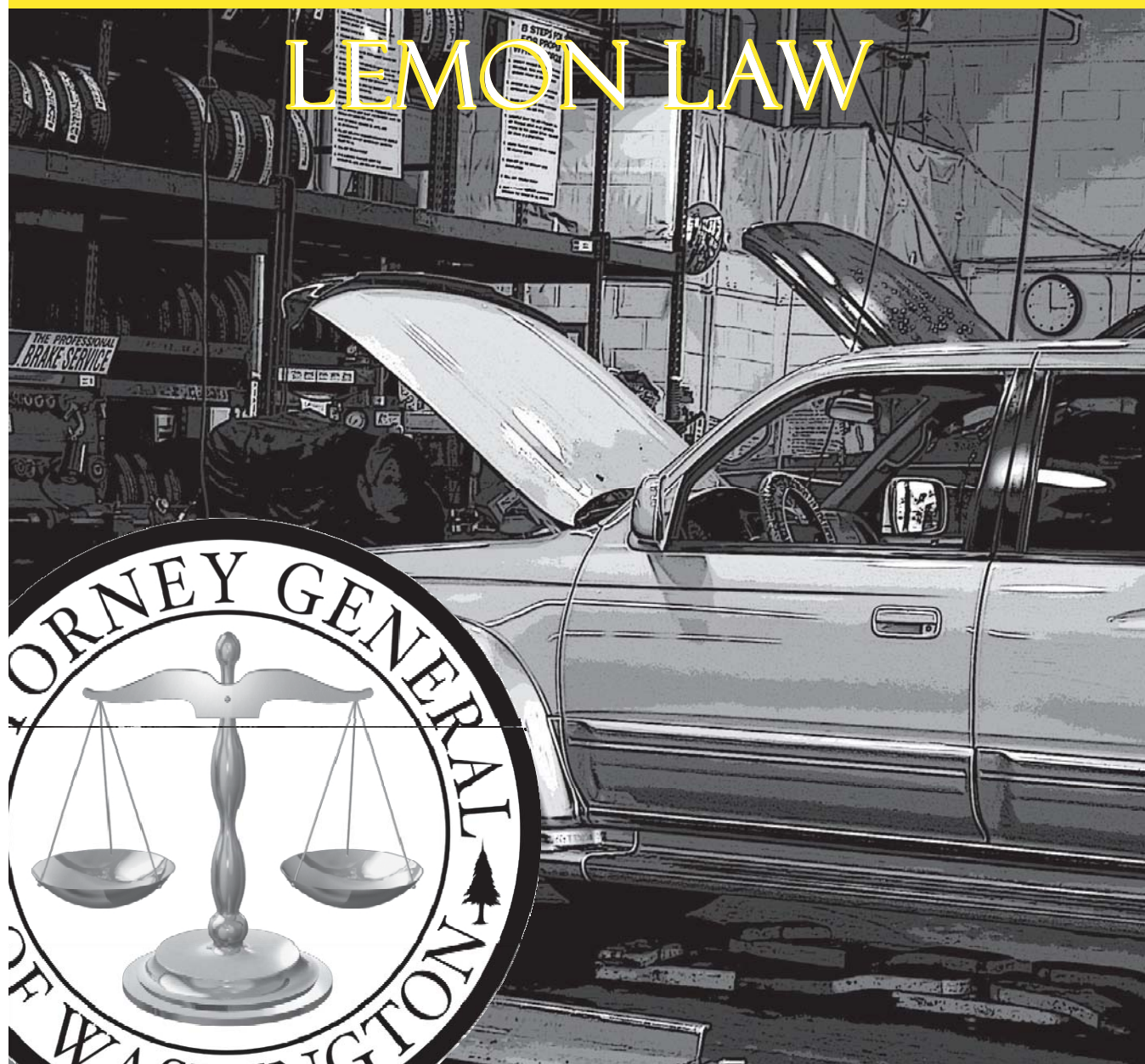


LEMON LAW



MOTOR VEHICLES

Lemon Law

Motor Vehicles

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Provided courtesy of
the Washington State
Attorney General's Office



Lemon Law - Motor Vehicles

Motor Vehicle Lemon Law

What Is The Lemon Law?

The Washington State Motor Vehicle "Lemon Law" was enacted to help consumers who purchase or lease a new vehicle and have continuing problems with warranty repairs of substantial defects. Among other consumer benefits, the law established an arbitration program in the Attorney General's Office to hear Lemon Law disputes with vehicle manufacturers.

A consumer can request arbitration under the Lemon Law at any time within 30 months of the motor vehicle's original retail delivery date. There will be no charge for the arbitration process. After an arbitration hearing, an arbitrator will decide whether a consumer's claim meets the requirements under the law. *Note: The Lemon Law does not allow a consumer to stop making loan or lease payments while pursuing a Lemon Law claim.*

Is Your Vehicle a Motor Home?

There are additional requirements and limitations if your vehicle is a motor home. The motor home requirements are described in the Motor Home Lemon Law booklet available from the Lemon Law Administration. The booklet can also be downloaded from the Lemon Law website at www.atg.wa.gov.

Which Vehicles Are Eligible?

The law covers most classes of new motor vehicles originally purchased or leased by a consumer in Washington, including demonstrators.

Note – Armed Forces Provision: If you are a member of the armed forces stationed or residing in Washington, a new vehicle brought with you from another state is also covered by Washington's Lemon Law if it was purchased or leased with a manufacturer written warranty, is within 30 months after the original retail transaction, and the vehicle otherwise meets the definition of a 'new motor vehicle.'

*The following vehicles are **not** covered by the Lemon Law:*

- Motorcycles with engine displacements of less than 750 cubic centimeters;
- Trucks with a gross weight rating of 19,000 lbs. or more;
- Vehicles purchased or leased (as a group or under a single contract) by a business as part of a fleet of 10 or more.



You do not have to be the original owner to request arbitration. Later owners of a vehicle may request arbitration if you purchased or leased the vehicle:

- With a manufacturer warranty within two years of delivery to the original retail consumer and within the first 24,000 miles of operation
- The vehicle meets the other claim eligibility requirements and
- A Request For Arbitration is received by the Lemon Law Administration within 30 months of the original retail delivery date.

What is a "Lemon"?

Your vehicle may qualify as a "lemon" if it has one or more significant defects that have been subject to a "reasonable number of attempts" to diagnose or repair defect(s) covered by the manufacturer's warranty. The law covers only defects that "substantially impair" the use, value, or safety of the motor vehicle.

A manufacturer is required to repurchase or replace a vehicle with a "nonconformity" or "serious safety defect" after a "reasonable number of attempts" to diagnose or repair the vehicle have occurred when requested by a consumer. A Lemon Law arbitrator can determine if a consumer's request is justified under the Lemon Law's standards. At an arbitration hearing, the arbitrator will expect to receive proof of a consumer's claim for each defect that occurred in your vehicle including the type and the claim categories.

If you have a Lemon Law claim, you should present all the claim categories applying to your vehicle's defects and warranty service history. See *Claim Categories Under the Lemon Law.*

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Types of Defects Covered Under the Lemon Law

The Lemon Law covers 2 types of defects. Each is defined by how dangerous a defect is and how it affects the vehicle's reliability, value and general safety.

Nonconformity

A "nonconformity" is a defect that "substantially impairs" the use, value or safety of the motor vehicle making the vehicle unreliable, unsafe for ordinary use or diminished in resale value compared to equivalent vehicles.

Serious Safety Defect

A "serious safety defect" is a life-threatening malfunction that impedes the driver's ability to control or operate the vehicle, or creates a risk of fire or explosion.

Claim Categories Under the Lemon Law

There are 4 claim categories that a consumer can prove at an arbitration any one of which will result in requiring the manufacturer to repurchase or replace a new motor vehicle:

1. Unrepaired Nonconformity

A "nonconformity" covered by a manufacturer warranty where:

- The "nonconformity" has been subject to diagnosis or repair four or more times including at least once during the period of the manufacturer's written warranty and during the "eligibility period" (See *What Is The Eligibility Period?* on page 4)
- The nonconformity continues to exist
- The consumer sent a written request to the manufacturer asking for repurchase or replacement of the vehicle and
- The manufacturer failed to respond or did not reach a resolution with the consumer within 40 days

2. Unrepaired Serious Safety Defect

A "serious safety defect" covered by a manufacturer where:

- The serious safety defect has been subject to diagnosis or repair two or more times including at least once during the period of the manufacturer's written warranty and during the 'eligibility period'
- The serious safety defect continues to exist.
- The consumer sent a written request to the manufacturer asking for repurchase or replacement of the vehicle and
- The manufacturer failed to respond or did not reach a resolution with the consumer within 40 days

3. Multiple Serious Safety Defects

Two or more different "serious safety defects" (whether or not repaired) covered by the manufacturer's warranty:

- Occur within a twelve-month period
- Each serious safety defect has been subject to diagnosis or repair one or more times during the period of the applicable manufacturer's written warranty and during the "eligibility period"
- The consumer sent a written request to the manufacturer asking for repurchase or replacement of the vehicle and
- The manufacturer failed to respond or did not reach a resolution with the consumer within 40 days

Note: Whether or not a "serious safety defect" has been repaired is not considered in a 'two serious safety defects' claim.

4. Days Out-of-Service

Days out-of-service are accumulated during attempts to diagnose or repair one or more "nonconformities" or "serious safety defects." The vehicle has been out of service due to diagnosis or repair meeting this claim category when:

- A total of 30 or more cumulative calendar days for diagnosis or repairs have occurred
- At least 15 of the days occurred during the period of the manufacturer's written warranty and during the "eligibility period"
- To add to cumulative days out-of-service a nonconformity or serious safety defect must have been subject to diagnosis or repair at least once during the "eligibility period"



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- The consumer sent a written request to the manufacturer asking for repurchase or replacement of the vehicle and
- The manufacturer failed to respond or did not reach a resolution with the consumer within 40 days

Note: Days out-of-service can accumulate whether or not a "serious safety defect" or "nonconformity" is repaired.

What Is A Warranty? What Is A Manufacturer's Written Warranty?

Generally, a warranty is an express (oral or written) or implied promise regarding the qualities or characteristics of goods or services, enforceable in a court of law (or under the Lemon Law). In the context of a new motor vehicle, the term "warranty" refers to the obligations of the manufacturer or seller for defective materials or workmanship, or under implied warranties, the failure of a new motor vehicle to be 'fit for ordinary use' or fit for 'reasonably intended purposes.'

"Warranty" includes express (oral or written) and implied promises and may include 'affirmations of fact or promise' made by the manufacturer in connection with the sale or lease of a new motor vehicle when that 'becomes part of the basis of the bargain'. This may include representations made in the owner's manual, brochures or advertising if it was a substantial reason you selected this specific vehicle or model.

A "manufacturer's written warranty" states the manufacturer's obligations to a consumer if there is a defect in a new motor vehicle identified during a limited time period after the first retail sale or lease. The 'warranty period' usually is determined by time and/or mileage. A service contract is not a manufacturer warranty because it is an agreement to make repairs rather than a guarantee of a vehicle's quality and attributes.

A modification by a new motor vehicle dealer is covered by the manufacturer's warranty if the dealer installs the manufacturer's authorized parts (or the manufacturer's approved equivalent) and follows the manufacturer's specifications for a specific vehicle model.

Note: A vehicle converter or modifier (which may include a dealership) is a 'manufacturer' under the Lemon Law in specific circumstances. A vehicle modifier is a 'manufacturer' with warranty responsibilities and potential Lemon Law liability if:

- A vehicle has been modified in any way before you purchased/leased the new vehicle and the modification is not covered by the 'factory' warranty or

- You requested that a dealer modify or add an 'option' to a new vehicle as part of your purchase or lease that turns out to be defective, is not covered by the factory warranty and the dealer did not have you sign a written disclosure stating that 'the modification may void all or part of the manufacturer's warranty and that Lemon Law remedies may not apply to the modification.'

Are All Problems Covered Under the Lemon Law?

The law does not cover problems caused by abuse or neglect, or any modifications or alterations made to a new vehicle after the original retail sale or lease. If the dealer made a proper written disclosure signed by you, the Lemon Law will not cover options or modifications you requested as part of the purchase or lease.

Note: Consumer requested modifications sometimes are not authorized by the manufacturer and may void all or part of the manufacturer's warranty.

What is the "Eligibility Period"?

For a defect to be covered under the Lemon Law it must have had at least one attempt to diagnose or repair under the manufacturer's warranty and during the Lemon Law's "eligibility period." If your Request for Arbitration includes a claim due to "days out-of-service", the Lemon Law requires that each defect, and at least 15 or more cumulative days must have occurred during the "eligibility period." See *Claim Categories Under The Lemon Law*.

The Lemon Law "eligibility period" is not a set time frame. It is often shorter than the manufacturer's warranty coverage (a manufacturer's warranty must cover at least 12 months or 12,000 miles). The "eligibility period" is determined by a mileage limit and a time limit. An 'attempt to diagnose or repair' a defect occurred during the "eligibility period" **if** it was diagnosed or repaired under the manufacturer's warranty and:

- Within 2 years from the original retail delivery date and
- Before the vehicle reached 24,000 miles of operation.

The Lemon Law Remedies

Replacement or Repurchase?

If your vehicle is determined to be a "lemon" by an arbitrator, you will be awarded your choice of repurchase or replacement of the vehicle. At the arbitration hearing you will have to decide whether you want the vehicle replaced or repurchased. Once an arbitration hearing is over, your choice of repurchase or replacement cannot be changed by the arbitrator. If there is an award

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and you have changed your mind about your choice of repurchase or replacement, you will need to negotiate directly with the manufacturer as there is no authority for anyone to change the terms of the award.

Note: A manufacturer will not be required to refund, replace or reinstall an item that you added to the defective vehicle after you purchased/leased it. You and the manufacturer are encouraged to negotiate how after-market add-ons will be dealt with. This might include the manufacturer agreeing to buy them from you. Items like a truck canopy added after you purchased or leased the vehicle may be removed. You will not be required to return the vehicle to original condition when the items are removed. If you are removing an after-market item, you will be required to return or replace any original equipment that was removed from the vehicle for the after-market add-on (e.g. the manufacturer stock radio).

Note: A consumer will be required to repair the vehicle or transfer an insurance claim or settlement to the manufacturer when there is damage that is not reasonable for the amount of use and type of vehicle. See *Compliance and Consumer Requirements When Returning a Vehicle*

Replacement:

If you are awarded a replacement vehicle, the vehicle must be new and “identical or reasonably equivalent” to your vehicle as it existed at the time of original purchase or lease including any service contract, undercoating, rustproofing and other factory/dealer options. The manufacturer is responsible for paying sales tax, license and registration fees for the replacement vehicle. The manufacturer must refund to you any incidental costs or attorney’s fees awarded by the arbitrator.

Before receiving the new vehicle you are obligated to pay the manufacturer an “offset for use” (see *Offset for Use*).

You must contact your lender early in the process about how they would deal with your existing loan or lease and a replacement vehicle as you may have to make a new loan at very different terms. If the manufacturer originally offered a special financing deal like a low interest rate, the manufacturer is not required to offer those terms for a replacement vehicle.

Repurchase:

If you are awarded a repurchase of the vehicle, the arbitrator will determine your refund based on the following:

- **If you purchased the vehicle:** your refund will include the cash price of the vehicle in the sales agreement (minus any manufacturer rebate), ‘collateral charges’ and ‘incidental costs.’ If you have a loan balance, the lender will be paid from your refund by the manufacturer.
- **If you leased the vehicle:** your refund will include the total of all lease payments that you made, including inception and security deposit payments (not including any manufacturer rebate), ‘collateral charges’ and ‘incidental costs.’ The manufacturer will pay any remaining lease obligations except late payment penalties which are your responsibility.

Note: If you are a second or subsequent owner, a repurchase award will be based on your purchase price, not the original owner’s purchase price.

The following category of items will be included in a repurchase award for leased and purchased vehicles:

‘Collateral charges’ - sales or lease related charges including sales and use tax, finance charges (interest on a loan), dealer preparation and transportation costs, unused license fees, unused registration and title fees, prorated insurance costs based on days out-of-service, nonrefundable portions of credit life and disability insurance, service contracts, undercoating, rustproofing and other factory or dealer installed options purchased when you bought/leased the vehicle.

Note: The following types of items will be refunded in both repurchase and replacement awards:

- **‘Incidental costs’** - reasonable expenses paid by you related to repairs including costs of towing and obtaining alternate transportation.



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- **Legal fees** - If the manufacturer was represented by counsel, the arbitrator will also award reasonable costs and attorney's fees if you were represented by an attorney. If the manufacturer is not represented by an attorney at some point in your contacts with the manufacturer, you cannot be awarded costs and attorney's fees.

Offset For Use

A manufacturer is not required to refund all your costs related to the vehicle or provide a replacement vehicle without cost to you. An "offset for use" is calculated based on your use of the vehicle before a significant defect occurs. The "offset for use" is computed by multiplying the number of miles 'attributable to consumer use' (explained in detail below) times the "purchase price" (less any rebate) and dividing by 120,000.

Notes for Offset Calculations:

- If you leased the vehicle the "purchase price" is the vehicle's capitalized cost in the lease agreement. If you are a second or subsequent owner, a repurchase offset is based on your purchase price and a replacement offset is based on the original purchase price of the vehicle (as you will receive a new vehicle for the used vehicle you purchased).
- For a motorcycle the 'offset' calculation is divide by 25,000 instead of 120,000

'Mileage attributable to consumer use' for new motor vehicles accumulates between the retail delivery date and:

- The date of the first attempt to diagnose or repair a defect that causes a manufacturer to be required to repurchase or replace a vehicle; or
- The 15th "day out-of-service" where a manufacturer is required to repurchase or replace a vehicle solely because of accumulated "days out-of-service" due to diagnosis or repair of one or more substantial defects.

Example: Based on a purchase price of \$24,000 and 10,000 miles 'attributable to a consumer's use', the 'reasonable offset for use' would be:

$$\frac{(\$24,000) \times (10,000)}{120,000} = \$2,000$$



IMPORTANT: Be certain that you understand how your "offset for use" will be calculated. If you are awarded a replacement vehicle, you must pay the "offset for use" before receiving the new vehicle. Most consumers are able to add this into the financing for the replacement vehicle. Talk to your lender as soon as possible. This may affect your decision whether to choose repurchase rather than a replacement.

If you are awarded repurchase, the "offset for use" will be deducted from your refund before any existing loan obligations are paid. It is possible in situations of a large loan balance and high mileage, that a refund will not be enough to pay off the loan. The remaining balance would still be your responsibility.

A similar situation may occur when a consumer's trade-in was worth less than the loan on it resulting in 'negative equity' specifically listed in the purchase agreement. Call the Lemon Law Administration for more information if you have questions how this might apply to your Lemon Law claim.

Compliance and Consumer Obligations When Returning a Vehicle

After a manufacturer receives notice from the Lemon Law Administration that you have accepted a decision awarding repurchase or replacement of the vehicle, the manufacturer has a maximum of 40 days to comply with the award. The Attorney General's Office will continue to provide information and assistance to you and the manufacturer during the compliance period.

Compliance with the award must occur at a time, place and in a manner that is mutually agreeable to you and the manufacturer.

You must return the vehicle free of damage. A consumer is not responsible for problems related to 'wear and tear'

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from ordinary or expected use of the vehicle (minor paint chips, 'dings') or damage related to defects covered by the warranty. If the vehicle has been damaged due to fire, theft, vandalism, or collision (a dented fender from an accident or a broken/cracked windshield), the consumer must choose between having the vehicle repaired or transferring any insurance claim/insurance settlement to the manufacturer.

Note: When returning a vehicle to the manufacturer, you cannot remove any equipment or options from the vehicle that were included in the purchase or lease. If you added features after buying or leasing the vehicle (e.g. stereo or a canopy for a truck), those items may be removed avoiding further damage. You are not required to repair the vehicle to original condition but you must replace original equipment that was removed. You and the manufacturer will be strongly advised to negotiate over the after-market items as there may be problems for a consumer reinstalling in another vehicle and the 'add-ons' may enhance resale value for the manufacturer.

You have a "Lemon"

What Should You Do?

1. Gather and organize all your purchase and finance documents and repair records. Evaluate how your vehicle qualifies as a "lemon" based on your records.
2. Write to the manufacturer requesting the repurchase or replacement of your vehicle. You must include a clear request for replacement or repurchase. To locate the manufacturer's address look in your owner's manual, ask the dealership or contact the Lemon Law Administration.

The written request to the manufacturer for repurchase or replacement should include:

- Make, Model, Year, and Vehicle Identification Number (VIN; 17 digits)
- An explanation of the problem(s)
- Name(s) of dealership(s) where diagnosis/repair attempts have been made, including dates of attempts.

You should send the letter to the manufacturer by certified mail with a return receipt requested. This will verify the date that the manufacturer received your letter. If you are near the 30 month arbitration deadline you should consider sending your letter by overnight express. **Keep a copy of your letter and the return receipt in your records.**

3. The manufacturer should be allowed 40 days to respond in most instances (see *Note* below). If the manufacturer does not respond or if the response is unsatisfactory, you can submit the Request For Arbitration form to the Lemon Law Administration in the Attorney General's Office. Unless your claim is near the 30 month arbitration deadline, a Request For Arbitration received during the 40 day period may be delayed until the manufacturer's 40 days to respond have expired.

Note: Your Request For Arbitration form **must be received** by the Lemon Law Administration **within 30 months** of the vehicle's original retail delivery date **whether or not the 40 day response period has expired.**

4. Submit a complete Request For Arbitration with supporting documents to the Lemon Law Administration. Call or write the Attorney General's Office for a Request For Arbitration form or download one from the Lemon Law website.

Note: The Lemon Law does not allow a consumer to stop making loan or lease payments while pursuing a Lemon Law claim.

Submitting Your Request For Arbitration

Keep a copy of the Request For Arbitration for your records and mail the original form to the Lemon Law Administration. If you are approaching the 30 month deadline for submitting a Request For Arbitration, send the form and documents by certified mail (return receipt requested), overnight express delivery, deliver it in person, submit it by FAX or e-mail it to lemon@atg.wa.gov.

Note: the date a Request For Arbitration is mailed is not accepted as the 'received' date.

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On the Request For Arbitration form you are offered options regarding how the Lemon Law Administration should send arbitration notices and correspondence to you by either e-mail or regular mail.

You are also asked to state a preferred time for the hearing. Arbitration hearing dates can be requested for business days during morning or afternoon hours at locations around the state. **It is very important to consider this carefully. It is very difficult (and probably will not be possible) to make changes at a later time.** The Arbitration Board (see *New Motor Vehicle Arbitration Board*) will try to accommodate your schedule, but cannot guarantee to schedule your hearing when requested or where it will be most convenient for you.

Completing the Request For Arbitration Form

Read the instructions for filling out the form. Check that you have copies of all the documents and other evidence that you intend to include when you submit the form. When you send the Request For Arbitration form you must include copies of all required documents, records and repair orders. All registered owners of the vehicle must sign the form.

Fill the form out completely. When completing the form you must clearly describe each defect, identify when each attempt to diagnose or repair occurred, the mileage on your vehicle at the time of each attempt, the dealer that made the repairs, and the number of days your vehicle was out of service due to diagnosis or repair. If you have not completed the form it may be rejected. Add any additional explanations or information you believe relate directly to defects or other elements of your claim on additional pages.

Upon receipt of your Request For Arbitration, the Lemon Law Administration shall have 10 days to make a reasonable determination of the cause of your request and contact you with more information. Lemon Law Administration staff will be available to answer your questions, provide information and assist you as you prepare your claim presentation for the arbitration hearing. In order to promote early resolutions, basic information from your Request For Arbitration form will be sent immediately to the manufacturer by the Lemon Law Administration. **You and the manufacturer are strongly encouraged to communicate with each other throughout the arbitration process about the possibility of a settlement even if earlier negotiations failed.**

Information Needed to Complete the Request For Arbitration Form

You must send copies of the repair orders for all diagnosis or repair attempts related to each defect in your claim. If you cannot provide the repair orders and other documents, you must explain the reason why they are missing on a separate page attached to the Request For Arbitration form. If you did not receive a repair order after an attempt to diagnose or repair a defect there may be records including mechanic's notes and billing records about the repair at the service department. See *How to Obtain Documents and Other Records*.

Records Needed to Submit a Complete Request For Arbitration

You must submit copies of your purchase or lease agreement, finance agreement (if applicable), and title/registration documents. **Note: If you are not the original owner, you must also submit a title history for the vehicle obtained from the Department of Licensing and/or the original owner's documents and prior repair history.** You must also submit copies of your vehicle's repair orders when you request arbitration. If you did not receive repair orders or did not keep your copies, see *How to Obtain Documents and other records*.

Each time you take your vehicle to a dealership for warranty services in Washington, the dealer must provide a fully itemized and legible repair order or written statement when returning the vehicle to you. Among other requirements, the repair order or statement must identify the problem(s) you are experiencing with your vehicle, a diagnosis, work done, the 'in and out' mileage on the vehicle, the date you took the vehicle in for service and the date the dealer notified you that you could pick up the vehicle.

You are entitled to receive a copy of any report or computer reading regarding inspection, diagnosis, or test-drive of your vehicle by asking the dealer or manufacturer. In addition, you are entitled to copies of any Technical Service Bulletins (TSBs) regarding the year, make and model of your vehicle upon request. Technical Service Bulletins are notices sent to service departments by the manufacturer. Service bulletins include descriptions of specific problems occurring in a vehicle model, how to diagnose a problem and repair it.

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How to Obtain Documents and Other Records

The Attorney General has authority to issue a subpoena to obtain critical documents and records for a consumer or a manufacturer. The Attorney General does not have the authority to require a person to attend a hearing, provide written statements or to testify at a hearing.

A consumer can request the Attorney General to issue a subpoena for documents and records when you submit a Request For Arbitration. If you are missing documents necessary to prove your claim(s), you should immediately send a written request to the source (dealer, manufacturer, etc.) asking for copies of all documents and records relating to your vehicle. If you ask for copies of repair orders you should consider also asking for mechanic's notes, test results, reports and communications with the manufacturer or between manufacturers. Keep a copy of your request letter.

If you do not receive the documents after asking, indicate this on the Request For Arbitration form and provide a copy of your written document request. This will be considered a request for a subpoena.

If the manufacturer responds to your claim being assigned to the arbitration board by sending a Manufacturer's Statement, you have a second opportunity to ask for a subpoena for documents and records to support your claims. You have only 3 days from when you receive the statement to ask for a subpoena for additional documents and records.

The Arbitration Process

Do You Need an Attorney?

The arbitration program has been developed so that a consumer does not need to have an attorney for most claims. However, you always have a right to be represented by counsel for any claim. The manufacturer may be represented by an attorney. Most large manufacturers of cars, trucks and motorcycles do **not** have attorneys represent them at arbitration hearings.

Note: "Reasonable" attorney costs will be refunded to you in an award only if the manufacturer has also been represented by counsel.

You should read this entire section before making your decision as to whether you will be represented by an attorney. If you decide you want to be represented by an attorney, consult with one as early as possible.

After You Request Arbitration

The Lemon Law Administration will screen your arbitration request for:

- A completed form
- Whether you have stated a claim covered by the Lemon Law
- Copies of all the designated repair orders and documents
- Eligibility requirements
- Receipt of the Request For Arbitration within 30 months of the vehicle's original retail delivery date
- A written request to the manufacturer to repurchase or replace the vehicle.

If the Lemon Law Administration rejects your Request For Arbitration due to being incomplete or an eligibility problem, a written explanation will be mailed to you with further directions.

When your Request For Arbitration form is complete with all necessary documents and repair orders, the claim record will be established. Your Request For Arbitration file will be forwarded to the arbitration board for scheduling and a copy sent to the manufacturer. You will be sent complete information about arbitration procedures and how to prepare for an arbitration hearing including information regarding the Lemon Law, RCW 19.118 and the Washington Administrative Code known as 'rules' adopted for the program, WAC 44-10. **It is very important that you review the rules in particular, as these spell out the detailed arbitration procedures and options that can be very useful to you at the arbitration hearing.**

After the manufacturer has had time to review the claim and reply with a Manufacturer's Statement, a hearing date will be set and an arbitrator assigned. At least 10 days before the hearing date you will be notified of the hearing date, time and location. Your arbitration hearing must be held within 45 days of the arbitration board's receipt of your Request For Arbitration from the Lemon Law Administration.

You will be sent a financial information form that must be completed and given to the arbitrator at the hearing. **If you do not provide the financial form to the arbitrator, refundable items may be missed in the award calculation.** You must be prepared to present verification of all financial information at the hearing necessary to complete the calculation of an award.

The New Motor Vehicle Arbitration Board

The New Motor Vehicle Arbitration Board has been

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selected by competitive public bid to provide arbitration services for the Lemon Law program. The arbitration board and the arbitrators are not associated with any automobile dealer or manufacturer and are independent of the Attorney General's Office. Lemon Law arbitrators are attorneys specifically trained in arbitration procedures and the Lemon Law.

The Manufacturer's Statement

After your Request For Arbitration is forwarded to the Board, the manufacturer is required to send you a 'Manufacturer's Statement'. The manufacturer will include its perspective of the vehicle's problems, repair history, other issues affecting the dispute and the reasons why the manufacturer believes that it should not be required to replace or repurchase the vehicle. The manufacturer must provide you this statement within 10 days of being notified that your claim has been forwarded to the arbitration board.

You have a maximum of 3 days from receipt of the statement to deliver a request for subpoenas to the Lemon Law Administration.

You should review the Manufacturer's Statement carefully when you prepare your presentation, testimony, and evidence for the hearing. You must be prepared to respond to specific defenses and issues identified by a manufacturer.

A Manufacturer's Right to View the Vehicle

The manufacturer will have the right to inspect the vehicle before the arbitration hearing if a request is made in a Manufacturer's Statement received by you within the 10 day period. During this view, the manufacturer's representative can drive the vehicle or conduct tests with diagnostic equipment, but cannot make any repairs.

You must be present while the manufacturer views the vehicle unless you request otherwise in writing. The manufacturer and you must make arrangements for a mutually convenient time, date, and location to view the vehicle.

What if Your Claim is Resolved Before the Hearing?

If you settle, you **must** notify the Arbitration Board and the Lemon Law Administration **immediately**. You **must** complete and return a Settlement/Withdrawal form which will have been included in the materials sent to you.

The manufacturer may contact you to try to settle your claim. It is wise to get complete settlement terms in writing from the manufacturer before withdrawing from the arbitration process. If you reach an agreement without a written agreement you should send a letter to the manufacturer's representative with your understanding of the responsibilities of the manufacturer and yourself. An agreement should include clear dollar amounts, totals and deadlines.

If you withdraw from arbitration before your hearing for any reason including illness or settlement, you may re-file for arbitration again within the 30 month time limit. However, if you withdraw a second time, you will not be allowed to re-file for arbitration on the same grounds.

The Arbitration Hearing

What is an Arbitration Hearing?

Lemon Law arbitration hearings are much less complicated than court trials or administrative hearings. There are no formal rules of evidence or court procedures. The hearings are designed to be as easy as possible for participants. You will be given the opportunity to explain your claim and present documents, affidavits or witnesses and other evidence to prove your claim. The manufacturer will have an opportunity to present their side of the dispute. The manufacturer and the arbitrator may ask you questions or request more detail. There will be an opportunity for you to ask questions about the manufacturer's position, affidavits or witnesses and evidence. The final section of the hearing will be about financial issues and a possible replacement vehicle.

Who Will Attend the Arbitration Hearing?

Hearings usually will be attended by you, a manufacturer's representative, any witnesses and the arbitrator. Arbitrators are like judges in that they listen to each side and then issue a written decision after the hearing.

In unusual instances, an impartial automotive expert technician will be assigned to assist the arbitrator. The expert's function is not to provide testimony for either side in the dispute. You must provide technical testimony from qualified independent mechanics or other experts when it is necessary to prove your claim.

Lemon Law - Motor Vehicles

What You Must Prove at the Arbitration Hearing

Your claim may be based on one or more defects and cover more than one claim category. For example, a serious safety defect may have been subject to 2 unsuccessful attempts to diagnose or repair and a second serious safety defect occurred within 12 months during the eligibility period. Presenting problems that clearly do not meet the definitions of a nonconformity or serious safety defect will not help your case, will take up time and may confuse the important issues. An arbitrator will be lenient but will not allow either party to pursue issues that are not relevant to the Lemon Law and the claim.

Plan your presentation to show how your vehicle meets **all** the requirements and definitions for the type of defect and claim category. You should include your response to the issues identified in the manufacturer's statement. It is likely that you already know the manufacturer's issues from trying to resolve the situation. If additional points of dispute have been mentioned or discussed in other conversations or correspondence with manufacturer representatives, you should be prepared to address those also.

The critical points to prove to an arbitrator are:

- The vehicle meets the definition of a 'new motor vehicle'
- You meet the definition of a 'consumer'
- Your Request for Arbitration was received by the Lemon Law Administration within 30 months of the original retail delivery date

- Your written request asking for repurchase or replacement of the vehicle was received by the manufacturer
- A defect meets the definition of a "nonconformity" and/or "serious safety defect"
- The defect was covered under the manufacturer's written or implied warranty
- The defect has been subject to a "reasonable number of attempts to diagnose or repair" based on the type of defect and the claim category (see *Types of Defects Covered Under the Lemon Law*)
- The defect still exists (except for claims based on "multiple serious safety defects within 12 months" or "days out-of-service")
- Mileage on the vehicle at the first attempt to diagnose/repair each defect or mileage on the 15th day out-of-service for claims based on 30 or more 'days out-of-service'
- Defenses made by the manufacturer are incorrect or do not apply
- The financial items necessary to calculate an award if that is the arbitrator's decision.

The Arbitration Decision

The Board must issue the arbitration decision within 60 days from the date the Board receives a Request For Arbitration. You will receive a copy of the decision and a form asking whether you accept or reject the decision from the Lemon Law Administration within 2-3 weeks after the hearing but often sooner. You will have 60 days from the date you receive the decision to accept or reject it.

After the Decision

The Decision: Accept - Reject - Appeals

If the arbitration decision is in your favor and you accept it, then the manufacturer must:

- Comply within 40 days of receiving notice of your acceptance from the Lemon Law Administration or
- File an appeal in superior court within 30 days of receiving your acceptance.

While appeals by manufacturers or consumers are very rare, if you disagree with the decision you can reject the decision and file an appeal. You will need the assistance of a private attorney to pursue your claims against the manufacturer when filing an appeal in superior court. You will be allowed a new hearing of the dispute at a trial. If you decide to appeal, the appeal must be filed in superior court within 120 days of rejecting the arbitration decision.

