

- the used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the business of the used motor vehicle dealer, the used motor vehicle has a particular defect;
- the consumer agrees to buy the used motor vehicle after disclosure of the defect; and
- before the sale, the consumer indicates agreement to the waiver by signing and dating a conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type.

An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of the warranty renders a used motor vehicle purchase agreement **voidable** at the option of the consumer.

If you feel you have been sold a used “lemon,” then you would sue under the Uniform Commercial Code of New Mexico. Even if you do sue in court, the dealer may raise the affirmative defense that the problem with the car does not “substantially impair” its use and market value. So, if the problems with your car are minor, then the “Lemon law” does not apply and does not protect you.

REFERENCES

57-16A-1 to 57-16A-9 New Mexico Statutes Annotated

DISCLAIMER:

The information contained in this pamphlet is meant for the sole use of active duty members, retirees, their families, and other persons eligible for Legal Assistance from the Holloman AFB, NM, 49 WG/JA Office. The information is general in nature and presented to assist eligible persons in preparing for a Legal Assistance appointment with an attorney in the legal office. It is not an all-inclusive guide to federal or New Mexico law. It is not a substitute for legal advice from an attorney regarding individual situations. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general statements of background information presented here without discussing your specific situation with an attorney prior to taking any action in court. (As of January 2017)



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NEW MEXICO'S LEMON LAW

DEFINITIONS UNDER THE “LEMON LAW”

The New Mexico “Lemon Law” applies to both **new** and **used** vehicles, for which there are different definitions.

A **new** “motor vehicle” means a passenger motor vehicle, including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, that is sold and registered in this state and whose gross vehicle weight is less than ten thousand pounds.

A “**used** motor vehicle” means a motor vehicle that has been sold, bargained or exchanged or a motor vehicle that is the subject of a title that has been transferred from the person who first acquired the motor vehicle from the manufacturer, importer or dealer or agent of the manufacturer or importer and that has been placed in bona fide consumer use.

A “**used motor vehicle dealer**” means a person or business that has sold or offered to sell four or more used motor vehicles in the last year. A used motor vehicle dealer **does not** include a one-time individual seller, a financial institution or an insurance company.



NEW MEXICO'S LEMON LAW

HOW AM I PROTECTED UNDER THE "LEMON LAW" FOR A NEW VEHICLE?

Under the "Lemon Law," dealers are required to make all repairs required under the warranty during the term of the warranty OR for one year following delivery, whichever period is shorter. If after a "reasonable number of attempts" at one repair, the **dealer** is unable to fix the car in fulfillment of the warranty, the **manufacturer** MUST: (1) replace the car or (2) refund the full purchase price minus the depreciation of the value for "reasonable use."

The law presumes that the dealer has made the required "reasonable number of attempts" at one repair if:

- The dealer has attempted to fix the same problem **four or more times** within the warranty period OR one year, whichever period is shorter.
- The car is in the repair shop for **30 business days** or more during the warranty period OR one year, whichever period is shorter.

If you think you have a lemon, you MUST notify the dealer or manufacturer immediately in order to benefit from the New Mexico "Lemon Law." After you have notified the manufacturer AND the dealer has made a "reasonable number of attempts" at one repair, the dealer must replace the car or refund your money. If the dealer fails to do this, you may sue the manufacturer. However, if the manufacturer has an informal dispute resolution program (i.e. an arbitration program), you MUST participate in it before you sue in court. If you win in court, the manufacturer must pay your reasonable attorney's fees.

Although you must use the manufacturer's arbitration program if there is one, you are NOT bound by any determination by the arbitrator. If you disagree with the arbitrator, you may then sue the manufacturer in court.

If you decide to sue the manufacturer in court, you must do so within **18 months** from the date of purchase, or within 90 days of the arbitration program, whichever is later.

HOW AM I PROTECTED UNDER THE "LEMON LAW" FOR A USED VEHICLE?

A used motor vehicle dealer shall not exclude, modify or disclaim the **implied warranty of merchantability** (the vehicle is substantially free of a defect that significantly limits the use of the used motor vehicle for the ordinary purpose of transportation on any public highway) or limit the remedies for a breach of the warranty before midnight of the 15th calendar day after delivery or until a used motor vehicle is driven 500 miles after delivery, whichever is earlier.

In other words, when you buy a used motor vehicle from a used motor vehicle dealer, the vehicle must be able to operate normally for at least **15 calendar days or 500 miles**, whichever is earlier. This statement is only true for **used motor vehicle dealers** and **does not** include a one-time individual seller, a financial institution or an insurance company.

In calculating distance, the miles driven to obtain repairs, servicing or testing of the used motor vehicle that fails to conform with the warranty of merchantability are excluded.

In calculating time, a day on which the warranty is breached and all subsequent days in which the used motor vehicle fails to conform with the implied warranty of merchantability are excluded.

An implied warranty of merchantability does not extend to damage that occurs after the sale of the used motor vehicle that results from off-road use, racing, towing, abuse, misuse, neglect, failure to perform regular maintenance, and failure to maintain adequate oil, coolant and other required fluids or lubricants.

If the implied warranty of merchantability is breached, the consumer shall give reasonable notice to the seller within **30 days**. Before the consumer can file a lawsuit, the seller shall have a reasonable opportunity to repair the used motor vehicle. The consumer will be liable for one-half of the cost of the first two repairs necessary to bring the used motor vehicle into compliance with the warranty. The payments by the consumer are limited to a maximum payment of \$25.00 for each repair.

EXAMPLE

Johnny Airman buys a used vehicle from Fast Eddie's Used Car Dealership on June 10th. The car drives perfectly until June 20th when the engine blows up. He has had the car for only 10 days so he must notify Fast Eddie's within 30 days (July 20th) and they must repair the car. Once the car is repaired, Johnny Airman has 5 more days of protection under the "Lemon Law."

A consumer of a used motor vehicle may waive the implied warranty of merchantability only for a particular defect in the vehicle and only if all of the following conditions are satisfied: