



**STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL**



Letitia James  
Attorney General

**NEW YORK'S AUTO LEASING  
EXCESS WEAR & DAMAGE  
ARBITRATION PROGRAM**

**A GUIDE FOR CONSUMERS**

# **New York's Auto Leasing Excess Wear & Damage Arbitration Program**

## **A Guide For Consumers**

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## **Introduction**

An ever growing number of consumers in New York lease their new or used motor vehicles rather than purchase them. In a lease, you, the consumer, are referred to as the "lessee" and the leasing company as the "lessor." The "holder" refers to the lessor or its assignee, usually a finance company to whom you remit the monthly lease payments. You are required to sign a lease agreement which defines your rights and obligations. Virtually all motor vehicle leases contain a provision under which you are held financially responsible for "excess wear and damage" as described in the lease.

The New York Motor Vehicle Retail Leasing Act ("MVRLA" or "the law") provides you with the legal right to challenge charges for excess wear and damage to the leased vehicle upon termination of your lease. You may exercise this right by participating in the New York Auto Leasing Excess Wear and Damage Arbitration Program (the "EWD Arbitration Program"), established by the Attorney General. The EWD Arbitration Program enables you to contest (1) whether damage to the leased vehicle exists, (2) whether such damage constitutes "excess" wear and damage, and (3) the amount of the charges sought by the holder.

This booklet provides you with helpful information concerning how to protect your legal rights through participation in the EWD Arbitration Program.

## **Questions & Answers on Excess Wear & Damage in Auto Leasing**

### **WHICH VEHICLES ARE COVERED UNDER NEW YORK'S MOTOR VEHICLE RETAIL LEASING LAW?**

The New York Motor Vehicle Retail Leasing Law ("MVRLA"), Personal Property Law Article 9-A, covers new or used motor vehicles leased in New York pursuant to a retail lease agreement on or after August 31, 1995. Your lease must be for more than four months and you must lease the vehicle primarily for personal, family or household purposes.

### **ARE YOU FINANCIALLY RESPONSIBLE FOR WEAR AND DAMAGE TO THE LEASED VEHICLE UPON THE TERMINATION OF THE LEASE?**

Yes, if it is provided for in the lease. Virtually all leases do provide for the lessee to be financially responsible for "excess wear and damage" to the leased vehicle at the termination of the lease. To hold you responsible for excess wear and damage, the law requires the lease to describe the type of damage for which you will be liable.

### **WHAT IS "EXCESS WEAR AND DAMAGE"?**

This is commonly defined to be more than "normal" wear and tear. However, under the law, the extent of your responsibility must be spelled out in the lease. Therefore, you are cautioned to read your lease carefully. Although there is no standard industry definition of what "excess wear and damage" means, typically, it has been defined to include the following items:

- (a) glass that is damaged or that has been tinted;
- (b) damaged body, fenders, metal work, lights, trim or paint;
- (c) missing equipment that was in or on the vehicle when delivered and has not been replaced with equipment of equal quality and design;
- (d) missing wheel covers, jack or wheel wrench;
- (e) missing or unsafe wheels or tires (including spare; snow tires are not acceptable);
- (f) any tire with less than 1/8 inch of tread remaining at the shallowest point;
- (g) torn, damaged or stained dash, floor covers, seats, head liners, upholstery, interior work, or trunk liners;
- (h) any mechanical damage or other condition that causes the vehicle to operate in a noisy, rough, improper, unsafe, or unlawful manner; and
- (i) any other damage whether or not covered by insurance.

**TO CHARGE FOR EXCESS WEAR AND DAMAGE, MUST THE LESSOR/HOLDER ACTUALLY REPAIR THE DAMAGE?**

Not if the leased vehicle is returned at the end of the lease. Instead of actually repairing the damage, the holder may rely on an itemized estimate of the costs of the repairs prepared by an appraiser licensed by the New York State Department of Motor Vehicles. However, if the vehicle is being returned before the end of the lease term, the holder may only charge up to the actual cost of repairs, reduced by all discounts, paid by the lessor.

**MUST THE LESSOR/HOLDER GIVE YOU WRITTEN NOTICE BEFORE SEEKING TO RECOVER FOR EXCESS WEAR AND DAMAGE CHARGES?**

Yes. The lessor must mail or deliver to you a notice advising you of your rights and obligations under the law. In the case of a scheduled termination, the notice must be given not more than 40 days nor less than 20 days before the end of the lease term. In the case of an early termination, the notice must be given not more than 10 business days after early termination.

**WHAT MUST THE NOTICE SAY?**

The notice must advise you of the following rights and obligations of the parties:

- \* You have a right to obtain, at your own expense, before you turn in your leased vehicle, an itemized appraisal of any excess wear and damage. The appraisal must be prepared by an appraiser licensed by the Department of Motor Vehicles not more than 20 days before turning in the vehicle.
- \* The holder has the right to obtain an itemized appraisal of any excess wear and damage prepared by a licensed appraiser within 30 days after the date on which the vehicle comes into its possession.
- \* If you obtained your own appraisal and there is a discrepancy between your appraisal and the holder's, you or the holder may submit the dispute to the holder's informal dispute settlement procedure if one was established. However, you may instead choose to submit the dispute to the Attorney General's arbitration program. The dispute must be submitted for arbitration within 60 days from the date the holder obtains possession of the vehicle.

- \* If you did not obtain an appraisal before turning in the vehicle, you still have the right to obtain one. Such appraisal must be obtained within 10 business days after you have received (or 14 days after the holder has sent) the holder's itemized appraisal and bill for excess wear and damage.
- \* Where the holder's claim for excess wear and damage is based on the actual cost of repairs and you failed to obtain your own appraisal, you may dispute only whether any item claimed exists and/or whether such item(s) is excessive but not the actual cost of the repairs.

**MUST THE HOLDER MAKE THE VEHICLE ACCESSIBLE TO ENABLE YOU TO HAVE THE VEHICLE APPRAISED AFTER THE VEHICLE WAS RETURNED?**

Yes. The holder must grant your licensed appraiser access to the vehicle at a reasonable time and place. The holder is not required, however, to deliver the vehicle to your appraiser.

**WHAT IF THE HOLDER REFUSES TO MAKE THE VEHICLE ACCESSIBLE?**

If the holder fails to provide reasonable access to the vehicle for your appraisal, the holder shall be deemed to have forfeited its right to collect any excess wear and damage charges.

**WHAT DOCUMENTS MUST THE HOLDER PROVIDE TO YOU TO ENABLE IT TO CHARGE FOR EXCESS WEAR AND DAMAGE?**

Before the holder may charge you for any excess wear and damage, it must provide you with an itemized bill and an itemized appraisal. The bill must contain an itemized list of the estimated or actual cost of repairing or replacing each item and must contain the address to which any response is to be mailed. The appraisal must be dated, signed by the holder or its agent and identify, by type, each item of excess wear and damage. The bill and appraisal may be combined into one document. Both the bill and the appraisal must also contain certain prescribed notices advising you of your legal rights.

**HOW AND WHEN ARE THESE DOCUMENTS TO BE PROVIDED?**

The holder must send you these items by registered mail or hand deliver them to you within 30 days after the holder obtains possession of the vehicle.

## **WHAT REMEDY IS AVAILABLE TO RESOLVE ANY DISPUTE REGARDING EXCESS WEAR AND DAMAGE?**

You may submit the dispute, upon payment of the prescribed filing fee, to the Attorney General's arbitration program. If the holder has established its own arbitration program which complies with the law's requirements, you may submit your dispute to that program. The holder must submit any dispute relating to excess wear and damage to such arbitration program, if established, before pursuing any other remedy unless you have opted to participate in the Attorney General's arbitration program.

## **WHAT IS AN ARBITRATION PROCEEDING?**

An arbitration proceeding is much less complicated, time consuming and expensive than going to court. The arbitration hearing is informal and strict rules of evidence do not apply. Arbitrators, rather than judges, listen to each side, review the evidence and render a decision.

## **HOW CAN YOU PARTICIPATE IN THE NEW YORK AUTO LEASING EXCESS WEAR AND DAMAGE PROGRAM?**

You must first complete a "Request for Arbitration" form, which may be obtained from any of the Attorney General's regional offices. (A list of the Attorney General's regional offices may be found at the end of this booklet). The completed form must be returned to the Attorney General's Lemon Law Arbitration Unit, Office of the Attorney General, 28 Liberty Street, New York, New York 10005.

## **HOW DOES THE NEW YORK PROGRAM OPERATE?**

The Attorney General's office will review the form to determine whether your claim is eligible under the leasing law to be heard by an arbitrator. If accepted, the form will be forwarded to the Administrator for processing. The Administrator is the one responsible for the actual arbitration operations. The Administrator will then ask you to pay the required filing fee. Upon receiving the filing fee, the Administrator will appoint an arbitrator and schedule a hearing to be held within 35 days. If rejected, the form will be returned to you together with an explanation for the rejection.

## **WHO ARE THE ARBITRATORS?**

The arbitrators are volunteers who have been trained in the leasing law and in arbitration procedures by the Attorney General's office and the Administrator.

### **ARE YOU ENTITLED TO AN ORAL HEARING?**

You have an absolute right to an oral hearing. At an oral hearing, each party has the opportunity to present their case in person before an arbitrator.

### **MAY YOU CHOOSE A HEARING ON DOCUMENTS ONLY?**

You may elect to have a hearing on documents only by indicating this preference on the "Request for Arbitration" form. In a "documents only" hearing, both sides must present their positions in writing. If you request a "documents only" hearing but the holder objects, an oral hearing will be scheduled.

### **MAY A STENOGRAPHIC RECORD OR TAPE RECORDING BE MADE OF THE HEARING?**

Any party to the arbitration may arrange, on its own, for a stenographic record or a tape recording of the hearing at its own expense even if the other party objects. If a stenographer or tape recorder will be used, reasonable prior notice, through the Administrator, must be given to the other party.

### **DO YOU NEED AN ATTORNEY FOR THE ARBITRATION HEARING?**

The New York Program is designed to be accessible to consumers without the need for an attorney. However, either party may use an attorney or any other person to assist them if they so choose.

### **WHAT IF YOU DO NOT HAVE ALL THE DOCUMENTS?**

Upon payment of the filing fee and prior to the hearing, you may make a written request to the arbitrator, through the Administrator, to direct the holder to provide any necessary documents or other information. You may also request the arbitrator to subpoena documents or witnesses to appear at the hearing. A sample letter requesting documents may be found in this booklet.

### **WHAT HAPPENS IF EITHER PARTY FAILS TO APPEAR AT THE HEARING?**

Unless the hearing has been properly rescheduled, if either party fails to appear at an oral hearing, the arbitrator will nevertheless conduct the hearing and issue a decision based upon the evidence presented and any documents contained in the file.



### **WHEN CAN YOU EXPECT A DECISION?**

You may expect a decision, generally, within 10 days of the hearing. Sometimes, however, the arbitrator requests that additional documents or information be submitted, in which case the decision may be delayed.

### **CAN YOU RECOVER THE FILING FEE?**

If you are successful, the arbitrator's decision in your favor must include the return of the filing fee.

### **WHEN MUST A HOLDER COMPLY WITH AN ARBITRATOR'S DECISION?**

Within thirty days.

### **WHAT HAPPENS IF THE HOLDER DOES NOT COMPLY WITH THE ARBITRATOR'S AWARD?**

If the holder does not comply with the award, you can enforce the arbitrator's decision through the courts by bringing an action to confirm the award. This action must be commenced within one year of receipt of the decision. You should consult a private attorney if you wish to pursue this remedy. If you are successful, the Court will convert the arbitrator's award into a court judgment.

### **UNDER WHAT CIRCUMSTANCES CAN AN ARBITRATOR'S DECISION BE MODIFIED?**

The grounds for modification are very limited. Generally, awards may be modified only to correct a miscalculation or a technical mistake in the award. For example, a modification may be requested where the filing fee was omitted from the refund.

### **WHEN MUST A REQUEST FOR MODIFICATION BE MADE?**

Either party may seek a modification by the arbitrator of the award by written application to the Administrator within 20 days of receiving the award. The other party will be given the opportunity to object to the modification. The arbitrator must rule on all such requests within 30 days after the request is received. To modify an award after 20 days, an application to a court may be necessary.

### **CAN AN ARBITRATOR'S DECISION BE CHALLENGED?**

Either party may commence a lawsuit to challenge an arbitrator's award within 90 days of receipt of the award. However, the grounds for such challenges are limited by law. Generally, the courts will uphold an arbitrator's award if it is supported by evidence and is grounded in reason.

### **WHEN CAN A HOLDER REPORT AN UNSATISFIED CLAIM FOR EXCESS WEAR AND DAMAGE TO A CREDIT REPORTING AGENCY?**

A holder is prohibited from reporting an unsatisfied claim for excess wear and damage to a credit reporting agency as a derogatory item until (a) the right to challenge an arbitration award has expired (90 days); (b) in a court action, until a final judgment is obtained; or (c) where the parties execute a settlement agreement, 30 days after the date a payment is due but not made.

## TIME-LINE OF LAW'S REQUIREMENTS

<b>Event</b>	<b>Time Period</b>
1. Holder must mail or deliver to lessee specified notice of rights and obligations of parties.	1. 20-40 days before scheduled lease termination, <b>or</b> 10 business days after early termination.
2. Lessee may obtain own appraisal.	2. 0-20 days before scheduled lease termination.
3. Holder may obtain own appraisal.	3. 0-30 days after holder obtains possession of vehicle.
4. If lessee did not obtain appraisal before turning in vehicle, Lessee may now obtain own appraisal.	4. 0-14 business days after bill and appraisal sent to lessee, <b>or</b> 0-10 business days after documents received by lessee
5. Lessee may submit dispute to Attorney General's arbitration program or to the holder's own arbitration program if established. A holder seeking arbitration must submit dispute to its own arbitration program if established (unless lessee opted for Attorney General's program).	5. 0-60 days after holder obtains possession of vehicle.

**Personal Property Law §343 --  
Assessment of Excess Wear and Damage to the Vehicle**

1. (a) Upon the scheduled termination of a retail lease agreement, the holder shall not charge, receive or collect a charge for excess wear and damage to the vehicle which exceeds: (i) the actual cost of repairs, reduced by all discounts, paid by the holder; or (ii) a true itemized estimate of the cost of such repairs by an appraiser licensed pursuant to section three hundred ninety-eight-d of the vehicle and traffic law selected by the holder, of the cost of such repairs.  
  
(b) Upon early termination of a retail lease agreement, the holder shall not charge, receive or collect a charge for excess wear and damage to the vehicle which exceeds the actual cost of repairs, reduced by all discounts, paid by the holder.
  
2. In order for a holder to impose a charge for excess wear and damage to a vehicle subject to a retail lease agreement, such agreement shall contain a clause describing the excess wear and damage to the vehicle for which the lessee may be liable. Such holder shall, not more than forty days nor less than twenty days prior to the scheduled termination date, or, not more than ten business days after the date of an early termination of a lease agreement, mail or deliver to the lessee a notice advising the lessee of the following rights and obligations of the parties, herein granted and imposed:
  - (a) Such notice shall include the following statement, as set forth herein, at the beginning of the notice in at least ten-point bold type:

**"YOUR LEASE AGREEMENT ALLOWS (HOLDER) TO ASSESS A CHARGE FOR EXCESS WEAR AND DAMAGE TO THE VEHICLE. YOU SHOULD OBTAIN YOUR OWN EVIDENCE OF THE CURRENT CONDITION OF THE VEHICLE NOT MORE THAN TWENTY (20) DAYS PRIOR TO THE SCHEDULED TERMINATION OF YOUR LEASE. YOU ALSO WILL HAVE THE RIGHT TO SUBMIT DISPUTES TO THE ALTERNATE ARBITRATION MECHANISM ESTABLISHED UNDER REGULATIONS PROMULGATED BY THE NEW YORK STATE ATTORNEY GENERAL."**
  
  - (b) In the case of a scheduled termination, of the lessee's right to turn the vehicle in with a copy of an itemized appraisal of excess wear and damage to the vehicle prepared by an appraiser licensed under section three hundred ninety-eight-d of the vehicle and traffic law, selected by the lessee and conducted not more than twenty days prior to the scheduled termination date;

(c) Of the right of the holder to, within thirty days after the date on which the vehicle comes into the actual physical possession of the holder, obtain a written itemized appraisal of excess wear and damage to the vehicle prepared by an appraiser licensed under section three hundred ninety-eight-d of the vehicle and traffic law selected by the holder;

(d) That if the lessee had not previously obtained and submitted to the holder a written itemized appraisal on the lessee's own behalf in accordance with paragraph (b) of this subdivision, the lessee will have the greater of ten business days after the lessee has received or fourteen business days to do so after the holder has sent, in conformance with subdivision three of this section, an itemized bill for excess wear and damage and a copy of the itemized appraisal prepared on behalf of the holder, unless the lessee does not dispute any of the items contained therein. In the case where the holder bases the charge for excess wear and damage on the actual cost of repairs, the notice shall also inform the lessee that should the lessee fail to obtain an itemized written appraisal, he or she is entitled to dispute only whether any items claimed exist and/or are excess wear and damage to the vehicle, but not the actual cost of making the repairs;

(e) That if the lessee disputes any of the items claimed for excess wear and damage to the vehicle exist or are excessive in nature, the lessee may submit the dispute within sixty days of the date on which the vehicle comes into actual physical possession of the holder to the holder's informal dispute settlement procedure, if any, or, upon the payment of the prescribed filing fee which is refundable if the arbitrator finds in the lessee's favor, to an alternative arbitration mechanism established under regulations promulgated by the attorney general of the state of New York;

(f) That if there exists a discrepancy between the itemized appraisals obtained by the holder and the lessee, if any, the holder shall submit the dispute within sixty days of the date on which the vehicle comes into the actual physical possession of the holder to the holder's informal dispute settlement procedure, if any, unless the lessee exercises the option granted by paragraph (b) of subdivision five of this section; provided, however, that in the event the holder has complied with the provisions of this subdivision, a lessee who has failed to obtain an itemized appraisal of the excessive wear and damage to the vehicle in accordance with either paragraph (b) or (c) of this subdivision may dispute only the existence of any item or whether the wear is excessive in nature, but may not dispute the actual cost of repairs.

3. (a) Itemized bill.

(i) In the event that the holder wishes to impose a charge for excess wear and damage to the vehicle, the holder shall send by registered mail or hand-deliver to the lessee a bill containing an itemized list of the estimated or actual cost of repairing or replacing each item as to which an excess wear and damage charge is claimed and specifying the address to which any response must be mailed. The bill shall be mailed or hand-delivered to the lessee within thirty days after the date on which the vehicle comes into the actual possession of the holder.

(ii) The itemized bill shall include the following statements printed in at least ten-point type: "You are being asked to pay an amount claimed for excess wear and damage to the vehicle. If you wish to contest this amount, you must obtain an itemized appraisal from an appraiser licensed by the New York State Department of Motor Vehicles, and mail or deliver a copy of such appraisal to (NAME AND ADDRESS OF HOLDER) within the greater of fourteen business days after (NAME OF HOLDER) has sent, or ten business days of receipt of this bill and (NAME OF HOLDER'S) itemized appraisal. If you fail to do so, you will forfeit your right to contest in arbitration any actual repair costs incurred by the (HOLDER) for excess wear and damage; however, you do not forfeit your right to contest the existence of any item or whether the wear is excessive in nature."

(iii) The following bill shall also notify lessees of their material rights and obligations for dispute resolution in arbitration.

(b) Itemized appraisal.

(i) A holder who imposes a charge for excess wear and damage to the vehicle shall send by registered mail or hand-deliver, within thirty days after the date on which the vehicle comes into actual physical possession of the holder, a written itemized appraisal prepared by an appraiser licensed under section three hundred ninety-eight-d of the vehicle and traffic law. The appraisal shall be dated, signed by the holder or its agent, and identify by type each item of excess wear and damage.

(ii) The following notice shall be included at the beginning of the itemized appraisal prepared on behalf of the holder and furnished to the lessee,

"ALL ITEMS OF DAMAGE FOR WHICH A CHARGE FOR EX-CESSIVE WEAR OR DAMAGE WILL BE CLAIMED BY THE HOLDER MUST BE NOTED IN THIS APPRAISAL. IF YOU DIS-PUTE THE EXISTENCE OR NATURE OF ANY ITEM OF DAMAGE IDENTIFIED IN THIS NOTICE, YOU MAY SUBMIT THE DISPUTE TO THE ALTERNATE ARBITRATION MECHANISM ESTABLISHED UNDER REGULATIONS PROMULGATED BY THE NEW YORK STATE ATTORNEY GENERAL."

4. (a) The itemized bill and appraisal required by subdivision three of this section may be combined into a single document. Mere acknowledgment by the lessee of receipt of an itemized bill, an appraisal, or a combination of the two shall not operate as an admission of the existence, nature or amount of any of the items therein.  
  
(b) (i) The holder shall grant the lessee access to the vehicle at a reasonable time and place in order for the lessee to obtain an itemized appraisal on the lessee's own behalf. The holder shall not be required, however, to deliver the vehicle to, or produce the vehicle at, a destination designated by the lessee for such purpose.  
  
(ii) A holder may not fail to provide, either intentionally or by actions or omissions, reasonable access to the vehicle by the licensed appraiser chosen by the lessee within the period during which a lessee must obtain and submit an appraisal. If the holder fails to so provide reasonable access to the vehicle, the holder shall be deemed to have forfeited its contractual right to charge, receive or collect any charge for excessive wear and damage to the vehicle from the lessee.  
  
(c) A lessor or holder of a retail lease agreement shall not report an unsatisfied claim for excess wear and damage to a credit reporting agency as a derogatory item of information until: (i) the expiration of the time granted under article seventy-five of the civil practice law and rules for the filing of a petition to vacate or modify an arbitrator's award; (ii) the issue has been a subject of a final judgment; or (iii) where the holder and the lessee execute a settlement, thirty days after the date a payment is due under the settlement if no payment has been made.
5. (a) Arbitration and enforcement. If a holder has established or participates in an informal dispute settlement procedure which is consistent in all respects with the provisions of part seven hundred three of title sixteen of the code of federal regulations, any dispute, disparity or conflict between any appraisal report prepared by an appraiser licensed by the state department of motor vehicles on behalf of the holder and one prepared on behalf of the lessee shall be decided by such informal dispute settlement procedure. Holders utilizing informal dispute settlement procedures pursuant to this subdivision shall insure that the arbitrators participating in such informal dispute settlement procedures are familiar with the provisions of this section.

(b) Upon the payment of a prescribed filing fee, a consumer shall have the option of submitting any dispute arising under this section to an alternate arbitration mechanism established pursuant to regulations to be promulgated hereunder by the attorney general. Upon application of the consumer and payment of the filing fee, the holder shall submit to such alternate arbitration. Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the attorney general. Such alternate arbitration mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules. Holder or lessee shall have thirty days from the date of mailing of a copy of the arbitrator's decision to such holder or lessee to comply with the terms of such decision.

(c) In no event shall any person who has participated in an informal dispute settlement procedure be precluded from seeking the rights or remedies available to such person under applicable law.

(d) Nothing in this section shall be deemed to prohibit: (i) the holder and the lessee from agreeing upon termination of the agreement to the payment by the lessee, in satisfaction of his or her obligation under the provisions of the agreement, of an amount, which the lessor and the lessee agree is a reasonable figure to compensate for damage to the vehicle; (ii) the holder from retaining any portion of a security deposit in satisfaction of amounts owed to the holder that are not attributable to excess wear and tear; or (iii) to restrict or otherwise regulate the assessment of charges for excess mileage.



Title 13 NYCRR Chap. VIII  
Part 302

Auto Leasing Arbitration  
Program Regulations

Section

- 302.1 Purpose
- 302.2 Definitions
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**Section 302.1 Purpose**

(a) These regulations are promulgated pursuant to section 343(5)(b) of the Personal Property Law ("PPL") and set forth the procedures for the operation of an alternative arbitration mechanism (the "Program").

(b) These regulations are designed to promote the independent, speedy, efficient and fair disposition of disputes concerning the assessment of excess wear and/or damage to leased vehicles.

**Section 302.2 Definitions**

(a) Unless otherwise stated, terms used in these regulations are as defined in PPL Article 9-A.

(b) The term "Administrator" shall mean a professional arbitration firm or individual appointed by the Attorney General to administer the Program.

**Section 302.3 Appointment of Administrator**

(a) The Attorney General shall appoint an Administrator initially to a term not to exceed two years. The term shall be renewable.

(b) The following criteria shall be considered in the selection of an Administrator: capability, objectivity, non-affiliation with a holder or a holder's arbitration program, reliability, experience, financial stability, extent of geographic coverage, and fee structure.

(c) The Attorney General shall give appropriate public notice at least 60 days prior to the expiration of an Administrator's term inviting any interested qualified party to apply in writing for the position of Administrator within 30 days from the date of the public notice.

(d) Upon a vacancy occurring prior to the expiration of an Administrator's term, the time periods in subdivision (c) shall not apply and the Attorney General shall take appropriate steps to assure the continued administration of the Program.

**Section 302.4 Lessee's Request for Arbitration**

(a) The Attorney general shall prescribe and make available a "Request for Arbitration" form. To apply for arbitration under the Program, a lessee shall complete and submit the prescribed form to the Attorney General.

(b) Those lessees wishing a hearing on documents only shall so indicate on the form.

(c) Upon receipt of the submitted form, the Attorney General shall assign a case number and review it for completeness and eligibility and shall accept or reject it.

(e) If the form is rejected, the Attorney General shall promptly return the form to the lessee, indicating in writing the reasons for the rejection and, where possible, inviting the lessee to correct the deficiencies.

(f) If the form is accepted, it shall be referred to the Administrator for processing. The Attorney General shall promptly notify the lessee in writing of the acceptance of the form and of its referral to the Administrator. Upon receipt of the accepted form, the Administrator shall notify the lessee to submit the required filing fee. Upon receipt of the prescribed filing fee, the Administrator shall date stamp the "Request for Arbitration" form. Such date shall be considered the "filing date".

(g) If, after 30 days from the date of the notice of acceptance, the Administrator fails to receive the prescribed filing fee, the Administrator shall promptly advise the lessee in writing that unless such fee is received within 60 days from the date of the notice of acceptance, the form will be returned and the case marked closed. After such time, if the lessee wishes to submit a dispute to the Program, (s)he must submit another "Request for Arbitration" form to the Attorney General.

(h) Participation in any informal dispute resolution mechanism that is not binding on the lessee shall not affect the eligibility of a lessee to participate in the Program.

### **Section 302.5           Assignment of Arbitrator**

(a) After the filing date, the Administrator shall assign an arbitrator to hear and decide the case. Notice of assignment shall be mailed to the arbitrator and the parties along with a copy of these regulations and PPL section 343.

(b) The arbitrator assigned shall not have any bias, financial or personal interest in the outcome of the hearing, or current connection to the manufacture, sale, lease, repair or appraisal of motor vehicles.

(c) Upon a finding by the Administrator, at any stage of the process, of grounds to disqualify the arbitrator, the Administrator shall dismiss the arbitrator and assign another arbitrator to the case.

(d) If any arbitrator should resign, die, withdraw or be unable to perform the duties of his/her position, the Administrator shall assign another arbitrator to the case and the period to render a decision shall be extended accordingly.

(e) Arbitrators shall undergo training established by the Administrator and the Attorney General. This training shall include procedural techniques, the duties and responsibilities of arbitrators under the Program, and the substantive provisions of PPL section 343.

### **Section 302.6           Scheduling of Arbitration Hearings**

(a) The arbitration shall be conducted as an oral hearing unless either party has requested a hearing on documents only and both parties agree to a documents only hearing; provided, however, that the parties may mutually agree in writing to change the mode of hearing. Upon such change, the parties shall notify the Administrator who shall comply with the request and, where necessary, such request shall waive the 40 day limit in which a decision must be rendered.

(b) Within 5 days of the filing date, the Administrator shall send the holder a copy of the lessee's completed "Request for Arbitration" form together with a notice that it may respond in writing. Such response shall be sent in triplicate, within 15 days of the filing date, to the Administrator, who shall promptly forward a copy to the lessee and to the arbitrator.

(c) The lessee may respond in writing to the holder's submission within 25 days of the filing date. Such response shall be sent in triplicate to the Administrator, who shall promptly forward a copy to the holder and to the arbitrator.

(d) An oral hearing, where appropriate, shall be scheduled no later than 35 days from the filing date, unless a later date is agreed to by both parties. The Administrator shall notify both parties of the date, time and place of the hearing at least eight days prior to its scheduled date.

(e) Hearings shall be scheduled to accommodate, where possible, time-of-day needs

of the lessee and the holder, including evening and weekend hours.

(f) Hearings shall also be scheduled to accommodate geographic needs of the lessee and the lessor. Regular hearing sites shall be established at locations designated by the Administrator, including in the following areas: Albany, Binghamton, Buffalo, Nassau County, New York City, Plattsburgh, Poughkeepsie, Rochester, Suffolk County, Syracuse, Utica, Watertown and Westchester. No hearing site established by the Administrator shall be discontinued without the approval of the Attorney General. In addition, where a regular site is more than 100 miles from the lessee's residence, a hearing must be scheduled at the request of the lessee at a location designated by the Administrator within 100 miles of the lessee's residence.

(g) A party may present its case by telephone, provided that adequate advance notice is given to the Administrator and the consent of the other party is obtained. In such cases, the arbitrator and both parties shall be included and the party requesting the telephonic hearing shall pay all costs associated therewith.

### **Section 302.7           Adjournments**

Either party may make a request to reschedule the hearing. Except in unusual circumstances, such request shall be made to the Administrator orally or in writing at least two business days prior to the hearing date. Upon a finding of good cause, the arbitrator may reschedule the hearing. In unusual circumstances, the arbitrator may reschedule the hearing at any time prior to its commencement.

### **Section 302.8           Request for Additional Information or Documents**

(a) A party, by application in writing to the Administrator, may request the arbitrator to direct the other party to produce any documents or information. The arbitrator shall, upon receiving such request, or on his or her own initiative, direct the production of documents or information which she or he believes will reasonably assist a party in presenting his or her case or assist the arbitrator in deciding the case. The arbitrator's direction for the production of documents and information shall allow a reasonable time for the gathering and production of such documents and information.

(b) All documents and information forwarded in compliance with the arbitrator's direction shall be legible and received no later than three business days prior to the date of the hearing. Each party shall bear its own photocopying costs.

(c) Upon failure of a party to comply with the arbitrator's direction to produce documents and/or information, the arbitrator may draw a negative inference concerning any issue involving such documents or information.

(d) The term "documents" in this section shall include, but not be limited to, relevant manufacturer's service bulletins, dealer work orders, diagnoses, repair bills, damage appraisals and all communications relating to the issue of excessive wear or damage.

(e) At the request of either party or on his or her own initiative, the arbitrator may subpoena any witnesses to appear or documents to be presented at the hearing.

### **Section 302.9           Representation by Counsel or Third Party**

Any party may be represented by counsel or assisted by any third party.

**Section 302.10      Interpreters**

Any party wishing an interpreter shall make the necessary arrangements and assume the costs for such service.

**Section 302.11      Hearing Procedure**

(a) The conduct of the hearing shall afford each party a full and equal opportunity to present his/her case.

(b) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(c) Formal rules of evidence shall not apply; the parties may introduce any evidence which the arbitrator agrees is relevant.

(d) The arbitrator shall receive in evidence a decision rendered in a previous arbitration which was not binding on the lessee and give it such weight as the arbitrator deems appropriate.

(e) The arbitrator shall receive relevant evidence of witnesses by affidavit, and such affidavits shall be given such weight as the arbitrator deems appropriate.

(f) The arbitrator shall have discretion to examine or ride in the lessee's vehicle, if available. Both parties shall be afforded the opportunity to be present and accompany the arbitrator on any such examination or ride.

(g) The lessee shall first present his/her evidence and the holder shall then present its evidence. Each party may question the witnesses called by the other. The arbitrator may question any party or witness at any time during the hearing.

(h) A party has the right to make a record of the hearing. The arbitrator shall maintain decorum at the hearing.

(i) The arbitrator may request additional evidence after the closing the hearing. All such evidence shall be submitted to the Administrator for transmission to the arbitrator and the parties.

**Section 302.12      Hearing on Documents Only**

If the hearing is on documents only, all documents shall be submitted to the Administrator no later than 30 days from the filing date. The arbitrator shall render a timely decision based on all documents submitted.

**Section 302.13      Defaults**

(a) Upon the failure of a party to appear at an oral hearing, the arbitrator shall nevertheless conduct the hearing and render a timely decision based on the evidence presented and documents contained in the file.

(b) If neither party appears at the hearing, the arbitrator shall return the case to the Administrator who shall close it and so notify the parties.

(c) In a documents-only hearing, where the holder fails to respond, the arbitrator shall render a decision based upon the documents contained in the file.

### **Section 302.14      Withdrawal or Settlement Prior to Decision**

(a) A lessee may withdraw his/her request for arbitration at any time prior to decision. If the Administrator is notified by the lessee of his/her request to withdraw within seven business days of the filing date, the Administrator shall refund the filing fee.

(b) If the parties agree to a settlement more than seven business days after the filing date but prior to the issuance of a decision, they shall notify the Administrator in writing of the terms of the settlement. Upon the request of the parties, the arbitrator shall issue a decision reflecting the settlement.

### **Section 302.15      The Decision**

(a) The arbitrator shall render a decision within 40 days of the filing date which shall be in writing on a form prescribed by the Attorney General. The decision shall be dated and signed by the arbitrator.

(b) The decision shall indicate whether there was any excess wear and/or damage to the vehicle for which the lessee is responsible and, where applicable, specify the amount of such excess wear and/or damage. A basis for the arbitrator's findings and calculations shall be included in the decision. The decision shall also award the prescribed filing fee to a successful lessee.

(c) The decision shall, where applicable, require that any action or payment be completed within 30 days from the date the Administrator notifies the holder in writing of the decision, unless the parties agree to an extended time.

(d) The Administrator shall review the decision for technical completeness and accuracy and advise the arbitrator of any suggested technical corrections, such as computational, typographical or other minor corrections. Such changes shall be made only with the consent of the arbitrator.

(e) After review, the Administrator shall, within 45 days of the filing date, mail a copy of the final decision to both parties, the arbitrator, and the Attorney General. The date of mailing to the parties shall be date-stamped by the Administrator on the decision as the date of issuance.

(f) Failure to mail the decision to the parties within the specified time period or failure to hold the hearing within the prescribed time shall not invalidate the decision.

(g) The arbitrator's decision is binding on both parties and is final, subject only to judicial review pursuant to CPLR, Article 75. The decision shall include a statement to this effect.

### **Section 302.16      Record Keeping**

The Administrator shall keep all records pertaining to each arbitration for a period of at least two years and shall make the records of a particular arbitration available for inspection upon written request by a party to that arbitration, and shall make records of all arbitrations available to the Attorney General upon written request.

### **Section 302.17      Miscellaneous Provisions**

(a) All communications between the parties and the arbitrator, other than at oral hearings, shall be directed to the Administrator.

(b) If any provision of these regulations or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of these regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

## REGIONAL OFFICES OF THE ATTORNEY GENERAL

### **Albany**

State Capitol  
Albany, NY 12224-0341  
(518) 776-2000

### **New York City**

28 Liberty Street  
New York, NY 10005  
(212) 416-8345

### **Utica**

207 Genesee St., Room 508  
Utica, NY 13501-2812  
(315) 864-2000

### **Binghamton**

44 Hawley Street, 17<sup>th</sup> Floor  
Binghamton, NY 13901-4433  
(607) 251-2770

### **Plattsburgh**

43 Durkee St., Suite 700  
Plattsburgh, NY 12901  
(518) 562-3288

### **Watertown**

317 Washington Street  
Watertown, NY 13601-3744  
(315) 523-6080

### **Brooklyn**

55 Hanson Place  
Brooklyn, NY 11217-1523  
(718) 560-2040

### **Poughkeepsie**

One Civic Center Plaza, Suite 401  
Poughkeepsie, NY 12601-3157  
(845) 485-3920

### **Westchester**

44 South Broadway  
White Plains, NY 10601  
(914) 422-8755

### **Buffalo**

Main Place Tower, Suite 300A  
350 Main Street  
Buffalo, NY 14202  
(716) 853-8400

### **Rochester**

144 Exchange Boulevard  
Rochester, NY 14615-2176  
(585) 546-7430

### **Consumer Complaint**

**telephone number:**  
**1-800-771-7755**

### **For the Hearing Impaired:**

**1-800-788-9898**

### **Harlem**

163 West 125<sup>th</sup> Street  
New York, NY 10027-8201  
(212) 364-6010

### **Suffolk**

300 Motor Parkway  
Hauppauge, NY 11788-5127  
(631) 231-2401

### **Syracuse**

300 S. State St Suite 300  
Syracuse, NY 13202  
(315) 448-4800

### **Nassau**

200 Old Country Road  
Suite 240  
Mineola, NY 11501-4241  
(516) 248-3300