

# Attorney General's Guide to BUYING OR LEASING A NEW CAR



## **Lemon Law: General Laws Chapter 90, section 7 N 1/2**

Among the statutes which provide consumers protection in a motor vehicle transaction is the Massachusetts Lemon Law, which offers consumers who purchase or lease a new car with a serious defect the opportunity to receive a refund or a replacement vehicle. Leased cars are covered under this statute if the lease is entered into on or after July 1, 1997.

Contrary to popular belief, there is no automatic right to cancel your agreement to buy or lease a motor vehicle. You should therefore read over all lease or sale documents carefully before deciding to lease or buy a motor vehicle.

The law defines a “lemon” as a new motor vehicle which has a defect (“nonconformity”) that substantially impairs its use, market value or safety, and the defect remains or reoccurs, despite a reasonable number of repair attempts. The consumer must demonstrate that the impairment is substantial; in order to show substantial impairment of market value, you must show that the vehicle’s value is reduced by at least 10% because of the defect(s).

The term of protection under this law is one year, or 15,000 miles of use from the date of original delivery, whichever comes first. Both the defect(s) and the repair attempts must occur during this period, and vehicles resold during this time are also covered.

A new car, motorcycle, van or truck leased or purchased in Massachusetts from a dealer for personal or family use is within the protections provided by this law. However, an auto home, a vehicle built for off-road use, or a vehicle used primarily for business purposes is not covered by the Lemon Law.

If a motor vehicle suffers from a defect, the consumer must report the defect to the manufacturer, its agent, or its authorized dealer, and give the manufacturer or dealer a “reasonable number” of attempts to repair the vehicle. If the problem(s) still persist(s) or recur(s) after three or more repair attempts, or if the vehicle is out of service for fifteen or more business days (a business day is any day the service department of an authorized dealer is open for business) during the “term of protection,” then the consumer is entitled under the law to choose a refund or a replacement vehicle.

Not all costs incurred by the consumer may be recovered. A consumer who is entitled to a refund can recover the full contract price of the vehicle, including sales tax and all credits and allowances for any trade-in vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute. However a consumer can only recover for continuing costs, such as repair costs, upon the return of the vehicle if the consumer has previously submitted documentation to the manufacturer that such costs have been incurred. There will be a deduction from the refund for mileage put on the vehicle by the consumer. In the event the consumer is offered a replacement vehicle, the manufacturer must reimburse the consumer for any fees for the transfer of registration or any sales tax incurred as a result of the replacement. A consumer has a right to reject the offer of a replacement vehicle and demand a refund, but does not have the right to demand a replacement vehicle if offered a refund.

## **Implied Warranty of Merchantability**



Under General Laws chapter 106, section 2-314, a motor vehicle purchased from a dealer is subject to the “implied warranty of merchantability,” which states that a product should work as intended for a reasonable period of time. “Reasonable” time will take into account the age of the vehicle, mileage on the vehicle, price paid and other factors.

## **Mediation; Arbitration**



You may attempt to resolve a lemon law dispute on your own, but if this is not successful, there are a number of other possible sources of assistance in resolving your problem.

- ◆ Attorney General: you may request mediation of your complaint through the Attorney General’s office. The Consumer Complaint and Information Section (“CCIS”), located in Boston, may be reached by calling (617) 727-8400. CCIS offers information and mediation services, and referrals to the statewide network of 19 Local Consumer Programs that work in cooperation with the Attorney General’s office. These offices also offer free mediation services.
- ◆ Manufacturer sponsored arbitration: many vehicle manufacturers offer their own in-house mediation, with manufacturers’ representatives and independent consumer advocates on the reviewing panels. Manufacturers’ “zone representatives” will investigate problems in an effort to resolve them. To access these programs, you should contact the specific manufacturer’s zone or regional office for details. Manufacturers’ arbitration is not required to comply with the Lemon Law standards concerning repairs, timing, or refund or replacement. Therefore, in manufacturer sponsored arbitration, the manufacturer may

propose a resolution that is different from the resolution the Lemon Law would provide. For example, the manufacturer may offer to make additional repairs and to extend the manufacturer’s warranty on your vehicle.

- ◆ Better Business Bureau (“BBB”) arbitration: The Better Business Bureau offers a “BBB Auto Line” arbitration program for most vehicle makes. You may reach the BBB serving Eastern Massachusetts at 235 West Central Street, Suite 1, Natick, MA 01760, (508) 652-4800; and Central Massachusetts at 339 Main Street, Worcester, MA 01608, (866) 566-9222. BBB arbitration is not required to comply with the Lemon Law standards. As in manufacturer sponsored arbitration, BBB arbitration may propose a resolution that is different from the resolution the Lemon Law would provide.
- ◆ State-certified arbitration: The Office of Consumer Affairs is the state agency which operates the state-certified Lemon Law Arbitration Program. To qualify for this arbitration program, you must have tried to have a substantial defect repaired a reasonable number of times, and must have given the manufacturer a letter in which you stated you were giving it a final opportunity to repair the defect. If the manufacturer contacts you within seven days of receiving that letter from you, you must permit a final repair attempt within that seven days. If the vehicle continues to have the same defect following the final repair attempt, or it recurs during the period that the Lemon Law applies, you may apply for Lemon Law arbitration. The manufacturer must submit to this form of arbitration if you apply within 18 months of the date of delivery of the vehicle to you. If you apply after 18 months, the manufacturer may choose not to take part in arbitration.

You must apply for arbitration on the official form provided by the Office of Consumer

Affairs. You may go to state-certified arbitration even if you have previously gone to BBB or manufacturer arbitration, but not if you have previously gone to court. The arbitration hearing must generally be held within 44 days of the receipt of the request for arbitration, and the arbitrator must issue a decision within 45 days of the hearing. The manufacturer must either comply with the arbitrator's order or file an appeal within 21 days of the arbitrator's decision. As of this writing, there is no fee for this arbitration. For further information, contact the Office of Consumer Affairs, 10 Park Plaza, Suite 5170, Boston, MA, (617) 973-8700.

- ◆ Private legal action: You may also choose to consult an attorney concerning private legal action, instead of going through an arbitration process, or after winning at arbitration, if the dealer fails to comply with the arbitrator's order. You may also file in court after arbitration if you are unhappy with the decision of the arbitrator, but the arbitrator's decision against you could make further legal action more difficult.

### Voiding Automobile Sales Contracts



Under General Laws chapter 90, section 7N, if a motor vehicle, new or used, fails to pass a safety or combined safety and emissions inspection at a station licensed to conduct such inspections within 7 days of sale, and it will cost more than 10% of the purchase price to fix the items causing the vehicle to fail inspection, a consumer may void the sale, entitling the consumer to return of the purchase price. The consumer must notify the seller of the intention to return the vehicle within 14 days of the sale. The consumer must also within this 14 day period deliver the vehicle to the seller, and must provide the seller with a written statement signed by an authorized agent of the inspection station, stating the reason why the vehicle failed to pass

the safety or combined safety and emissions inspection, and providing an estimate of the cost of necessary repairs. The buyer is entitled to a refund, but the buyer and seller may agree in writing that the seller may make the necessary repairs at the expense of the seller within a reasonable period of time. Note that this law applies only to sales of motor vehicles, and applies equally to private party or dealer sales, regardless of the price paid for the vehicle, or the mileage on the vehicle at the time of purchase.

### Leasing Statutes



Under General Laws chapter 106, section 2A-212, a leased vehicle, just as a purchased vehicle, is subject to the "implied warranty of merchantability," which means that a product should work as intended for a reasonable period of time. "Reasonable" time will take into account the age of the vehicle, mileage on the vehicle, price paid and other factors.

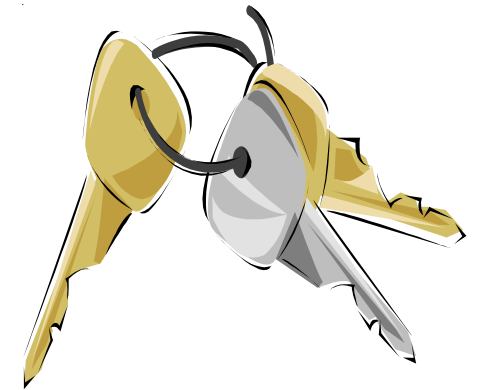
"Regulation M," a federal regulation ( 16 Code of Federal Regulations 213), requires lessors of vehicles to provide consumers with specific information concerning the costs of the lease. Effective January 1, 1998, the lessor must inform a consumer in writing of the amount required at lease signing, including: the "capitalized cost reduction," which is a credit, analogous to a cash down payment, trade-in, rebate, or noncash credit in a sales transaction; the amount of the first monthly payment; the refundable security deposit; and any title or registration fees due. The lessor must also inform the consumer of the total monthly payment due, the number of payments to pay off the lease, any other charges such as a "disposition fee" if the consumer does not purchase the vehicle at the end of the lease, and the total payments due. Most importantly, the lessor must inform the consumer of the "gross capitalized cost" of the vehicle, which is the agreed upon value of the vehicle, and any items the consumer may pay for over the lease term, such

as service contracts, insurance, and any outstanding loan or prior lease balance. You may negotiate the "capitalized cost," just as you would if you were buying the vehicle.

By comparison with any terms of an installment purchase of a vehicle, this information is helpful to consumers in evaluating whether a lease or purchase is more advantageous to the consumer in the consumer's particular situation. However, remember that during a lease, you do not build any "equity" or ownership interest in the vehicle. You may also be liable for substantial costs should you wish to terminate a lease early, and you may also be charged for excessive wear and tear and excessive mileage costs at the end of the lease if you go beyond the agreed upon mileage, or damage the car beyond normal wear and use. The allowed mileage on the lease may be negotiable, and will be spelled out in the lease document. Early termination fees vary, depending on when you terminate the lease.



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