Used cars lemon laws

A guide for consumers

Office of the New York State
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Table of contents

The lemon law covers your used car only if:

The car has fewer than 100,000 miles on it.

The defective part is specifically covered under the law (see list on page 5). The law does not cover many parts, such as battery, body, tires, and many others.

What to know about the law

If you bought or leased a defective used car, New York state's lemon law may be able to help. Under this law:

- A lemon-law warranty on a car, as mandated under New York state law, may be different from a manufacturer's or dealer's warranty on the car.
- If your dealer does not give you a written lemon-law warranty, contact our Consumer Frauds and Protection Bureau.
- Under the lemon-law warranty, the dealer must repair any defect in the covered parts, free of charge. Remember that many parts are not covered.
- If the dealer is unable to fix your car after three or more tries, you may be able to receive a full refund.

Your New York state car dealer must give you a lemon-law warranty with the following terms:

If the car had been driven this many miles:	Then your warranty must cover (whichever comes first):
18,001-36,000 miles	60 days or 4,000 miles
36,001-79,999 miles	60 days or 3,000 miles
80,000-100,000 miles	30 days or 1,000 miles

The lemon-law warranty must cover the following parts (*remember that many parts are not covered*):

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

Transmission. Transmission case, internal parts, torque converter

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

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

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

Other parts. Radiator, alternator, generator, starter, ignition system (not including battery)

How a car qualifies for the lemon law

Your car must meet all of the following conditions:

» You bought, leased, or received it after it already had 18,000 miles on it.

» It is at least two years old.

» You bought or leased the car from a New York dealer.

» The car had a purchase price or lease value of at least $1,500.

» The car had been driven less than 100,000 miles when you bought or leased it.

» You use the car for mostly personal purposes.

The manufacturer's duty to repair

Your car's manufacturer must first try a certain number of times to fix your car for any defect covered by the lemon-law warranty, free of charge. This is called a "duty to repair." You may be able to get a refund or replacement if either of the following:

» The problem is still there after the dealer tries to fix it three or more times.

» You cannot use your car for a total of 15 days or more while the dealer is fixing it.

Why your car may not be covered

The manufacturer is not required to refund or replace your car if the problem does either of the following:

- It does not greatly reduce your car's value.
- It is a result of abuse, neglect, or unauthorized modifications.

In addition, the law does not apply if your car has more than 100,000 miles on it or if you are complaining about a noncovered part.

What to do if your car has a problem

- Immediately report any problems to the manufacturer or your dealer. If you notify the dealer, the dealer must alert the manufacturer within seven days.
- Keep careful records of all your complaints and copies of work orders, repair bills, and communications with the dealer or manufacturer.
- If you have any problems requesting repairs, contact the Department of Motor Vehicles (DMV) at **518-474-8943**.

If you think you should get a refund

You can try to resolve your case with the dealer's arbitration program.

You can also bring your case to an arbitrator under New York's arbitration program. Fill out the form and mail or email it back to us (see directions on the form). Learn about the arbitration process.

Have more questions?

See if your question is in our frequently asked questions.

Contact the Attorney General's consumer help line:

1-800-771-7755

Frequently asked questions

What the lemon law covers

Other than passenger cars, which used vehicles are covered?

Effective September 1, 2004, used motorcycles are covered. The following are not covered:

- » motor homes
- » off-road vehicles (for instance, snowmobiles and all-terrain vehicles)
- » "classic" cars registered under section 401 of the New York Vehicle and Traffic Law

What does "primarily used for personal purposes" mean?

A car is primarily used for personal purposes when its main use is for personal, family, or household purposes. For example, the car qualifies if you use it to run household errands or for your work commute. If you drive it for business as well, the car still qualifies if you drive it for personal use more than half the time.

Who is protected by the used-car lemon law?

If you, the buyer, transferred (sold or gave) the car to anyone else during the lemon-law warranty period, they are also covered.

Are private sales covered?

No. If you bought your car from a private individual, rather than from a professional dealer, the lemon law does not protect your purchase. Consult a lawyer for advice about other possible remedies.

If the purchase price was $5,000 or less, you may wish to pursue your claim in small claims court ($3,000 in town and village courts – this amount does not include interest and court costs).

Is a car covered if it is owned or leased by a business?

Yes, as long as it is used primarily for personal, family, or household purposes.

Which dealers are subject to the lemon law?

A dealer is any person or business that sells or leases a used car after selling or leasing three or more used cars in the previous 12 months. Banks and other financial institutions are not considered dealers.

Other sellers that are not considered "dealers" are:

- a business that sells a used car to its own employee
- a regulated public utility that publicly auctions cars that it uses in the ordinary course of its operations
- a lessor that sells a leased car to the person who leased it (the lessee)
- a lessee's family member or employee
- the state and local government or any of their agencies

What about cars bought at auto auctions?

If you buy a used car at a retail auto auction, and if the auction company is a used-car dealer registered with the DMV, it must provide you with your lemon-law rights.

What does the law require from the dealer?

A dealer who sells or leases you a used car is required to give you a written lemon-law warranty. The law specifies the terms of the warranty. The dealer must honor this lemon-law warranty. This warranty must specify that while it is in effect the dealer or his agent will repair any part covered by the warranty, free of charge.

The dealer may elect to reimburse you for the reasonable cost of repairing any covered part.

When must the dealer give me the lemon-law warranty?

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

What does the lemon-law warranty look like?

It may be included as part of the sales contract or lease, or it could be 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 very visible title.

Can a dealer limit the coverage provided by the lemon-law warranty?
Yes. A dealer is allowed to add language to the lemon-law warranty to exclude coverage for any of the following:

- » covered part that failed because of a lack of customary maintenance
- » covered part that failed because of collision, abuse, negligence, theft, vandalism, fire or other casualty, or environmental cause (windstorm, lightning, road hazards, etc.)
- » covered part that failed while the odometer has been stopped or altered such that the car's actual mileage cannot be readily determined
- » covered part that failed because of an alteration
- » maintenance services for parts that are not on the list of covered parts
- » motor tune-up
- » failure resulting from racing or other competition
- » failure caused by towing a trailer or other vehicle (unless the used car is equipped for this as recommended by the manufacturer)
- » use of the car to carry passengers for hire
- » rental of the car to someone else
- » repair of valves or rings to correct low compression or oil consumption that are considered normal wear
- » property damage arising or allegedly arising out of the failure of a covered part, to the extent otherwise permitted by law
- » loss of the use of the car, loss of time, inconvenience, commercial loss, or consequential damages, to the extent otherwise permitted by law

Can I lose my lemon-law rights because of the way the contract was written?
No. Any contract clause that tries to waive your rights under the lemon law is void.

Can a dealer offer a warranty with more protection?
Yes. The lemon-law warranty sets only minimum obligations. So, a dealer may agree, as part of the sale or lease, to give you more warranty protection than the law requires. For example, the dealer may offer to sell you an extended service contract that provides protection beyond the lemon-law warranty. You may be able to negotiate the price of this type of extended service.

If your car requires repairs

Should I keep making car payments while pursuing my lemon-law rights?

Yes. Unless your lawyer advises you otherwise, continue making your monthly payments if the car is financed or leased. If you don't, your car could be repossessed, and then you might be unable to return the car to qualify for a refund.

If my car must be repaired, do the repair days extend the warranty?

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

If the dealer does not fix my car, what are my rights?

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.

What is a "reasonable opportunity" to repair a car?

The law says that the dealer has had a reasonable opportunity to repair a problem during the lemon-law warranty period. This is if either:

- The problem remains after three repair attempts.
- You have not been able to drive the car for 15 or more days.

If you or the dealer feels that this is not a reasonable opportunity – for example, if you feel the problem should have been fixed after two repair attempts, or the dealer feels that the problem requires more 15 days to fix – you or the dealer can argue your case. If so, whoever makes the argument will have to demonstrate that a different number of repair attempts or out-of-service days is reasonable under the circumstances.

How do you calculate the 15 days?

If there were days when the shop could not start repairs because it could not get the necessary parts, you do not count these days. However, the dealer must have made a reasonable attempt to get the necessary parts. There is an absolute 45-day limit, regardless of the circumstances.

Can I still get a refund or replacement if the problem has been fixed?

Yes. If you have met all the other lemon-law requirements, you may still be entitled to relief. If the defect continued to exist after three repair attempts or if the car was out of service for a total of 15 days or more, you may be due a refund or replacement – even if the problem was eventually fixed.

> **For example:** Your transmission was defective and the problem continued to exist after 15 out-of-service days, due to repairs. The repair shop finally fixed the transmission on the 18th day. Because the car was not repaired by the end of the 15th day, the dealer had a reasonable opportunity to correct the defect and you could be entitled to relief.

What is a "substantial impairment of value?"

This depends on the facts of the specific case. In general, your complaint must be about a serious problem, such as a defect in the engine that prevents the car from running. In some cases, a number of smaller defects have been found to add up to a substantial impairment of value.

What do I have to show to prove my car is a lemon?

You must be able to establish the necessary repair attempts or days out-of-service due to repairs. Keep careful records of all complaints, copies of all work orders, repair bills, correspondence, and telephone and email communications. Whenever a problem starts, immediately notify the dealer in writing.

Dealers are required by DMV regulations to provide you, at your request, with a legible and accurate written work order each time they perform any repair work on your car, including warranty work. If you have difficulty getting your repair orders, contact the DMV in Albany at **1-518-474-8943**.

If you win your case

What will the refund include?

The refund must include the full purchase price. The dealer can deduct a reasonable amount for any damage beyond normal wear or use. The dealer can also adjust the amount if the car has been modified in any way that increases or decreases its market value. There is no deduction for mileage. Other expenses or charges that are not included are finance charges, rental and storage charges, and loss of use or loss of time. Note that sales tax and attorneys fees are refunded separately (see following questions and answers for details).

Will the refund include sales tax?

Yes — but note that state and local taxes are refunded directly by the New York State Commissioner of Taxation and Finance, who determines the amount of the refund. Complete and submit an application for refund of state and local sales tax (form AU-11; available from the Commissioner of Taxation and Finance) to the New York State Department of Taxation and Finance, Central Office Audit Bureau — Sales Tax, State Campus, Albany NY 12227.

How do trade-ins affect the refund?

The dealer does not have to include the value of the trade-in car in the refund. It can choose either:

- to return any car you traded in at the time of the sale or lease of the used car (plus a refund of whatever money you paid)
- to include the wholesale value of the car, when you traded it in, in the refund. The wholesale value is determined by referring to the NADA Used Car Guide. However, the DMV is authorized to approve the use of an alternative guidebook. The dealer is allowed to adjust the listed value for mileage, improvements, or major defects that existed at the time of the trade-in

Does the dealer have to tell me how it calculates trade-in values?

Yes. The dealer must give you a written notice of how it calculated the value of any trade-in car that it did not return to you. You must receive this notice when or before you sign the sales contract or lease.

The notice can 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 highly visible title.

How does car financing affect my refund?

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.

If I leased the car, how does this affect the refund?

Your refund consists of all the payments made under the lease.

If I win in court, can I recover attorney's fees as well?

Yes. If you are successful, the court can award you reasonable attorney's fees.

If the arbitrator or court finds that my leased car is a lemon, is my lease terminated?

Yes. Once a court or arbitrator has determined that a car is a lemon, the lease is terminated. You will not owe any early-termination penalties.

Can the dealer give me a replacement car instead of a refund?

Yes, if you are willing to accept a replacement instead of a full refund.

The dealer can decide to offer a replacement car instead of a monetary refund. You can accept or decline the offer. You must negotiate any price negotiations between yourselves.

Getting your lemon-law rights

How can I get my rights under the lemon law?

You can either participate in an arbitration program or sue the dealer directly in court. You must start any action or arbitration under the lemon law within four years of receiving the car.

What is arbitration?

An arbitration proceeding is much less complicated, time consuming and expensive than going to court. The arbitration hearing is informal and procedures are less strict than in court. Arbitrators, rather than judges, listen to each side, review the evidence, and render a decision. Read more about the arbitration process in the next section on the "New York state arbitration program for cars and other vehicles.

What arbitration programs are available to me in New York?

You can participate in New York state's arbitration program for used cars (the "New York program"), provided by the lemon law for used cars. This program is administered by the New York State Dispute Resolution Association (NYSDRA) under regulations issued by the Attorney General (read the text of the regulations). A decision under the New York program is binding on both parties. This means that both you and the dealer must accept the decision. Be aware that the arbitrator may not decide in your favor.

If your dealer has an established arbitration procedure that complies with federal regulations and New York's lemon law for used cars, you can choose to participate in this program. A decision under the dealer's program is not binding on you. This means that, if you have gone through the dealer's program and are not satisfied with the outcome, you can still apply for arbitration under the New York program. However, any previous arbitration award can be considered at any later arbitration hearing or court proceeding.

Be aware that your dealer may refuse to provide a refund until you participate in the dealer's arbitration procedure or in the state-run arbitration program.

After arbitration

Can I recover the arbitration filing fee?

Yes, if you are successful. If the arbitrator decides in your favor, it must return the filing fee.

How long does a dealer have to comply with the arbitrator's decision?

Your dealer has 30 days from the date you notify the dealer that you are accepting the arbitrator's decision. Within this time, the dealer will contact you to arrange for the return of the car for a refund or a replacement car.

If the dealer does not comply within this time, you are entitled to recover an additional $25 for each business day of noncompliance, up to $500. If the dealer refuses to pay any applicable penalty, you can sue to recover this penalty in small claims court.

However, if you do anything that makes it impossible for the dealer to comply with this deadline – for example, if you have requested a particular replacement car that the dealer cannot immediately – the penalty does not apply.

How do I return the car?

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

What happens if the dealer does not comply with the arbitrator's decision?

If this happens, consult a private attorney.

You can enforce the arbitrator's decision through the courts by bringing an action to confirm the award. You must begin this action within one year of receiving the decision. If you are successful, the court will convert the arbitrator's award into a court judgment. It may award you reasonable attorney's fees, as well as fees you incurred to enforce the collection of the award.

What can I do if the dealer refuses to comply with the arbitrator's award?

You can complain to the DMV. If the DMV determines that the dealer deliberately failed to pay an award within 60 days of the arbitrator's decision (unless the decision was stayed or appealed), it may revoke, suspend, or refuse to renew a dealer's registration. If this happens, the arbitration administrator will send a notice to you and dealer, specifying your award and explaining the remedy.

If you wish to pursue this approach, the DMV's Bureau of Consumer and Facility Services is authorized to enforce this action. Contact the Bureau of Consumer and Facility Services, New York State DMV, P.O. Box 2700-Empire State Plaza, Albany NY 12220-0700.

Can an arbitrator's decision be changed?

The grounds for modification are very limited. Awards can usually be modified only to correct a miscalculation or a technical mistake in the award. For example, you could request a modification if the filing fee was omitted from the refund.

When do I have to request a modification to the award?

Either you or the dealer can request a modification to the award by writing 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, you may have to apply to a court.

Can I challenge an arbitrator's decision?

Either party can begin a lawsuit to challenge an arbitrator's award within 90 days of receiving the award. The grounds for such challenges are limited. Generally, the courts will uphold an arbitrator's award if it is supported by evidence and is grounded in reason. If you succeed in challenging or defending an arbitration award, the court may award you reasonable attorney's fees.

Can the Attorney General or the administrator help if I have to challenge the decision?

No. Your personal attorney must represent you. Neither the Attorney General nor the administrator is authorized to represent an individual consumer in such a challenge.

Does the lemon law limit my legal remedies?

No. The lemon law adds to your legal remedies. Your attorney can explain your options.

When it comes to used cars, your most important legal right is the warranty of serviceability (Vehicle and Traffic Law, section 417):

- You cannot give up this right, even if the dealer makes you sign a contract that says you are giving it up.
- No dealer can sell you a car "as is."
- The dealer must certify to you that the car is in a condition and state of repair to provide, under normal use, satisfactory and adequate service at the time of delivery.
- Specified safety equipment must be in good working order.

If the dealer fails to honor this duty, complain to the DMV, Division of Vehicle Safety Services, Empire State Plaza, Albany NY 12228.

What if the car I want to buy was returned by someone else under the lemon law?

The dealer must give you a written, clearly visible disclosure statement that says:

> **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 DMV.

Where can I get help or more information on the lemon law?

Contact the Attorney General's help line at 1-800-771-7755 or consult an attorney.

New York state arbitration program for cars and other vehicles

If the car, motorcycle, motor home, wheelchair, or self-propelled farm equipment you bought or leased turns out to be defective, and if the dealer or manufacturer cannot fix it, you can pursue arbitration under New York's lemon laws. An arbitrator hears from both you and the seller. The arbitrator decides whether you should receive a refund and, if so, how much you should receive.

How is the Attorney General involved?

The Office of the New York State Attorney General (OAG) is officially involved only in determining eligibility for arbitration, but can help answer your questions along the way.

Who manages the arbitration?

After OAG has initiated the process, the arbitration itself is done by the New York State Dispute Resolution Association (NYSDRA) (https://www.nysdra.org), which is not part of OAG. NYSDRA is contracted by OAG to administer the arbitration program. The arbitrators are volunteers who work through local Community Dispute Resolution Centers (CDRCs) (https://www.nysdra.org/centers) .

These arbitrations are a program of the New York State Unified Court System's Alternative Dispute Resolution program (https://ww2.nycourts.gov/ip/adr/index.shtml).

NYSDRA's lemon-law program manager (https://www.nysdra.org/contact-us) is available to answer questions about the process.

What vehicles and equipment are covered by this arbitration program?

This program is for the following items that you have bought:

- » new cars
- » new motorcycles
- » new motorhomes
- » new wheelchairs
- » new self-propelled farm equipment
- » used cars
- » used motorcycles

New York state has a separate arbitration program specifically for wear and tear on leased cars.

How does the arbitration program work?

There are 10 steps to the process:

1. You officially request arbitration
2. Our office (OAG) reviews your request and accepts or rejects it
3. The program administrator requests the filing fee from you
4. The administrator begins the arbitration process, appoints an arbitrator, and schedules a hearing
5. The administrator notifies the manufacturer or dealer, the manufacturer responds, and you reply
6. You or the manufacturer or dealer can request documents or witnesses during the pre-hearing discovery
7. You and the manufacturer or dealer meet with the arbitrator for the hearing
8. The arbitrator makes a decision
9. The administrator reviews the decision document to ensure it is complete and accurate
10. You and the manufacturer or dealer have 20 days to modify or appeal the decision

Who is involved in the arbitration process?

» You – the consumer who bought or leased the car or other equipment

» The lemon-law unit – the OAG unit that reviews your arbitration request

» The administrator – NYSDRA's lemon-law program manager, who manages the arbitration process, paperwork, and schedule

» The arbitrator – the official in the local CRDC who hears from you and the manufacturer and decides how to resolve your claim

» The manufacturer if your dispute involves a new car, motorcycle, motor home, wheelchair, or self-propelled farm equipment; or the dealer if the dispute involves a used car or used motorcycle

» Any third parties – the people or businesses who may have been involved in the purchase or lease, such as a finance company, dealer, or reseller Witnesses – anyone else that you or the manufacturer invite to the hearing to provide evidence

Steps in the arbitration process

1 You request arbitration

If your car or other vehicle is defective and the manufacturer or dealer cannot repair it within a reasonable amount of time or after a reasonable number of attempts, you can request the Attorney General to start arbitration:

Download our form to request arbitration:

https://ag.ny.gov/used-car- lemon-law-form

Complete the form and return it to:

Attorney General's Lemon Law Unit
28 Liberty Steet, New York NY 10005

2 OAG reviews your application

We promptly review your submission. We send you a letter letting you know if we accepted or rejected your submission, and explaining our reasons:

- We may reject your application because your claim is not eligible for arbitration – for example, if your car was not bought or registered in New York state. If this is the case, you cannot pursue arbitration.
- We may reject your application because it has errors that can be corrected. If so, you can fix the errors and resubmit the form.
- If we accept your application, we will let you know that we have forwarded your documents to the administrator (NYSDRA) to start the arbitration.

3 The administrator asks you to send a filing fee

The administrator receives your form and writes to you to ask you to pay the filing fee and requests your supporting documents:

- If the administrator does not receive your payment after 30 days, it sends you a second notice.
- If the administrator does not receive your payment after another 30 days, it closes your case.

4 The administrator starts your case, appoints an arbitrator, and schedules your hearing

The date the administrator receives your filing fee is considered the case filing date. This is when your arbitration officially begins, and is considered Day 1. The following things now happen:

- The administrator appoints an arbitrator.
- The administrator schedules a hearing for a specific date no later than 35 days after the filing date.

Most arbitration hearings are done **in person**. The administrator schedules the hearing based on your preferred location and time of day. The form provides locations for your convenience.

You can also request a **documents-only** hearing, which does not require your presence. However, the hearing can be done this way only if the manufacturer agrees.

You may also request a virtual hearing if you are unable to attend an in-person hearing.

5 The administrator notifies the manufacturer or dealer of your claim, the manufacturer responds, and you reply

Within five days of the filing date, the administrator sends the manufacturer or dealer a copy of your request for arbitration and any supporting documents.

If your case involves a third party, such as a bank, finance company, or leasing company:

- The administrator notifies the third party of your claim and the date of the hearing.
- The administrator requests the third party to submit any relevant financial information before the hearing.

The manufacturer or dealer has 15 days from the filing date to respond to your claim. If you requested a documents-only hearing or a virtual hear, the manufacturer can object, and the administrator will then schedule an in-person hearing.

The administrator mails you any response from the manufacturer or dealer. You have until Day 25 to reply. If you do, the administrator mails a copy of your reply to the manufacturer or dealer.

6 Either party can request information or witnesses during pre-hearing discovery

Before the hearing, you or the manufacturer or dealer can request the arbitrator to ask the other party to supply specific documents or information, such as repair orders. Either of you can also request the arbitrator to subpoena a witness.

If either party ignores the arbitrator's request for documents or witnesses, the arbitrator is allowed to interpret this as a refusal to cooperate. This refusal can count against that party when the arbitrator is weighing the evidence.

7 You, the manufacturer or dealer, and the arbitrator appear at the hearing

The hearing is not a formal court trial, so formal rules of evidence that would be used in a court do not apply. However, it has certain guidelines and a standard sequence of events:

- » You present your evidence and any witnesses.
- » The manufacturer or dealer presents its evidence and any witnesses.
- » You, the manufacturer or dealer, and the arbitrator, can question the other party or any witness. The arbitrator administers an oath or affirmation to each person who testifies.
- » Formal rules of evidence do not apply. The hearing is not run as strictly as a court case.
- » Each party has a full and equal opportunity to present its case.
- » A typical hearing lasts between one and two hours.
- » The arbitrator can examine, ride in, or drive the vehicle named in your claim. You and the manufacturer or dealer can be present and accompany the arbitrator on any examination or ride.

8 The arbitrator makes a decision

The arbitrator must render a decision:

- » within five days after the hearing date, if more time is not required to collect more documents
- » within 40 days after the hearing date if more time is required to gather extra documents

8 The arbitrator makes a decision (continued)

The decision must:

- include the arbitrator's signature and certification
- contain a summary of the issues in dispute and the evidence presented by each side
- include the arbitrator's findings
- indicate whether or not the arbitrator, based on the stated findings, has decided that you qualify for relief under the lemon law

If the arbitrator finds that you are entitled to relief, the arbitrator must award either a refund or a comparable replacement vehicle, depending on what you requested. The decision must contain:

- a calculation of the award, including any allowable deductions for excess mileage
- a refund of your filing fee

Once you notify the manufacturer or dealer that you have accepted the decision, the manufacturer or dealer must comply within 30 days after the date of your acceptance.

If the manufacturer or dealer does not comply within 30 days after your acceptance of the decision, you are entitled to a penalty of $25-500 for each day of noncompliance.

If, after that, the manufacturer still refuses to comply, you can go to court within one year of the decision. The court can confirm the arbitrator's decision and issue a judgment that can be enforced against the manufacturer or dealer. The court can also award attorney fees.

9 The administrator reviews your decision

The administrator reviews your decision for technical completeness and accuracy. If the administrator finds any errors, the arbitrator must approve any corrections.

When the decision is final, the administrator mails copies of the decision to you, the manufacturer or dealer, and OAG within 45 days of the filing date.

10 You and the manufacturer can modify or appeal the decision

If you or the manufacturer believe the arbitrator has made a mistake:

- Either you or the manufacturer can request a modification within 20 days of receiving the decision.
- The arbitrator must act upon the request within 30 days of receiving the decision.
- You and the manufacturer or dealer are limited by law on what kinds of modifications you can make [Civil Practice Law and Rules (CPLR) section 7511(c)].
- Both you and the manufacturer or dealer must accept the modified decision. If either of you is dissatisfied with the decision, you may be able to request a judge to review it (CPLR Article 75).
- Either you, or the manufacturer or dealer, can start a lawsuit to vacate (reverse) the decision or modify an award within 90 days of receiving the decision (CPLR section 7511(b)].

The Used Car Lemon Law (General Business Law Section 198-b)

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/hers 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/hers 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/hers 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/hers 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, The Capitol, Albany, NY 12224.

12. 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.

13. 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.

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.

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.

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 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.

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.

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.

Arbitration program regulations (Title 13 NYCRR Chap. VIII Part 300)

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 an 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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