TO REPAIR TWO TIMES OR YOUR MOTOR HOME HAS BEEN OUT OF SERVICE BY REASON OF REPAIR FOR TWENTY-ONE DAYS, WHICHEVER COMES FIRST, YOU MUST HAVE REPORTED THIS TO THE MOTOR HOME MANUFACTURER OR ITS AUTHORIZED DEALER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND YOU MAY INSTITUTE ANY PROCEEDING OR OTHER ACTION PURSUANT TO THE LEMON LAW IF THE MOTOR HOME HAS BEEN OUT OF SERVICE BY REASON OF THREE REPAIR ATTEMPTS OR FOR AT LEAST THIRTY-SIX DAYS. THIS SPECIAL NOTICE REQUIREMENT SHALL ONLY APPLY IF THE MANUFACTURER OR ITS AUTHORIZED DEALER PROVIDES WRITTEN COPY OF THE REQUIREMENTS OF THIS PARAGRAPH TO YOU AND RECEIPT OF NOTICE IS ACKNOWLEDGED BY YOU IN WRITING. IF YOU FAIL TO COMPLY WITH THE SPECIAL NOTIFICATION REQUIREMENTS OF THIS PARAGRAPH, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON OF REPAIR SHALL NOT BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER YOU ARE ENTITLED TO A REMEDY PROVIDED IN PARAGRAPH FOUR. HOWEVER, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON OF REPAIR THAT OCCUR AFTER YOU COMPLY WITH SUCH SPECIAL NOTIFICATION REQUIREMENTS SHALL BE TAKEN INTO ACCOUNT IN MAKING THAT DETERMINATION. NOTICE TO THE MANUFACTURER SHOULD BE SENT TO THE FOLLOWING: NOTICE TO THE DEALER SHOULD BE SENT TO THE FOLLOWING:

(6) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE MOTOR HOME.

(7) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE MOTOR HOME OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM IS NOT COVERED BY THE LEMON LAW OR DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR MOTOR HOME.

(8) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE MOTOR HOME OR REFUND YOUR PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.

(9) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S FEES IF YOU PREVAIL.

(10) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(11) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, 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 ARBITRATION.

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TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.

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