

STANDARDS OF THE FLORIDA LEMON LAW

Motor Vehicle Warranty Enforcement Act

The following is a brief explanation of most relevant provisions of the Florida lemon law. The complete text of the lemon law can be found at Florida Stat. Ann. Section 681.10 *et seq.*

To obtain a “Consumer Guide to the Florida Lemon Law,” or speak with someone about the Lemon Law, consumers in Florida may call the Florida Department of Agriculture & Consumer Services’s Lemon Law Hotline at 1-800-321-5366, or 1-850-488-2221 for consumers outside Florida.

VEHICLES COVERED

The Florida lemon law covers cars and trucks that are sold in Florida to transport persons or property. This includes demonstrators, recreational vehicles (other than the living facilities), and also leased vehicles if the lessee is responsible for repairs. The Florida lemon law does not cover vehicles run only on tracks, off-road vehicles, trucks over 10,000 pounds G.V.W., motorcycles, mopeds, or the living facilities of recreational vehicles.

CONSUMERS COVERED

The lemon law covers any of the following:

1. The purchaser, other than for purposes of resale, or the lessee, of a vehicle primarily used for personal, family or household purposes;
2. Any person to whom such vehicle is transferred for the same purposes during the duration of the Lemon Law Rights Period; or
3. Any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

Subsequent owners are covered if the vehicle is transferred from one consumer to another during the Lemon Law Rights Period (24 months from original delivery).

VEHICLE CONVERTERS

The lemon law applies to vehicle converters.

PROBLEMS COVERED THE FLORIDA LEMON LAW

The lemon law covers vehicle nonconformities. A nonconformity is defined as a defect or condition that substantially impairs the use, value or safety of a vehicle. In addition, the lemon law requires repurchase/replacement only if the nonconformity causes the vehicle to not conform to the warranty.

This does not include a defect or condition that results from an accident, abuse, neglect, modification, or alteration of the vehicle by persons other than the manufacturer or its authorized service agent.

LEMON LAW RIGHTS PERIOD

The Lemon Law Rights Period established by the lemon law is the period ending 24 months after the date of original delivery of the vehicle to a consumer.

MANUFACTURER'S DUTY TO REPAIR

If a motor vehicle does not conform to the warranty and the consumer first reports the problem to the manufacturer or its authorized service agent during the Lemon Law Rights Period, the manufacturer or its authorized service agent shall repair the motor vehicle, even if the repairs are made after the Lemon Law Rights Period.

FINAL REPAIR ATTEMPT

The lemon law gives the manufacturer the right to a final repair attempt after there are 3 repair attempts for the same nonconformity or after the vehicle has been out of service for 15 days or more for the repair of one or more nonconformities.

After three repair attempts:

After three attempts have been made to repair the same nonconformity, the consumer must give written notice to the manufacturer, by registered or express mail, of the need to repair the nonconformity.

After the manufacturer receives the consumer's notice by registered or express mail, the manufacturer must respond within 10 days and give the consumer the opportunity to have the vehicle repaired at a reasonably accessible repair facility within a reasonable time after the consumer's receipt of the response.

After the vehicle is delivered to that facility, the manufacturer must correct the nonconformity within 10 days.*

*For recreational vehicles, the manufacturer has 45 days (not 10) to correct the nonconformity.

The requirement for the manufacturer to be given a final repair attempt does not apply if the manufacturer does not properly respond to the consumer within 10 days of receipt of the consumer's notice, or if it does not perform the repairs within the prescribed time periods.

After 15 days out of service:

If the motor vehicle is out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 15 or more days, exclusive of down time for routine maintenance prescribed by the owner's manual,

the consumer must give written notice to the manufacturer by registered or express mail.

After receiving the registered or express mail notice from the consumer, the manufacturer or its agent has an opportunity to inspect or repair the vehicle.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer or its authorized service agent cannot conform a vehicle to its warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer must either repurchase or replace the vehicle. The consumer has a right to choose repurchase rather than replacement.

REASONABLE NUMBER OF REPAIR ATTEMPTS

It is presumed that a reasonable number of repair attempts have been made if, during the Lemon Law Rights Period, either:

1. The same nonconformity has been subject to repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer after receiving the registered or express mail notice from the consumer, and the nonconformity continues to exist; or
2. The vehicle has been out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 30* or more days, exclusive of down time for routine maintenance prescribed by the owner's manual. The manufacturer must have had the opportunity for a final repair attempt as described above. The 30 and 60 day periods may be extended if repair services are not available because of war, invasion, strike, fire, flood, or natural disaster.

*For recreational vehicles, the days out of service is 60 (not 30).

Regulations define "repair attempt" as the replacement of a component, or some adjustment made, to correct a substantial defect or condition covered by the manufacturer's warranty. An examination of a reported defect or condition, without a subsequent adjustment or component replacement, may be considered a repair attempt if it is later shown that repair work was justified. Examination or repair performed by anyone other than the manufacturer or its authorized service agent is not considered a repair attempt.

Regulations define "out-of-service day" as any day, including weekends and holidays, when the vehicle is left at an authorized service agent or manufacturer's designated repair facility for an examination or repair of one or more substantial defects or conditions covered by the manufacturer's warranty. The days for each visit start on the day the vehicle is brought in to the repair facility and end on the day the work is completed. If the vehicle is left at the repair facility for routine maintenance, repair of minor defects, or repairs to defects first reported after the lemon law rights period expired, the days will not be considered as out-of-service days.

This information is not intended as legal advice. Please direct specific questions to your legal counsel.
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DISPUTE RESOLUTION

The lemon law provisions requiring repurchase or replacement of a nonconforming motor vehicle do not apply to a consumer who has not first used a dispute settlement procedure if:

1. The procedure has been certified by the Division of Consumer Services as complying with 16 C.F.R. Part 703 and the lemon law and regulations; and
2. At the time of the vehicle's acquisition, the manufacturer informed the consumer in writing how and where to file a claim with the procedure.

TIME PERIOD FOR FILING CLAIMS

If a manufacturer participates in a certified dispute settlement procedure, the consumer must file a claim with the certified procedure no later than 60 days after the expiration of the Lemon Law Rights Period.

A consumer may file a claim with the Florida New Motor Vehicle Arbitration Board if:

1. The certified procedure does not render a decision within 40 days of filing;
2. The consumer is not satisfied with the certified procedure's decision or the manufacturer's compliance with the decision; or
3. The manufacturer does not participate in a certified procedure.

The claim must be filed with the Florida New Motor Vehicle Arbitration Board no later than 60 days after the expiration of the Lemon Law Rights Period or 30 days after the final action of a certified procedure, whichever date occurs later.

REMEDIES UNDER THE FLORIDA LEMON LAW

REPURCHASE OF OWNED VEHICLE

Basic Repurchase Amount

The Florida lemon law provides that the manufacturer must refund the following amounts when repurchasing a vehicle under the lemon law:

1. *Purchase price of the vehicle.* This is the cash price for the vehicle, inclusive of any allowance for a trade-in vehicle;
2. *Collateral charges.* These are reasonably-incurred additional charges to a consumer wholly incurred as a result of the acquisition of the vehicle. They include, but are not limited to:
 - a. sales taxes and title charges;
 - b. manufacturer-installed or agent-installed items or service charges;
 - c. earned finance charges; and
3. *Reasonably incurred incidental charges.* These are reasonable costs to the consumer that are directly caused by the nonconformity of the vehicle.

“Purchase price” excludes debt from a previous transaction. “Allowance for trade-in vehicle” means the net trade-in allowance as reflected in the purchase contract if acceptable to the consumer and the manufacturer. If that amount is not acceptable to both parties, then the trade-in allowance is an amount equal to the retail price of the trade-in vehicle as reflected in the NADA Official Used Car Guide (Southeastern Edition) or NADA Recreation Vehicle Appraisal Guide, whichever is applicable, in effect at the time of the trade-in. The manufacturer is responsible for providing the applicable NADA book.

The refund will be paid to the consumer and lienholder of record, if any, as their interests may appear.

Deductions from Amount Paid to Purchaser

The Florida lemon law provides that the following deduction must be made as a reasonable offset for the vehicle’s use:

$$\begin{array}{rcl} \text{offset} & & \text{vehicle} \\ \text{for use} & = & \text{purchase} \\ & & \text{price} \\ & & \text{-----} \\ & & 120,000 \text{ (60,000 for recreational vehicles)} \end{array} \quad \times$$

The Office of the Attorney General interprets “miles attributable to a consumer” to exclude reasonable miles driven to and from the authorized service agent for repair of the nonconformity.

REPURCHASE OF LEASED VEHICLE

Basic Repurchase Amount

The Florida lemon law provides that the manufacturer must refund the following amounts when repurchasing a leased vehicle under the lemon law:

To the lessee:

1. *Lessee Cost.* This is the total deposit and rental payments previously paid to the lessor for the leased vehicle, excluding debt from a previous transaction;
2. *Collateral charges.* These are reasonably-incurred additional charges to a consumer wholly incurred as a result of the acquisition of the vehicle. They include, but are not limited to, sales taxes and title charges, manufacturer-installed or agent-installed items or service charges, and earned finance charges; and
3. *Reasonably incurred incidental charges.* These are reasonable costs to the consumer that are directly caused by the nonconformity of the vehicle.

To the lessor:

The *Lease Price* MINUS the *Lessee Cost*.

Lease Price means the capitalized cost and each of the following items to the extent not included in the capitalized cost:

1. The lessor's earned rent charges through the date of repurchase;
2. Collateral charges, if applicable;
3. Any fee paid to another to obtain the lease;
4. Any insurance or other costs expended by the lessor for the benefit of the lessee; and
5. An amount equal to state and local sales taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.

Deductions from Amount Paid to Lessee

The Florida lemon law provides that the following deduction must be made as a reasonable offset for the vehicle's use:

$$\begin{array}{rclcl} \text{offset} & & \text{number of miles attributable to a consumer} & & \text{vehicle} \\ \text{for use} & = & \text{up to the date of the arbitration hearing} & \times & \text{purchase} \\ & & \text{-----} & & \text{price} \\ & & 120,000 \text{ (60,000 for recreational vehicles)} & & \end{array}$$

The Office of the Attorney General interprets "miles attributable to a consumer" to exclude reasonable miles driven to and from the authorized service agent for repair of the nonconformity.

REPLACEMENT

When replacing a vehicle under the Florida lemon law, the manufacturer must provide a new vehicle that is identical or *reasonably equivalent* to the vehicle to be replaced, as that vehicle existed at the time of purchase.

“Reasonably equivalent” means that the manufacturer’s suggested retail price (“M.S.R.P.”) of the replacement vehicle does not exceed 105% of the M.S.R.P. of the vehicle to be replaced. In the case of a recreational vehicle, the retail price of the replacement vehicle will not exceed 105% of the purchase price of the recreational vehicle to be replaced.

The Florida lemon law also provides that the manufacturer must refund to the consumer the following amounts when replacing a vehicle under the lemon law:

1. *Collateral charges.* These are reasonably incurred additional charges to a consumer wholly incurred as a result of the acquisition of the vehicle. They include, but are not limited to:
 - a. sales taxes and title charges;
 - b. manufacturer-installed or agent-installed items or service charges;
 - c. earned finance charges; and
2. *Reasonably incurred incidental charges.* These are reasonable costs to the consumer that are directly caused by the nonconformity of the vehicle.

The consumer must pay a reasonable offset for the vehicle’s use in accordance with the following formula:

$$\begin{array}{rcl} \text{offset} & & \text{vehicle} \\ \text{for use} & = & \text{purchase} \\ & & \text{price} \\ & & \text{-----} \\ & & 120,000 \text{ (60,000 for recreational vehicles)} \end{array} \quad \times$$

The Office of the Attorney General interprets “miles attributable to a consumer” to exclude reasonable miles driven to and from the authorized service agent for repair of the nonconformity.