



TEXAS LEMON LAW

AND GENERAL WARRANTY COMPLAINTS



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For More Information

The information in this handbook is a summary of the Lemon Law and the procedures involved in pursuing a complaint. The law itself is found in *Texas Occupations Code Annotated*, Chapter 2301, Subchapter M (formerly *Vernon's Revised Texas Civil Statutes*, Article 4413(36), Section 6.07)

To get a copy of the Lemon Law,

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The Texas Motor Vehicle Commission merged with the Texas Department of Transportation (TxDOT) on September 1, 1992, and became TxDOT's Motor Vehicle Division. An independent Texas Motor Vehicle Board establishes general policy applicable to Lemon Law cases, adopts rules and procedures, and acts on motions for rehearing. The Board accepts written comments from anyone who wants to share suggestions about the law or its implementation.

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Introduction

The Texas “Lemon Law” is a state law that helps consumers who buy or lease new motor vehicles and have repeated problems getting their vehicles properly repaired. The Lemon Law can help a consumer get the vehicle repurchased, replaced, or repaired.* It can be less complicated and less expensive than going to court.

The law was enacted by the Texas Legislature in 1983. A court challenge stalled enforcement of the law, but in 1985, a federal appeals court upheld its validity. In Texas, the Lemon Law is administered by the Texas Department of Transportation’s Motor Vehicle Division and its Motor Vehicle Board.

Through mediation and formal hearings allowed under the law, the Motor Vehicle Division has helped resolve many complaints. From 1988 to 2002 the division processed 17,020 complaints. In 2002, the division received 951 written complaints and held 189 hearings on complaints that were not resolved informally. In 62.5% of the complaints closed in 2002, consumers received some type of relief totaling more than \$5.9 million in benefits.

In 1991, the Legislature changed the Lemon Law to benefit more consumers. The time period for filing a complaint and the definition of a “lemon” were expanded, incidental expenses became reimbursable, and a disclosure notice on vehicles ordered repurchased or replaced became mandatory.

In 1997, the Legislature added towable recreational vehicles (TRVs) to the Lemon Law. Besides being made primarily for temporary human habitation, TRVs must (1) be titled and registered in Texas; (2) be built on a single chassis; (3) contain one or more life support systems, and (4) be towable by another motor vehicle.

In 1998, the Motor Vehicle Board amended its rules to require that manufacturers affix a disclosure decal to the front window of vehicles ordered repurchased or replaced and on vehicles reacquired under another state’s lemon law program and transferred to Texas for resale.

Effective June 19, 1999, the Legislature limited the Lemon Law to vehicles purchased or leased from Texas licensed dealers or lessors.

In 2000, the Board extended the disclosure notice and label requirements to all vehicles that are reacquired to resolve warranty complaints.

In 2002, the Board amended its rules to provide that manufacturers must re-title the vehicle in Texas before selling it. This requirement applies to both vehicles reacquired in Texas and those transferred to Texas for resale.

*The relief available to **used** motor vehicle buyers is limited to repairs only, if the vehicle is still under the original factory warranty.

The Lemon Law

What does it cover?

The Lemon Law applies to new vehicles (including cars, trucks, vans, motorcycles, all-terrain vehicles, motor homes, towable recreational vehicles (TRVs), and neighborhood electric vehicles) purchased or leased from a Texas licensed dealer or lessor that develop problems covered by a written factory warranty. Demonstrator vehicles are also considered new vehicles.



The law does not cover used motor vehicles (including program vehicles), repossessed vehicles, non-travel trailers, boats, or farm equipment. Neither does it cover vehicles with:

- problems caused by owner's abuse, neglect or unauthorized changes to the vehicle,
- parts or components not authorized or installed by the manufacturer*, or
- problems that do not substantially affect the use or market value of the vehicle like minor rattles or stereo problems.

How do I know if my vehicle is a lemon?

A motor vehicle may be declared a lemon if it meets all of the following conditions:

- the vehicle was purchased or leased from a Texas licensed dealer or lessor;
- the vehicle has a serious defect or abnormal condition;
- the defect or condition is covered by a manufacturer's written warranty;
- the owner reports the defect or condition to the dealer or manufacturer within the warranty term;
- the owner gives the dealer or manufacturer a reasonable number of attempts to repair the defect or condition;
- the owner gives the manufacturer** (not the dealer) (preferably by certified mail) written notice of the defect and at least one opportunity for repair after notification;
- the defect or condition persists and substantially impairs the vehicle's use or market value, or creates a serious safety hazard;
- the owner files a timely Lemon Law complaint and pays the filing fee.

*Whenever the term "manufacturer" is used, it should be understood to include distributor and converter, as well.

**If more than one manufacturer or converter, each must be given written notice and have at least ONE opportunity to repair.

How many chances does the dealer get to fix the vehicle?

*Determining how many chances a dealer has to fix a defect is easy. Simply see if you pass either the four-times test, the serious safety-hazard test or the 30-day test.

Four-times test

If you have taken the vehicle to a dealership for repairs:

- two times for the same problem or defect within the first 12 months or 12,000 miles, whichever comes first, and
- twice more during the 12 months or 12,000 miles following the first repair attempt, and
- the problem is still not repaired - you pass the four-times test.

Serious safety-hazard test

If you have taken the vehicle for repair of a serious safety-hazard:

- once during the first 12 months or 12,000 miles, whichever comes first, and
- once more during the 12 months or 12,000 miles following the first repair attempt, and
- the problem is still not repaired - you pass the serious safety-hazard test.

30-day test

If your vehicle has been out of service for repair because of problems covered by the original factory warranty:

- for a total of 30 days** or more - not necessarily all at one time - during the first 24 months or 24,000 miles, and
- there were two repair attempts during the first 12 months or 12,000 miles immediately after delivery, and
- a substantial problem still exists, you pass the 30-day test.

*The law presumes you have given the manufacturer or authorized dealer a reasonable number of attempts to fix the defect if you pass one of these tests. The mileage requirements generally do not apply to TRVs.

**If a comparable loaner vehicle was provided while the vehicle was being repaired, that time does not count toward the 30 days.

How long do I have to file a complaint?

*A Lemon Law complaint **must** be filed within **six months** following **the earlier of**:

1. **expiration** of the express warranty term;
2. **24 months, or**
3. **24,000 miles** following the date of delivery of the vehicle (except TRVs).

In other words, the filing period is determined by which of the **above events occurs first**. To be safe, file your complaint **as soon as** you realize the dealer is having problems repairing the vehicle.

Why so many requirements?

Most people feel that a seller or manufacturer should replace defective products or refund the purchase price without a lot of hassle. However, it is not practical for vehicle manufacturers to do this. Their products are much more expensive than most other consumer goods, and warranty disputes involve more complicated issues. Often, whether the vehicle is really defective is a legitimate question.

Before the Lemon Law, consumers had to file lawsuits to get relief. Most states have passed laws to provide consumers with a relatively quick, inexpensive, and easy way to pursue their claim. But, any law requires certain procedures. Our staff, especially our case advisors, will try to make it easy for you to understand the legal requirements and procedures.

* Even if you have gone past the time limit allowed for a repurchase, the Motor Vehicle Board may still be able to help you get repairs under your vehicle warranty.

Informal Procedures

What's my first step?

If your dealership does not seem to be able to correct the problems with your vehicle, send a letter (preferably by certified mail) to the manufacturer. Each manufacturer or converter must be sent notice. The owner's manual or warranty booklet should have a contact name and the address of the manufacturer. Describe the vehicle's condition and offer the manufacturer an opportunity to fix the problem. Better yet, tell the manufacturer or converter when the vehicle will be back at the dealership for repair. A sample letter is enclosed for your convenience.



It is important to keep a complete record of all your dealings with the manufacturer and dealer, including copies of all repair orders, letters, and records of phone calls. If you decide to file a Lemon Law complaint, you will need to send copies of all the materials to TxDOT.

How do I file a complaint?

Your complaint must be in writing. Use the complaint form in this booklet.

If you want your vehicle replaced or repurchased, you must send a \$35.00 non-refundable filing fee with your complaint. However, if you win your case at a hearing, the manufacturer will reimburse you for the fee. If you are only seeking repairs under the warranty, no fee is required.

Can my complaint be resolved quickly?

TxDOT will contact the manufacturer and dealer about your complaint. The manufacturer may send one of its experts to the dealership to help identify and fix the problem. If your vehicle is satisfactorily repaired, your case is resolved.

If the vehicle is not repaired, TxDOT may send a technical expert to meet with you and representatives for the dealer and the manufacturer. At the meeting, TxDOT's expert will help settle the dispute, if possible. In many cases, the complaint is resolved at this stage within 30 to 60 days after the complaint was filed.

Although the terms of a settlement can vary widely, it is usually in the form of a repurchase, replacement, trade-assist, repairs, service contract, or reimbursement. The amount of trade assistance by a manufacturer can vary from a few hundred dollars towards the purchase of a new vehicle to a "no profit" replacement by the manufacturer or dealer subject only to a mileage deduction or reasonable allowance for use.

If the complaint is not settled, a hearing will be necessary.

Formal Procedures

What is a Lemon Law hearing?

A Lemon Law hearing is your opportunity to prove to an administrative law judge (ALJ) that your vehicle is a lemon. You must present your own testimony or that of witnesses. You should also present letters, repair orders, or other documents (except affidavits) to prove to the ALJ that your vehicle is a lemon.

Presenting a case to the ALJ is somewhat like appearing before a judge of a small-claims court. There are certain legal procedures that a judge must follow. The ALJ will relax the rules as much as possible, but the process is subject to the Texas Administrative Procedure Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

When a hearing is needed, TxDOT's goal is to hold it and issue a decision within 150 days after receiving the complaint and filing fee. If the 150-day period expires without a decision, the consumer has the right to use the Lemon Law in court as though the Lemon Law process were complete.

How should I prepare for the hearing?

- Collect your documents, i.e.: sales contract, warranty booklet, work orders or repair tickets, and letter to or from the dealer or manufacturer. Bring three copies of all documents to the hearing.
- Arrange the work orders by date. Put the oldest work order first and complete the warranty repair log we send you. Be prepared to support the log entries with your testimony or notes, or with testimony of witnesses.
- Complete the "List of Agreed Facts" form in advance to save time at the hearing.
- Arrange for witnesses to appear at the hearing because notarized statements generally are not allowed. If you have friends who have witnessed the vehicle's problems, ask them to testify at the hearing. You may also subpoena witnesses. Make sure your witnesses know when and where to appear, and tell them it may take most of the morning or afternoon.
- Make sure the vehicle is ready to be inspected and test-driven at the hearing, including having current registration and state inspection. For example, if the complaint is a severe vibration, make sure the tires are not worn out and that they are properly aligned and balanced. Be sure your vehicle has had the required maintenance and bring records to prove it.

How do I prove my case

Although a hearing is less formal than a court trial, you must still prove your case to the ALJ.
*You must prove that:

- you purchased or leased a new motor vehicle from a Texas licensed dealer or lessor, and you still own or lease it at the time of the hearing;
- the vehicle had a defect covered by the warranty, and you reported the defect to the dealer or manufacturer during the warranty period;
- you gave the manufacturer or its dealer a reasonable number of attempts to fix the defect or condition, but the defect remains (See Page 3). Ordinarily, the defect must continue to exist at the time of the hearing;
- you notified each manufacturer or converter of the defect in writing and have given each one at least one chance to fix it after notification;
- the defect or condition substantially impairs the use or market value of the vehicle, or creates a serious safety hazard. You may be able to prove the vehicle's use is impaired if any of its major systems are defective, or if a defect such as a water leak prevents it from being used normally in the rain.

A vehicle's value may be decreased by paint flaws or any other condition that would lead a buyer to pay substantially less than the market price for a comparable vehicle that does not have the defect. A serious safety hazard is a life-threatening malfunction that impedes your ability to control or operate the vehicle normally, or that creates a substantial risk of fire or explosion.

ALJs conduct the hearings which usually last two to four hours. They travel across the state to TxDOT locations convenient to consumers. The ALJ does not represent either party at the hearing, but reaches a decision based on the evidence presented

Who is involved in the hearing?

Usually, owners present their own cases and manufacturers send their customer relations managers. However, if a manufacturer has an attorney or if you **feel uncomfortable** without one, you may want to be represented by counsel. If you choose to have an attorney, you must send written notice to TxDOT's Motor Vehicle Division **and** the manufacturer at least five business days before the hearing.

*Proof elements here are described in layman's terms. The actual legal provisions are found in Chapter 2301, Subchapter M of the Texas Occupations Code Annotated (formerly Section 6.07 of the V.T.C.S. Article 4413(36)).

What will happen at the hearing?

First, you will present your side of the story. Then, the ALJ or the manufacturer's representatives may ask you questions about your statements or documents.

Next, the manufacturer's case is presented. They may bring witnesses or documents to try to show one of three things:

- there is no defect at all;
- the defect is minor and does not substantially impair the vehicle's use or market value; or
- the defect was caused by owner neglect or some other factor.

Be sure to take notes as the manufacturer presents the case so you can then ask specific questions about testimony or documents.

The ALJ may decide to conduct the inspection and test drive after you present your case, and will explain the procedures. At the hearing's conclusion, each party summarizes the evidence presented and argues for a specific result.

After the Hearing

TxDOT will issue a decision shortly after the hearing that will include the ALJ's summary of the evidence, reasoning, findings of fact and conclusions of law. The judge will decide one of three things:

- the complaint should be dismissed;
- the vehicle has a defect that the manufacturer must repair;
- the vehicle qualifies as a lemon and should be repurchased or replaced.



What happens if I win?

The law provides basic guidelines for what you may get if you prove your case. Because every situation is different, ALJs review the facts of each particular case when making a decision.

If you win your case, the ALJ will order one of the following:

Refund:

The manufacturer must buy back the vehicle for the *full purchase price (including taxes, title and license fee) minus an amount charged for the use of the vehicle. The amount deducted is decided according to a formula that takes into account the number of miles on the vehicle at the time of the hearing and other factors. (See pages 10-11 for the "Calculating the Repurchase Price" table.)

* This does not include any interest paid on the vehicle

Replacement:

The manufacturer must replace the defective vehicle with one that is comparable to the original vehicle (usually same make, model and accessories) and acceptable to you, minus the mileage used.

Repair:

The manufacturer must fix the vehicle's defects. Also, out-of-pocket expenses for repairs that should have been covered by the warranty will be reimbursed.

Reimbursement of incidental expenses:

Incidental expenses are awarded only if the vehicle is ordered to be repurchased or replaced. They must be reasonable and may include costs of alternate transportation, towing, telephone calls or mail charges, meals and lodging necessitated by the vehicle's failure during out-of-town trips, loss or damage to personal property, attorney fees if complainant retains counsel after notification that respondent is represented by an attorney, and items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. In regard to the cost of the item or accessory, the ALJ must consider the permanent nature, functionality, value added, and whether original equipment manufacturer (OEM) parts or non-OEM parts.

What if I'm not satisfied?

Neither you nor the manufacturer has to accept the ALJ's decision. Copies of the decision and order are sent to the consumer and the manufacturer by certified mail. Each can file a motion for rehearing within 20 days after receipt of the decision. A party is presumed by law to have received the decision on the third day after it is mailed. The motion may be sent either to the director of the Motor Vehicle Division or to the Motor Vehicle Board. Parties are promptly notified whether the motion for rehearing has been granted or denied.

If a rehearing is denied, a party can appeal to the State District Court in Travis County within 30 days of the order denying the motion for rehearing. A replacement or repurchase order remains in effect, unless suspended, even though a manufacturer files an appeal.

A party wishing to appeal a TxDOT order should hire an attorney promptly because of the short time allowed to file an appeal.

What are my other options?

The Lemon Law expressly provides that it does not limit the rights or remedies otherwise available to an owner under any other law. You may file a lawsuit against a manufacturer or dealer for breach of warranty, deceptive trade practices or some other reason as long as you are still within the applicable statute of limitations. For information concerning other rights and remedies available, you should contact a private attorney.

Once you have had a hearing under the Lemon Law, you may be able to use certain provisions of the Lemon Law in court as part of your lawsuit. You may also use the Lemon Law in court if it has been more than 150 days since TxDOT received your complaint and filing fee, and you have not yet received a decision.

Calculating the Repurchase Price Motorized Vehicles

According to Lemon Law Rule 107.8*

I. **Purchase price** = sales price plus tax,
title, fees, add-on accessories, less rebate,
if any. PP=\$_____

II. Mileage

TM=Total number of miles on
hearing date. TM=_____

UM=Number of unimpaired miles
(miles driven before defect is first
reported), UM=_____

IM=Number of impaired miles
(miles driven AFTER defect was
reported), TM less UM. IM - _____

III. Reasonable allowance for use (RAFU)

1. $\frac{UM \times \$PP}{120,000} =$ \$_____ (A)

2. $\frac{IM \times \$PP \times .5}{120,000} =$ \$_____ (B)

TOTAL RAFU \$_____ (A+B)

IV. Repurchase Price (RP)

1. PP - RAFU = \$_____

2. Refund of filing fee + \$_____

3. Reimbursement of incidental
expenses except add-ons
or accessories. (See Lemon Law
Rule 107.9) + \$_____

Total repurchase price = \$_____
(1) + (2) + (3)

*This is the formula generally used to calculate repurchase price, except in lease and TRV cases.

Calculating the Repurchase Price Towable Recreational Vehicles (TRV)

According to Lemon Law Rule 107.8(5)*

I. **Purchase price** = sales price plus tax, title, fees, add-on accessories, less rebate, if any.

PP=\$ _____

II. Usage

TU=Total number of days on hearing date.

TU= _____

UU=Number of unimpaired days (days used before defect is reported),

UU= _____

IU=Number of impaired days (days driven AFTER defect was reported), TU less UU.

IU - _____

III. Reasonable allowance for use (RAFU)

1. $\frac{UU \times \$PP}{3650} =$

\$ _____ (A)

2. $\frac{IU \times \$PP \times .5}{3650^{**}} =$

\$ _____ (B)

TOTAL RAFU

\$ _____ (A+B)

IV. Repurchase Price (RP)

1. PP - RAFU

=\$ _____

2. Refund of filing fee

+\$ _____

3. Reimbursement of incidental expenses except add-ons or accessories. (See Lemon Law Rule 107.9)

+\$ _____

Total repurchase price
(1) + (2) + (3)

=\$ _____

*This is the formula generally used to calculate the repurchase price of TRVs, except in lease cases.

**1825 days (5 years) if TRV occupied full time.

Policy of Non-Discrimination on the Basis of Disability

The Motor Vehicle Division of the Texas Department of Transportation does not discriminate on the basis of disability in the administration of its Lemon Law or warranty compliance program. Persons requiring interpreter services for the hearing or vision impaired may call 1-800-622-8682 (voice only) or Relay Texas TDD 1-800-735-2988 for additional information concerning the division's programs and activities. Persons having physical disabilities that make attendance at a hearing difficult should contact a TxDOT case advisor at 1-800-622-8682 or 512-416-4800 for assistance.

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