

STANDARDS OF THE VIRGINIA LEMON LAW

The following is a brief explanation of most relevant provisions of the Virginia lemon law. The complete text of the lemon law can be found at Code of Virginia §§ 59.1-207.9 *et seq.*

VEHICLES COVERED

The Virginia lemon law covers “motor vehicles”, defined as:

1. Passenger cars designed and used primarily for the transportation of no more than 10 persons including the driver;
2. Pickup or panel trucks (i) designed for the transportation of property and having a registered gross weight of 7,500 pounds or less or (ii) every motor vehicle registered for personal use, designed to transport property on its own structure independent of any other vehicle, and having a registered gross weight in excess of 7,500 pounds but not in excess of 10,000 pounds.
3. Motorcycles, mopeds, and the self-propelled motorized chassis of motor homes; and
4. Demonstrators and leased vehicles with which a warranty was issued.

The lemon law appears to cover used vehicles.

CONSUMERS COVERED

The lemon law covers the following “consumers”:

1. The purchaser, other than for purposes of resale, or the lessee of a motor vehicle used in substantial part for personal, family, or household purposes;
2. Any person to whom the motor vehicle is transferred for the same purposes during the duration of any warranty applicable to the motor vehicle; and
3. Any other person entitled by the terms of the warranty to enforce its obligations.

PROBLEMS COVERED

The lemon law covers any *nonconformity*, which is defined as a failure to conform with a warranty, a defect or a condition, including those that do not affect the driveability of the vehicle, that significantly impairs the use, market value or safety of the motor vehicle. “Significant impairment” means to render the motor vehicle unfit, unreliable or unsafe for ordinary use or reasonable intended purposes.

The lemon law provides manufacturers with an affirmative defense if it can be shown that the alleged nonconformity does not significantly impair the use, market value, or safety of the motor vehicle, or the nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a consumer.

LEMON LAW COVERAGE PERIOD

The lemon law establishes a *lemon law rights period* ending 18 months after the date of the vehicle’s original delivery to the consumer. The lemon law rights period is extended if the manufacturer has been notified of the existence of a nonconformity but the nonconformity has not been effectively repaired by the manufacturer, its agent or authorized dealer before the expiration of the lemon law rights period.

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MANUFACTURER'S DUTY TO REPAIR

If a new motor vehicle does not conform to all warranties, and the consumer reports the nonconformity to the manufacturer, its agent or authorized dealer during the manufacturer's warranty period, then the manufacturer, its agent or authorized dealer must make the necessary repairs to conform the motor vehicle to the warranties.

The necessary repairs must be made even after the expiration of the manufacturer's warranty period.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, its agents or authorized dealers do not conform the motor vehicle to any applicable warranty by repairing or correcting any nonconformity after a reasonable number of attempts during the *lemon law rights period*, the manufacturer must either replace or repurchase the motor vehicle. The consumer has an unconditional right to choose a refund rather than a replacement motor vehicle, and to drive the nonconforming motor vehicle until the replacement or repurchase is provided.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Virginia lemon law establishes a *presumption* that a reasonable number of repair attempts has been undertaken to conform a motor vehicle to any warranty if, within 18 months following the date of the motor vehicle's original delivery, any of the following occurs:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, its agents or authorized dealers, and the same nonconformity continues to exist;
2. A nonconformity that is a serious safety defect (a life-threatening malfunction that impedes the consumer's ability to control or operate the motor vehicle for ordinary use or reasonable intended purposes, or creates a risk of fire or explosion) has been subject to repair one or more times by the manufacturer, its agents or authorized dealers, and the same nonconformity continues to exist; or
3. The motor vehicle is out of service due to repair for a cumulative total of 30 calendar days, unless repairs could not be performed because of conditions beyond the control of the manufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

NOTICE AND OPPORTUNITY TO REPAIR

The consumer or consumer's representative must notify the manufacturer of the need for correction or repair of the nonconformity. The manufacturer is deemed to have been notified if:

1. A written complaint of the defect or defects has been mailed to it; or
2. The manufacturer has responded to the consumer in writing regarding a complaint; or
3. A factory representative has either inspected the motor vehicle or met with the consumer or an authorized dealer regarding the nonconformity.

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The manufacturer must clearly and conspicuously disclose to the consumer, in the warranty or owner's manual, that written notification of the nonconformity to the manufacturer is required.

If the conditions of the *presumption* exist, and the manufacturer has not been notified that the conditions exist, then the manufacturer is given an additional opportunity to correct or repair the nonconformity, not to exceed 15 days.

DISPUTE RESOLUTION

If the manufacturer has established or participates in an informal dispute settlement procedure, it is the consumer's choice whether or not to use it prior to asserting lemon law rights.

TIME PERIOD FOR FILING CLAIMS

An action must be commenced within 18 months following the date of the motor vehicle's original delivery to the consumer. A consumer whose good faith attempts to settle the dispute in an informal dispute settlement procedure have not resulted in the satisfactory resolution of the matter, may commence a court action within the longer of (1) one year from the date of the manufacturer's final action in the procedure, as long as the procedure was initiated within 18 months following the vehicle's delivery; or (2) the original 18-month period.

REMEDIES UNDER THE VIRGINIA LEMON LAW

REPURCHASE

The Virginia lemon law sets out the following amounts that a manufacturer must pay when it repurchases a motor vehicle under the lemon law:

1. The full contract price;
2. All collateral charges, meaning any sales-related or lease-related charges including but not limited to sales tax, license fees, registration fees, title fees, finance charges and interest, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rust proofing, or installed options, not recoverable from a third party. In addition, “collateral charges” for leased vehicles means capitalized cost reductions, credits and allowances for any trade-in vehicles, fees to another to obtain the lease, and insurance or other costs expended by the lessor for the benefit of the lessee;
3. Incidental damages, including expenses reasonably incurred in inspection, receipt, transportation, and care and custody of the motor vehicle rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the breach of warranty; and
4. An amount for mileage, expenses, and reasonable loss of use necessitated by attempts to conform the motor vehicle to the express warranty;
5. Less a reasonable allowance for the consumer’s use of the vehicle up to the date of the first notice of nonconformity that is given to the manufacturer, its agents or authorized dealer.

Refunds must be made to the consumer, lessor, and lienholder, if any, as their interests may appear.

The reasonable allowance for use may not exceed 1/2 of the amount allowed per mile by the Internal Revenue Service for use of a personal vehicle for business purposes, plus an amount to account for any loss to the fair market value of the motor vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from a nonconformity.

A leased vehicle must be returned to the manufacturer and the consumer’s lease must be terminated by the lessor without penalty to the consumer. The lessor must transfer title to the manufacturer as necessary to effectuate the consumer’s rights.

REPLACEMENT

The Virginia lemon law provides that a replacement motor vehicle be comparable and acceptable to the consumer.

The manufacturer must also pay to the consumer an amount for mileage, expenses, and reasonable loss of use necessitated by attempts to conform the motor vehicle to the express warranty.

The consumer is responsible for a reasonable allowance for the consumer's use of the motor vehicle up to the date of the first notice of a nonconformity to the manufacturer, its agents or authorized dealer. The reasonable allowance for use may not exceed 1/2 of the amount allowed per mile by the Internal Revenue Service for use of a personal vehicle for business purposes, plus an amount to account for any loss to the fair market value of the motor vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from a nonconformity.

A leased vehicle must be returned to the manufacturer and the consumer's lease must be terminated by the lessor without penalty to the consumer. The lessor must transfer title to the manufacturer as necessary to effectuate the consumer's rights.