

STANDARDS OF THE DELAWARE LEMON LAW

The following is a brief explanation of most relevant provisions of the Delaware lemon law. The complete text of the lemon law can be found at 5 Del. Code Ann. §§ 5001 *et seq.*

VEHICLES COVERED

The Delaware lemon law covers automobiles, defined as any passenger motor vehicle that is leased or bought in Delaware or registered in Delaware. The lemon law does not cover motorcycles or the living facilities of motor homes.

Guidance from the Delaware Department of Justice indicates that the lemon law applies only to new automobiles.

CONSUMERS COVERED

The lemon law covers the following consumers:

1. The purchaser of an automobile, for purposes other than resale;
2. A person to whom an automobile is transferred during the duration of an express warranty applicable to the automobile; and
3. Any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

Because the lemon law covers leased vehicles, “consumer” appears to also include a lessee.

PROBLEMS COVERED

The lemon law covers any *nonconformity*, which is defined as a defect or condition that substantially impairs the use, value or safety of an automobile.

AFFIRMATIVE DEFENSE

The lemon law provides manufacturers with an affirmative defense if it can be shown that the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new automobile by anyone other than the manufacturer, its agent or dealer.

MANUFACTURER’S DUTY TO REPAIR

If a new automobile does not conform to the manufacturer’s express warranty, and the consumer reports the nonconformity to the manufacturer, its agent or dealer during the term of the warranty or the period of one year following the date of the automobile’s original delivery to the consumer, whichever is earlier, then the manufacturer, its agent or dealer must make the necessary repairs within a reasonable period of time to conform the new automobile to the warranty.

The necessary repairs must be made even if the term of the warranty or the one year period has expired.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE AN AUTOMOBILE

If the manufacturer, its agent or its authorized dealer does not conform the automobile to any applicable express warranty by repairing or correcting any nonconformity after a *reasonable number of repair attempts*, then the manufacturer must replace or repurchase the automobile.

The consumer has the unqualified right to decline a replacement automobile and to demand instead a repurchase.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Delaware lemon law establishes a *presumption* that a reasonable number of repair attempts has been undertaken to conform a new automobile to the manufacturer's express warranty if, during the warranty term or during the period of one year following the date of the automobile's original delivery to a consumer, whichever is earlier, either of the following occurs:

1. Substantially the same nonconformity has been subject to repair or correction four or more times by the manufacturer, its agents or dealers and the nonconformity continues to exist; or
2. The automobile is out of service by reason of repair or correction of a nonconformity by the manufacturer, its agents or dealers for a cumulative total of more than 30 calendar days since the automobile's original delivery to the consumer. The 30 day limit begins on the first day on which the consumer presents the automobile to the manufacturer, its agent or dealer for service of the nonconformity and the manufacturer, its agent or dealer prepares a written document describing the nonconformity.

This 30-day time limit is extended if repairs cannot be performed due to conditions beyond the control of the manufacturer, its agents or dealers, including war, invasion, strike, fire, flood or other natural disaster.

NOTICE AND OPPORTUNITY TO REPAIR

The *presumption* that a reasonable number of repair attempts has been undertaken does not apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer, and the manufacturer has had an opportunity to repair or correct the nonconformity.

DISPUTE RESOLUTION

If the manufacturer has established an informal dispute settlement procedure that has been certified or approved by the Division of Consumer Protection, the lemon law's

remedies are not available to a consumer who has not first resorted to the informal dispute settlement procedure. If an informal dispute settlement procedure has not been certified or approved, the consumer may immediately and directly seek the remedies provided by the lemon law.

TIME PERIOD FOR FILING CLAIMS

A judicial action must be filed within three years from the date the alleged defect is reported to the dealer or manufacturer, as long as the report is made during the term of the warranty or during the period of one year following the date of original delivery, whichever is earlier.¹

Guidance from the Delaware Department of Justice indicates that this statute of limitations does not stop running while a consumer uses an informal dispute settlement procedure.

¹ *Stenta v. GMC*, 2009 Del. Super. LEXIS 199 (Del. Sup. Ct. May 29, 2009), aff'd 7 A.3d 485 (Del., Oct. 18, 2010); *Pender v. Daimler Chrysler Corp.*, 2004 Del. Super. LEXIS 275 (Del. Sup. Ct. Jul. 30, 2004).

REMEDIES UNDER DELAWARE LEMON LAW

REPURCHASE

The Delaware lemon law provides that a manufacturer must pay the following amounts when it repurchases an automobile under the lemon law:

1. Full purchase price, including all credits and allowance for any trade-in vehicle; and
2. Related purchase costs, including sales taxes, registration fees and dealer preparation fees.

The Delaware lemon law provides that a reasonable allowance for the consumer's use of the motor vehicle be subtracted from the repurchase amounts. The reasonable allowance for use may not exceed an amount calculated in accordance with the following formula:

$$\begin{array}{rcl} \text{reasonable} & & \text{\# miles driven attributable to the consumer} \\ \text{allowance} & = & \text{before the nonconformity was first reported} \\ \text{for use} & = & \text{to the manufacturer, its agent, or dealer} \\ & & \text{-----} \\ & & 100,000 \end{array} \quad \times \quad \begin{array}{l} \text{full} \\ \text{purchase} \\ \text{price} \end{array}$$

An allowance is also made for damage not attributable to normal wear and tear, not including damage resulting from a nonconformity.

REPLACEMENT

The Delaware lemon law provides that a replacement automobile be a comparable new automobile acceptable to the consumer. The reasonable allowance for use does not apply to a replacement.

The manufacturer must also reimburse the consumer for any incidental costs, including dealer preparation fees, fees for transfer of registration, sales tax or other charges or fees incurred by the consumer as a result of the replacement.

When an automobile that was financed by the manufacturer or its subsidiary or agent is replaced, the manufacturer or its subsidiary or agent may not require the consumer to enter into any refinancing agreement for a replacement automobile that would create any financial obligations on the consumer beyond those created in the original financing agreement.