

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL



**NEW YORK'S  
NEW CAR LEMON LAW  
A GUIDE FOR CONSUMERS**



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# New York's New Car Lemon Law:

## A Guide for Consumers

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## *New Car Lemon Law Questions and Answers*

### **1. WHAT IS THE PURPOSE OF THE NEW CAR LEMON LAW?**

The New Car Lemon Law provides a legal remedy for buyers or lessees of new cars that turn out to be lemons. If your car does not conform to the terms of the written warranty and the manufacturer or its authorized dealer is unable to repair the car after a reasonable number of attempts during the first 18,000 miles or two years, whichever comes first, you may be entitled to a full refund or a comparable replacement car. A copy of the law may be found in the back of this booklet.

### **2. WHICH VEHICLES ARE COVERED BY THE NEW CAR LEMON LAW?**

The law covers both new and used cars, including demonstrators, motorcycles and motor homes which satisfy all of the following four conditions:

1. The vehicle was covered by the manufacturer's warranty at the time of original delivery; **and**
2. The vehicle was purchased, leased or transferred within the earlier of the first 18,000 miles or two years from the date of original delivery; **and**
3. The vehicle either: (a) was purchased, leased or transferred in New York State, or (b) is presently registered in New York State; **and**
4. The vehicle is primarily for personal use.

Some examples of cars that may be covered by the new car lemon law are:

- a new or demonstrator car, purchased or leased from a New Jersey dealer and registered in New York;

- a new or demonstrator car, purchased or leased from a New York dealer and registered in New Jersey;
- a new or demonstrator car received as a gift from a friend and registered in New York State;
- a used car with less than 18,000 miles **and** less than 2-years old.

### **3. WHAT DOES “PRIMARILY FOR PERSONAL USE” MEAN?**

Primarily for personal use is when its principal use is for personal, family or household purposes. Such purposes include, for example, using the car for household errands or to drive to and from work. A car may be used for both personal and business purposes provided that the personal use is predominant (more than 50% of the usage).

### **4. ARE MOTOR HOMES COVERED?**

Yes. Motor homes are also covered under the law, except as to defects in systems, fixtures, appliances or other parts that are residential in character. Such items excluded from coverage include, but are not limited to: flooring, plumbing system and fixtures, roof, air conditioner, furnace, generator, electrical systems other than automotive circuits, the side entrance door, exterior compartments, and windows other than the windshield and driver and front passenger windows. However, there are special notice requirements with respect to motor homes. The law defines a motor home manufacturer to include not only the manufacturer but also the assembler of the component parts of the motor home, including the chassis, engine and residential portion.

**5. ARE MOTORCYCLES AND OFF-ROAD VEHICLES COVERED?**

Effective September 1, 2004, motorcycles are covered vehicles. Off-road vehicles, such as snowmobiles, are **not** covered by the law.

**6. ARE CARS OWNED OR LEASED BY BUSINESSES COVERED?**

Yes, provided the car is *primarily* used for personal, family or household purposes.

**7. WHAT SHOULD YOU DO IF YOU BECOME AWARE OF A PROBLEM WITH YOUR CAR?**

You should immediately report any defect or "condition" covered by the manufacturer's warranty directly to the manufacturer or to its authorized dealer.

A "condition" is a general problem, such as difficulty in starting, repeated stalling, or a malfunctioning transmission, that can result from a defect of one or more parts.

If you report the problem to the dealer, the law requires the dealer to forward written notice to the manufacturer within seven days. Under the law, notice to the dealer is considered notice to the manufacturer.

**8. WHAT IS THE MANUFACTURER'S DUTY TO REPAIR?**

With respect to those covered cars sold **and** registered in New York State, if you notify the manufacturer or its authorized dealer of such defect within the first 18,000 miles of operation or two years from the original delivery date, whichever comes first, the law places a duty upon the manufacturer to repair --free of charge and without any deductible-- any defect covered by warranty.

Once timely notice of the defect is given, the manufacturer may not charge for the repairs, even if the repairs are performed after 18,000 miles or two years. If you have been charged for such repairs or a deductible, you should contact the Attorney General's office.

**9. WHAT ARE YOUR RIGHTS IF THE MANUFACTURER DOES NOT MEET ITS DUTY TO REPAIR?**

If the problem is not repaired after a reasonable number of attempts, or the manufacturer or the dealer refuses to commence repairs within 20 days from the manufacturer's receipt of the "refusal to repair" notice from you (see question #15), and if the problem substantially impairs the value of the car, the manufacturer may be required to refund the full purchase or lease price, or offer a comparable replacement car.

**10. DOES THE LAW SPECIFY THE NUMBER OF REQUIRED REPAIR ATTEMPTS?**

Yes. Except for motor homes, it is presumed that there has been a reasonable number of attempts to repair a problem if, during the first 18,000 miles of operation or two years from the original delivery date, whichever comes first, *either* (a) the manufacturer (or its authorized dealer) has had an opportunity to repair the same problem **four** or more times and the problem continued to exist at the end of the fourth repair attempt; *or* (b) the car was out of service by reason of repair for a cumulative total of 30 or more calendar days for one or more problems.

You, or the manufacturer, may rebut this presumption by demonstrating that fewer or more than four repair attempts, or **30** days out-of-service due to repairs, is reasonable under the circumstances.

**11. CAN YOU STILL OBTAIN A REFUND OR A REPLACEMENT CAR IF THE DEFECT HAS BEEN REPAIRED?**

Yes, you may still be entitled to relief under the law, provided all other statutory requirements are met, if a defect continued to exist at the end of the fourth repair attempt, or if the car was out-of-service for a total of at least 30 days, notwithstanding that the defect was subsequently repaired.

For example, a defective transmission continued to exist after four repair attempts but on the fifth repair attempt it was fully repaired. Nevertheless, since it was not repaired at the end of the fourth repair attempt, you have met the presumption that a reasonable number of attempts has occurred and you may be entitled to relief.

**12. WHAT CONSTITUTES SUBSTANTIAL IMPAIRMENT OF VALUE?**

It will depend on the facts in each case. In general, your complaint must be about a serious problem. For example, a defect in the engine which makes the car inoperable is clearly substantial. Some courts have found that the cumulative effect of numerous lesser defects can add up to substantial impairment of value.

**13. ARE THERE ANY EXCEPTIONS TO THE MANUFACTURER'S DUTY TO REFUND OR REPLACE?**

The manufacturer does not have a duty to make a refund or provide a replacement car if: (a) the problem does **not** substantially impair the value of the car to you, **or** (b) the problem is a result of abuse, neglect or unauthorized alteration --such as a dealer installed option-- of the car.

**14. SHOULD YOU CONTINUE TO MAKE YOUR PAYMENTS WHILE YOU ARE PURSUING YOUR RIGHTS UNDER THE LEMON LAW?**

Yes. Unless otherwise advised by your lawyer, if the car is financed or leased, you should continue to make your monthly payments. Failure to do so may result in a repossession which may lead to your being unable to return the car to qualify for a refund or replacement car under the law.

**15. WHAT SHOULD YOU DO IF THE DEALER REFUSES TO MAKE REPAIRS?**

If the dealer refuses to make repairs within seven days of receiving notice from you, you should immediately notify the manufacturer in writing, by certified mail, return receipt requested, of the car's problem and that the dealer has refused to make repairs.

A sample notice to the manufacturer may be found in this booklet.

**16. WHAT MUST THE MANUFACTURER DO UPON RECEIPT OF YOUR NOTICE OF THE DEALER'S REFUSAL TO MAKE REPAIRS?**

The manufacturer or its authorized dealer must commence repairs within 20 days from receipt of your notice of the dealer's refusal to make repairs.

**17. HOW CAN YOU PROVE YOU OWN A LEMON?**

You must be able to establish the necessary repair attempts or days out-of-service due to repairs. Therefore, it is very important to keep careful records of all complaints, copies of all work orders, repair bills, correspondence, and all telephone and email communications.

A dealer is required by Department of Motor Vehicles (DMV) regulations to provide a legible and accurate written work order each time any repair work is performed on a car, including warranty work for which no charge is made. You may contact the DMV

in Albany at 518-474-8943 if you have a problem obtaining your repair orders.

**18. WHAT SHOULD BE INCLUDED IN YOUR REFUND?**

The refund should include the price of the car (cash plus trade-in allowance), including all options, plus title and registration fees and any other governmental charges, less any lawful deductions. Other expenses or charges, such as loss of use, insurance premiums and finance charges, are not included under the law.

**19. WHAT ARE THE "LAWFUL DEDUCTIONS?"**

The manufacturer may deduct an amount for mileage in excess of the first 12,000 miles. No deductions may be made for the first 12,000 miles of use. The law states that such deduction shall be calculated by taking the mileage in excess of 12,000 miles times the purchase (or lease) price, divided by 100,000.

For example, if a defective car has 15,000 miles on its odometer and cost \$20,000, the deduction for use would be \$600 (3,000 multiplied by \$20,000 divided by 100,000). In addition, a reasonable deduction may be taken for any damage not due to normal wear.

**20. IF THE PURCHASE WAS FINANCED, HOW IS THE REFUND DIVIDED?**

The refund by the manufacturer is the same whether the car was financed or not. However, when the car is financed, instead of the entire refund going to you, the refund must be divided between you and the lender (the bank or finance company). Generally, the lender will calculate how much is still owed by you and the refund will be applied first to that amount. The balance of the refund will then go to you.

**21. IF THE CAR WAS LEASED, HOW IS THE REFUND CALCULATED?**

When the car is leased, the refund due from the manufacturer is divided between you (the lessee) and the leasing company (which owns the car and to which you make lease payments) according to a formula provided by the law. The lease price to be refunded to you is the total of your down payment (including any trade-in allowance) plus the total of monthly lease payments, minus interest charges and any other service fees.

For example, you leased a new car under a three-year lease, with a \$1,500 down payment, and pay a monthly lease payment of \$300. Of the \$300 monthly payment, \$100 is allocated as interest charges. After making twelve monthly payments, you are granted a refund under the lemon law. The refund will be \$3,900 calculated as follows:

Deposit .....	\$1,500
+ Monthly Payments. (12x300)	<u>\$3,600</u>
	\$5,100
- minus interest(12x100)	<u>1,200</u>
total refund .....	\$3,900

If the monthly payment includes other service fees, such as insurance or other costs, paid for your benefit, such amounts will also be deducted from your refund. The leasing company's portion of the refund is the balance of the "lease price," as that term is defined by the law.

**22. IF THE CAR IS LEASED, DOES A FINDING THAT THE CAR IS A LEMON TERMINATE THE LEASE?**

Yes. Once a finding has been made that a car is a lemon, the lease is terminated. As a result, no early termination penalties under the lease may be collected.

**23. IF SUCCESSFUL, CAN YOU RECOVER SALES TAX?**

Yes. State and local sales taxes are refunded directly by the New York State Commissioner of Taxation and Finance who will determine the appropriate amount to be refunded under the law. You must complete and submit an "Application for Refund of State and Local Sales Tax" (Form AU-11) to the New York State Department of Taxation and Finance, Central Office Audit Bureau - Sales Tax, State Campus, Albany, N.Y. 12227. (Such form may be obtained through the manufacturer or directly from the Commissioner of Taxation and Finance.)

You have three years from the date a refund is received from the manufacturer to apply for the tax refund.

**24. WHAT IS A "COMPARABLE REPLACEMENT VEHICLE"?**

The courts have ruled that the lemon law does not entitle you to receive a brand new vehicle if you elected to receive a "comparable replacement vehicle" instead of a refund. Rather, you are entitled to receive a car of the same year and model and which has approximately the same mileage as the car being replaced.

**25. WHAT SPECIAL NOTICE REQUIREMENTS EXIST FOR MOTOR HOME OWNERS?**

The law imposes special notice requirements with respect to motor homes. Manufacturers are to be given one final chance to repair the defect before you can take advantage of the remedies offered by the lemon law.

Once the motor home has been subject to **two** repair attempts, or has been out of service by reason of repair for 21 days, whichever occurs first, you must report such fact to the manufacturer or its authorized

dealer by certified mail, return receipt requested, before taking into account any additional repair attempts or days out-of-service and seeking arbitration or commencing a lawsuit under the lemon law. Once such notice is given, you can take advantage of the lemon law remedies after one additional repair attempt --for a total of **three** repair attempts-- for the same defect, or your motor home was out of service due to repair for one or more defects for at least 9 additional days for a total of at least **30** days.

Note, however, that it shall count as only one repair attempt if the same defect is being addressed a second time due to your decision to continue traveling and to seek the repair of the same defect at another authorized repair shop rather than wait for the initial repair to be completed.

**26. ARE THESE SPECIAL NOTICE REQUIREMENTS ALWAYS APPLICABLE?**

No. The special notice requirements are only applicable if the manufacturer or its authorized dealer has provided you with a prior written copy of these requirements and receipt of the notice is acknowledged by you in writing.

**27. WHAT IF YOU FAIL TO COMPLY WITH THESE SPECIAL NOTICE REQUIREMENTS FOR MOTOR HOMES?**

If you fail to comply with the special notice requirements, additional repair attempts or days out of service will not be taken into account in determining your right to relief. However, additional repair attempts or down time will be considered if they occur after you have complied with the notification requirements.

**28. HOW CAN YOU ENFORCE YOUR RIGHTS UNDER THE LEMON LAW?**

You have the choice of either participating in an arbitration program or suing the manufacturer directly in court. Any action under the lemon law must be commenced within four years of the date of original delivery.

**29. IF YOU WIN IN COURT, CAN ATTORNEY'S FEES ALSO BE RECOVERED?**

Yes. The law authorizes the court to award you reasonable attorney's fees if you are successful.

**30. WHAT IS AN ARBITRATION PROCEEDING?**

Arbitration 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.

**31. WHAT ARBITRATION PROGRAMS ARE AVAILABLE TO YOU IN NEW YORK?**

You may participate in the New York State New Car Lemon Law Arbitration Program ("New York Program"), as provided by the lemon law. The New York Program is administered by the New York State Dispute Resolution Association ("NYSDRA") under regulations issued by the Attorney General. (A copy of the regulations may be found in the back of this booklet.) Decisions under the New York Program are binding on both parties.

You may also choose to participate in the auto manufacturer's arbitration program if one has been established. Decisions under the manufacturer's program are not binding on you. Consequently, if you have gone through the manufacturer's program and are not satisfied, you may still apply for arbitration under

the New York Program. However, any prior arbitration decision may be considered at any subsequent arbitration hearing or court proceeding.

The law permits the manufacturer to require that you first participate in the manufacturer's program, provided it complies with federal regulations and New York's lemon law, before suing in court for relief under the lemon law. However, you do not have to go through the manufacturer's program before seeking relief under the New York state-run program.

**32. HOW DO YOU PARTICIPATE IN THE NEW YORK PROGRAM?**

You must first complete a "Request for Arbitration" form, which may be obtained from the Attorney General's website, [www.ag.ny.gov](http://www.ag.ny.gov), or 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 New Car Lemon Law Arbitration Unit, Office of the Attorney General, 120 Broadway, New York, New York 10271.

**33. HOW DOES THE NEW YORK PROGRAM OPERATE?**

The Attorney General's office will review the "Request for Arbitration" form to determine whether your claim is eligible under the lemon law to be heard by an arbitrator. If accepted, the form will be forwarded to the Administrator for processing. 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.

A complete, step-by-step description of the New York Program follows this "Question & Answer" section in this booklet.



**34. WHO ARE THE ARBITRATORS?**

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

**35. IS A CONSUMER ENTITLED TO AN ORAL HEARING?**

Yes. You have an absolute right to an oral hearing. At an oral hearing, both you and the manufacturer's representative have the opportunity to present your case in person before an arbitrator.

You may also 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, the manufacturer may object, in which case an oral hearing will be scheduled.

**36. CAN YOU REQUEST AN ADJOURNMENT OF A HEARING?**

Yes. Either party may apply to the arbitrator through the Administrator, for a reasonable adjournment of the hearing date. Upon the finding of good cause, the arbitrator will reschedule the hearing.

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

Yes. 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.

**38. DO YOU NEED AN ATTORNEY FOR THE ARBITRATION HEARING?**

No. The New York Program is designed to be accessible to you without the need for an attorney. Both you and the manufacturer may use an attorney (some manufacturers are always represented by an attorney) or any other person to assist you if you so choose. However, the law does not provide for the recovery of attorneys fees for representation in an arbitration proceeding.

**39. HOW SHOULD YOU PREPARE FOR THE HEARING?**

You should keep a copy of your "Request for Arbitration" form to use as a guide in preparing for the hearing. The form contains much of the information needed at the hearing. In addition, you are advised to:

- (a) *Gather Documents.* Bring to the hearing records of everything pertaining to the purchase and the problem, including a copy of the purchase contract (invoice) or lease, all correspondence, work orders, and warranty.
- (b) *Organize Records.* Keep records in chronological order. This will serve as a guide in presenting the history of the problem.
- (c) *Prepare an Outline.* This will help to present and remember relevant information.
- (d) *Prepare Questions to Ask the Manufacturer's Representative.* This will assure that no important question is omitted.
- (e) *Arrange for Witnesses.* The presence of witnesses, especially auto mechanics, or their sworn statements may be helpful to document the problem.

**40. WHAT IF YOU DO NOT HAVE ALL THE DOCUMENTS?**

Upon payment of the filing fee and prior to the hearing, you, or the manufacturer, may make a written request to the arbitrator, through the Administrator, to direct the other party to provide any necessary documents or other information. Either party may also request the arbitrator to subpoena documents or witnesses to appear at the hearing.

For example, you may request that the manufacturer furnish a copy of missing work orders and the manufacturer may request that you produce a copy of relevant tax information to determine whether you took a deduction on your taxes for business use.

A sample letter requesting documents may be found in this booklet.

**41. MAY THE ARBITRATOR DIRECT THAT THE CAR BE MADE AVAILABLE AT THE HEARING?**

Yes. The arbitrator may direct you to make the car available, if possible, at the hearing. The arbitrator has the discretion to examine or ride in the car in the presence of both parties.

**42. HOW SHOULD YOU PRESENT YOUR CASE AT THE HEARING?**

At the hearing, you should present your case in a clear, organized and concise manner. You are advised to:

- (a) State the specific nature of the problem.
- (b) State any conversations with the dealer's or manufacturer's representa-tives.
- (c) Describe and document, where possible, each repair attempt.

- (d) Describe and document any new developments which may have occurred since the "Request for Arbitration" form was submitted.
- (e) Offer proof of each point, especially those the manufacturer may dispute.
- (f) Present any witness that may provide relevant information.
- (g) State the relief requested.
- (h) At the end of the presentation, briefly summarize the facts discussed.

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

Unless the hearing has been properly rescheduled, if either the manufacturer or you fail 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.

**44. 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.

**45. CAN YOU RECOVER THE FILING FEE?**

Yes. If you are successful, the arbitrator's decision in your favor must include the return of the filing fee. Also, if you settle the case any time before a decision is rendered, you should seek to recover the filing fee.

**46. WHEN MUST A MANUFACTURER COMPLY WITH AN ARBITRATOR'S DECISION?**

Within thirty days from the date you notify the manufacturer of your acceptance of the arbitrator's decision. In most cases, the manufacturer's representative will contact you within this period to arrange for the return of the car in exchange for either a refund or a replacement car.

Failure of the manufacturer to comply within this time period entitles you to recover an additional \$25 for each business day of noncompliance, up to \$500. If the manufacturer does not voluntarily pay any applicable penalty, you may sue to recover this penalty in Small Claims Court. However, this deadline and penalties are not applicable where you request a replacement car built to order or with options which are not comparable to the car being replaced.

**47. WHAT HAPPENS IF THE MANUFACTURER DOES NOT COMPLY WITH THE ARBITRATOR'S AWARD?**

If the manufacturer 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 and may award reasonable attorney's fees. The court may also award reasonable attorneys' fees incurred to enforce the collection of the award.

**48. HOW IS A RETURN OF THE CAR IMPLEMENTED?**

The common procedure is to have all the affected parties (you, the manufacturer's representative, and, if the car is financed or leased, the lender's or the leasing

company's representative), meet at an agreed time and place to execute the necessary papers to exchange the car for a refund or replacement.

You may choose to return the car to either the selling dealer or the dealer which attempted to repair the car. No further shipping charges may be imposed for the return of the car.

**49. 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 mileage deduction was miscalculated or the filing fee was omitted from the refund.

**50. 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.

**51. 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. Reasonable attorneys fees may be awarded by the court if you are successful in challenging or defending an arbitration award.

**52. WHAT ROLE WILL THE ATTORNEY GENERAL'S OFFICE OR THE ADMINISTRATOR PLAY IF AN AWARD IS CHALLENGED IN COURT?**

Neither the Attorney General's Office nor the Administrator is authorized to represent you in such a challenge; this is the responsibility of your own attorney. The role of the Administrator ends when the arbitrator's award is sent to the parties.

**53. CAN YOU APPLY FOR ANOTHER HEARING UNDER THE NEW YORK PROGRAM IF YOU LOST THE FIRST ONE?**

It depends. A decision under the New York Program is binding on both parties. However, if new facts arise after a hearing was held, you may reapply for a new hearing based on the new facts.

**54. DOES THE LEMON LAW LIMIT ANY OF THE OTHER LEGAL REMEDIES ALREADY AVAILABLE TO YOU?**

No. The Lemon Law adds to your arsenal of existing legal remedies. These legal remedies can be explained by your attorney.

**55. CAN YOUR RIGHTS UNDER THE LEMON LAW BE WAIVED?**

No. Any contract clause which seeks to waive your rights under the Lemon Law is void.

**56. HOW ARE YOU PROTECTED WHEN BUYING A CAR PREVIOUSLY RETURNED TO THE MANUFACTURER UNDER THE LEMON LAW?**

When purchasing a car which was previously determined to be a lemon and returned to the manufacturer, you must be given a written, conspicuous disclosure statement by the dealer reading:

IMPORTANT: This vehicle was returned to the manufacturer or dealer because it did not conform to its warranty and the defect or condition was not fixed within a reasonable time as provided by New York law.

This disclosure must also be printed on the car's certificate of title by the New York State Department of Motor Vehicles.

**57. WHERE CAN YOU GET HELP OR FURTHER INFORMATION REGARDING THE LEMON LAW?**

You may contact any of the offices of Attorney General listed at the end of this booklet or consult a lawyer.

## **Using the New York State Arbitration Program**

The New York Program's operational procedures can be summarized in ten steps as follows:

- |      |    |   |   |
|------|----|---|---|
| Step | 1  | - | Consumer's Completion of Request-for-Arbitration Form                           |
|      | 2  | - | Attorney General's Review   |
|      | 3  | - | Request for Filing Fee by Administrator   |
|      | 4  | - | Filing Date; Appointment of Arbitrator; Schedule of Hearing                     |
|      | 5  | - | Notice of Claim Sent to Manufacturer; Manufacturer's Response; Consumer's Reply |
|      | 6  | - | Pre-Hearing Discovery   |
|      | 7  | - | Hearing   |
|      | 8  | - | Decision  |
|      | 9  | - | Administrator's Review of Decision Form   |
|      | 10 | - | Modification and Appeal   |

### **Step 1. Consumer's Completion of Request-For-Arbitration Form**

A consumer can seek redress under the New York Program by obtaining a "Request-for-Arbitration" form from the Attorney General's website: [www.oag.state.ny.us](http://www.oag.state.ny.us). or any office of the Attorney General. The consumer completes and returns this form, together with copies of all relevant supporting documents (including the bill of sale, repair work orders and any correspondence relating to the claim) to the Attorney General's New Car Lemon Law Unit located at 120 Broadway, New York, NY 10271.

### **Step 2. Attorney General's Review**

The form and documents are reviewed promptly by the Attorney General's Lemon Law Unit. The review is for screening purposes only --to determine whether the claim may be heard by an arbitrator. For example, to be eligible for acceptance into the New York Program the car must have been purchased or registered in New York State. Based on this review, the Request-for-Arbitration form is either accepted or rejected. If rejected, the form is returned to the consumer with a letter indicating the reason(s) for the rejection. In many instances, a consumer is able to correct the cause for rejection and successfully resubmit the form. If the form is accepted, the consumer is advised in writing that the matter is being forwarded to the Administrator for further processing.

### **Step 3. Request for Filing Fee by Administrator**

Upon receipt of the form, the Administrator writes to the consumer to request the payment of the filing fee. If, after 30 days, the Administrator has not received the filing fee from the consumer, it sends a second notice. If the fee is still not received within another 30 days, the Request-for-Arbitration form is returned and the consumer is advised that the case has been closed.

### **Step 4. Filing Date; Appointment of Arbitrator; Schedule of Hearing**

The date the Administrator receives the filing fee from the consumer is considered the case "filing date." This date marks the official beginning of the arbitration process. At this juncture, the Administrator appoints an arbitrator and schedules a hearing for a specific date no later than 35 days from the "filing date." Oral-in person hearings are scheduled to accommodate the needs of the consumer, both geographically and as to time-of-day. The consumer elects on the Request-for-Arbitration form the most convenient site for the hearing from the over-50 locations available.

### **Step 5. Notice of Claim Sent to Manufacturer (and Third Party, if any); Manufacturer Responds; Consumer's Reply**

Within five days of the filing date, the Administrator sends a copy of the consumer's Request-for-Arbitration form, together with all attachments, to the manufacturer's designated contact person. If the car was financed or leased, the finance company or bank to which the consumer makes his or her payments or the leasing company is also notified of the consumer's claim and of the scheduled hearing date and is requested to submit relevant financial information prior to the hearing date. The manufacturer is given 15 days from the filing date to respond to the consumer's claim. If the consumer requested a hearing on documents only, the manufacturer may object and an oral hearing will be scheduled. The Administrator mails any response received to the consumer, who may reply before day 25. The Administrator mails a copy of the consumer's reply, if any, to the manufacturer.

### **Step 6. Pre-Hearing Discovery**

Prior to the hearing, either party may request the arbitrator to direct the production of specified documents (such as repair orders) or information, or request that a witness be subpoenaed. Under the regulations, an arbitrator may draw a negative inference concerning any issue for which documents or witnesses were requested but not provided.

### **Step 7. The Hearing**

At the hearing, the consumer presents evidence and then the manufacturer presents its evidence. Each party, as well as the arbitrator, may question the other party or any witness. The arbitrator administers an oath or affirmation to each individual who testifies. Formal rules of evidence do not apply and each party is afforded a full and equal opportunity to present his or her case. Typically, a hearing lasts between one and two hours. The arbitrator has the discretion to examine and/or ride in the consumer's car, and both parties are afforded the opportunity to be present and accompany the arbitrator on any examination or ride.

## **Step 8. The Decision**

Regardless of the type of hearing -- oral (in person) or on documents only -- the arbitrator must render a decision within 5 days following the hearing date (unless additional time was allowed for the submission of requested documents) which is to be no more than 40 days from the filing date. Each decision must be signed and certified by the arbitrator, contain a summary of both the issues in dispute and the evidence presented by each side, include the arbitrator's findings and indicate whether or not the arbitrator, based on the stated findings, found that the consumer qualifies for relief under the lemon law. If the arbitrator finds that the consumer is entitled to relief, the arbitrator must award either a refund or a comparable replacement vehicle, depending on what the consumer requested. The decision must contain a calculation of the award, where applicable, in accordance with the law, taking into consideration, for example, any allowable deductions for excess mileage. A refund of the prescribed filing fee must also be included as part of every award in favor of the consumer. The manufacturer must comply with the award within 30 days from the date the consumer notifies the manufacturer of his or her acceptance of the decision.

## **Step 9. Administrator's Review of Decision Form**

Once rendered, the decision is sent to the Administrator which reviews it for technical completeness and accuracy and to eliminate arithmetic or typographical errors. The Administrator must obtain the approval of the arbitrator for any corrections. Once finalized, the Administrator mails copies of the decision to each of the parties and the Attorney General's Office within 45 days of the filing date.

## **Step 10. Modification and Appeal**

Where a party believes a mistake was made, he or she may seek a modification within 20 days of the receipt of the award. Such a request for modification must be acted upon by the arbitrator within 30 days. The grounds for modification are limited by law (CPLR §7511(c)). The decision is binding on both parties but may be subject to judicial review as permitted pursuant to CPLR Article 75. Either party may commence a court proceeding to vacate or modify an award within 90 days of its receipt (CPLR §7511(b)).

**SAMPLE LETTER TO THE MANUFACTURER  
GIVING NOTICE OF THE DEALER'S  
REFUSAL TO MAKE REPAIRS**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

To Whom It May Concern:

I am writing this letter pursuant to the New York New Car Lemon Law, General Business Law, section 198-a(b)(2), to notify you that your dealer [insert name] has refused to make repairs to my car within seven days of receiving notice regarding a problem with my car.

My car has the problem(s) described below which has not been repaired. As a result of this problem, the value of the car to me has been substantially impaired.

Problem: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless repairs are commenced within 20 days from the date you receive this notice, under General Business Law, §198-a(b)(2), you will be required to accept return of the car and, at my option, either issue me a full refund of the purchase price or replace it with a comparable car.

I await your prompt reply.

Sincerely,



## SAMPLE REQUEST FOR DOCUMENTS

Your Name  
Address  
City, State, Zip

NYS Dispute Resolution Association  
[Fill in Specific Dispute Center's Address]

Attention: Arbitrator [Name]

Re: Lemon Law Arbitration # \_\_\_\_\_  
Request for Documents

Dear Arbitrator:

Pursuant to section 300.9 of the New York Lemon Law Arbitration Regulations, I am requesting that you direct the manufacturer to obtain and forward to the Case Administrator legible copies of the following documents and information no later than three days before the scheduled hearing date:

1. Each and every repair order for work performed on my car, any mechanic's or technician's notes, email or written comments from any manufacturer's or dealer's representative relating to the diagnosis, repair, defect or condition complained of in my Request for Arbitration.
2. Any service bulletin and recall notice issued that may relate to the problem of: [describe your problem, for example, stalling, lack of power on acceleration, etc.]
3. Any report or correspondence regarding my car's problems.
4. Any other documents or information that may relate directly to this arbitration.

Your prompt attention to this request is greatly appreciated.

Very truly yours,

## **THE NEW CAR LEMON LAW**

General Business Law,  
Section 198-a

### **General Business Law, section 198-a. Warranties**

- (a) As used in this section:
- (1) "Consumer" means the purchaser, lessee or transferee, other than for purposes of resale, of a motor vehicle which is used primarily for personal, family or household purposes and any other person entitled by the terms of the manufacturer's warranty to enforce the obligations of such warranty;
  - (2) "Motor vehicle" means a motor vehicle excluding off road vehicles, which was subject to a manufacturer's express warranty at the time of original delivery and either (i) was purchased, leased or transferred in this state within either the first eighteen thousand miles of operation or two years from the date of original delivery, whichever is earlier, or (ii) is registered in this state;
  - (3) "Manufacturer's express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.
  - (4) "Mileage deduction formula" means the mileage which is in excess of twelve thousand miles times the purchase price, or the lease price if applicable, of the vehicle divided by one hundred thousand miles.
  - (5) "Lessee" means any consumer who leases a motor vehicle pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle.
  - (6) "Lease price" means the aggregate of:
    - (i) the lessor's actual purchase cost;
    - (ii) the freight cost, if applicable;
    - (iii) the cost for accessories, if applicable;
    - (iv) any fee paid to another to obtain the lease; and
    - (v) an amount equal to five percent of the lessor's actual purchase cost as prescribed in subparagraph (i) of this paragraph.
  - (7) "Service fees" -- means the portion of a lease payment attributable to:
    - (i) an amount for earned interest calculated on the rental payments previously paid to the lessor for the leased vehicle at an annual rate equal to two points above the prime rate in effect on the date of the execution of the lease; and

- (ii) any insurance or other costs expended by the lessor for the benefit of the lessee.
- (8) "Capitalized cost" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less service fees.
- (b)
  - (1) If a new motor vehicle which is sold and registered in this state does not conform to all express warranties during the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such consumer, whichever is the earlier date, the consumer shall during such period report the nonconformity, defect or condition to the manufacturer, its agent or its authorized dealer. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer shall within seven days forward written notice thereof to the manufacturer by certified mail, return receipt requested, and shall include in such notice a statement indicating whether or not such repairs have been undertaken. The manufacturer, its agent or its authorized dealer shall correct said nonconformity, defect or condition at no charge to the consumer, notwithstanding the fact that such repairs are made after the expiration of such period of operation or such two year period.
  - (2) If a manufacturer's agent or authorized dealer refuses to undertake repairs within seven days of receipt of the notice by a consumer of a nonconformity, defect or condition pursuant to paragraph one of this subdivision, the consumer may immediately forward written notice of such refusal to the manufacturer by certified mail, return receipt requested. The manufacturer or its agent shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the manufacturer or its authorized agent fails to commence such repairs, the manufacturer at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges. Such fees and charges shall include but not be limited to all license fees, registration fees and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.
- (c)
  - (1) If, within the period specified in subdivision (b) of this section, the manufacturer or its agents or authorized dealers are unable to repair or correct any defect or condition which substantially impairs the value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges. Any return of a motor vehicle may, at the option of the consumer, be made to the dealer or other authorized agent of the manufacturer who sold such vehicle to the consumer or to the dealer or other authorized agent who attempted to repair or correct the defect or condition which necessitated the return and shall not be subject to any further shipping charges. Such fees and charges shall include but not be limited to all license fees, registration fees and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of

this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.

- (2) A manufacturer which accepts return of the motor vehicle because the motor vehicle does not conform to its warranty shall notify the commissioner of the department of motor vehicles that the motor vehicle was returned to the manufacturer for nonconformity to its warranty and shall disclose, in accordance with the provisions of section four hundred seventeen-a of the vehicle and traffic law prior to resale either at wholesale or retail, that it was previously returned to the manufacturer for nonconformity to its warranty. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. Refunds shall be accompanied by the proper application for credit or refund of state and local sales taxes as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price, lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law. If applicable, refunds shall be made to the lessor and lessee as their interests may appear on the records of ownership kept by the department of motor vehicles, as follows: the lessee shall receive the capitalized cost and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. The terms of the lease shall be deemed terminated contemporaneously with the date of the arbitrator's decision and award and no penalty for early termination shall be assessed as a result thereof. Refunds shall be accompanied by the proper application form for credit or refund of state and local sales tax as published by the department of taxation and finance and a notice that the sales tax paid on the lease price or portion thereof being refunded is refundable by the Commissioner of Taxation and Finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law.
- (3) It shall be an affirmative defense to any claim under this section that:
  - (i) the nonconformity, defect or condition does not substantially impair such value; or
  - (ii) the nonconformity, defect or condition is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle.
- (d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:
  - (1) the same nonconformity, defect or condition has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity, defect or condition continues to exist: or
  - (2) the vehicle is out of service by reason of repair of one or more nonconformities, defects or conditions for a cumulative total of thirty or more calendar days during either period, whichever is the earlier date.

- (e) The term of an express warranty, the two year warranty period and the thirty day out of service period shall be extended by any time during which repair services are not available to the consumer because of a war, invasion or strike, fire, flood or other natural disaster.
- (f) Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.
- (g) If a manufacturer has established an informal dispute settlement mechanism, such mechanism shall comply in all respects with the provisions of this section and the provisions of subdivision (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such mechanism. In the event that an arbitrator in such an informal dispute mechanism awards a refund or replacement vehicle, he or she shall not reduce the award to an amount less than the full purchase price or the lease price, if applicable, or a vehicle of equal value, plus all fees and charges except to the extent such reductions are specifically permitted under subdivision (c) of this section.
- (h) A manufacturer shall have up to thirty days from the date the consumer notifies the manufacturer of his or her acceptance of the arbitrator's decision to comply with the terms of that decision. Failure to comply with the thirty day limitation shall also entitle the consumer to recover a fee of twenty-five dollars for each business day of noncompliance up to five hundred dollars. Provided, however, that nothing contained in this subdivision shall impose any liability on a manufacturer where a delay beyond the thirty day period is attributable to a consumer who has requested a replacement vehicle built to order or with options that are not comparable to the vehicle being replaced or otherwise made compliance impossible within said period. In no event shall a consumer who has resorted to an informal dispute settlement mechanism be precluded from seeking the rights or remedies available by law.
- (i) Any agreement entered into by a consumer for the purchase of a new motor vehicle which waives, limits or disclaims the rights set forth in this section shall be void as contrary to public policy. Said rights shall inure to a subsequent transferee of such motor vehicle.
- (j) Any action brought pursuant to this section shall be commenced within four years of the date of original delivery of the motor vehicle to the consumer.
- (k) Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the New York state attorney general. Upon application of the consumer and payment of the filing fee, all manufacturers 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 New York state attorney general. Such mechanism shall insure 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; provided, however, that notwithstanding paragraph (i) of subdivision (a) of section seventy-five hundred two of the civil practice law and rules, special proceedings brought before a court pursuant to such article seventy-five in relation to an arbitration hereunder shall be brought only in the county where the consumer resides or where the arbitration was held or is pending.

- (l) A court may award reasonable attorney's fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to subdivision (k) of this section. In the event a prevailing plaintiff is required to retain the services of an attorney to enforce the collection of an award granted pursuant to this section, the court may assess against the manufacturer reasonable attorney's fees for services rendered to enforce collection of said award.
- (m) (1) Each manufacturer shall require that each informal dispute settlement mechanism used by it provide, at a minimum, the following:
- (i) that the arbitrators participating in such mechanism are trained in arbitration and familiar with the provisions of this section, that the arbitrators and consumers who request arbitration are provided with a written copy of the provisions of this section, together with the notice set forth below entitled "NEW CAR LEMON LAW BILL OF RIGHTS", and that consumers, upon request, are given an opportunity to make an oral presentation to the arbitrator;
  - (ii) that the rights and procedures used in the mechanism comply with federal regulations promulgated by the federal trade commission relating to informal dispute settlement mechanisms; and
  - (iii) that the remedies set forth under subdivision (c) of this section are awarded if, after a reasonable number of attempts have been undertaken under subdivision (d) of this section to conform the vehicle to the express warranties, the defect or nonconformity still exists.
- (2) The following notice shall be provided to consumers and arbitrators and shall be printed in conspicuous ten point bold face type:

**NEW CAR LEMON LAW BILL OF RIGHTS**

- (1) **IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR NEW CAR, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST.**
- (2) **YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER.**
- (3) **UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.**
- (4) **IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR OR MORE ATTEMPTS; OR IF YOUR CAR IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE MANUFACTURER OR ITS AGENT REFUSES TO REPAIR A**

SUBSTANTIAL DEFECT OR CONDITION WITHIN TWENTY DAYS OF RECEIPT OF NOTICE SENT BY YOU TO THE MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; THEN YOU MAY BE ENTITLED TO EITHER A COMPARABLE CAR OR A REFUND OF YOUR PURCHASE PRICE, PLUS LICENSE AND REGISTRATION FEES, MINUS A MILEAGE ALLOWANCE ONLY IF THE VEHICLE HAS BEEN DRIVEN MORE THAN 12,000 MILES. SPECIAL NOTIFICATION REQUIREMENTS MAY APPLY TO MOTOR HOMES.

- (5) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE CAR.
  - (6) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE CAR OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR CAR.
  - (7) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE CAR OR REFUND YOUR PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.
  - (8) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEYS FEES IF YOU PREVAIL.
  - (9) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.
  - (10) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU MAY HAVE TO PAY A FEE FOR SUCH AN ARBITRATION. CONTACT YOUR LOCAL CONSUMER OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.
- (3) All informal dispute settlement mechanisms shall maintain the following records:
- (i) the number of purchase price and lease price refunds and vehicle replacements requested, the number of each awarded in arbitration, the amount of each award and the number of awards that were complied with in a timely manner;
  - (ii) the number of awards where additional repairs or a warranty extension was the most prominent remedy, the amount or value of each award, and the number of such awards that were complied with in a timely manner;
  - (iii) the number and total dollar amount of awards where some form of reimbursement for

expenses or compensation for losses was the most prominent remedy, the amount or value of each award and the number of such awards that were complied with in a timely manner; and

- (iv) the average number of days from the date of a consumer's initial request to arbitrate until the date of the final arbitrator's decision and the average number of days from the date of the final arbitrator's decision to the date on which performance was satisfactorily carried out.

(n) Special provisions applicable to motor homes:

- (1) To the extent that the provisions of this subdivision are inconsistent with the other provisions of this section, the provisions of this subdivision shall apply.
- (2) For purposes of this section, the manufacturer of a motor home is any person, partnership, corporation, factory branch, or other entity engaged in the business of manufacturing or assembling new motor homes for sale in this state.
- (3) This section does not apply to the living facilities of motor homes, which are the portions thereof designed, used or maintained primarily as living quarters and shall include, but not be limited to the flooring, plumbing system and fixtures, roof, air conditioner, furnace, generator, electrical systems other than automotive circuits, the side entrance door, exterior compartments, and windows other than the windshield and driver and front passenger windows.
- (4) If, within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such consumer, whichever is the earlier date, the manufacturer of a motor home or its agents or its authorized dealers or repair shops to which they refer a customer are unable to repair or correct any covered defect or condition which substantially impairs the value of the motor home to the consumer after a reasonable number of attempts, the motor home manufacturer, at the option of the consumer, shall replace the motor home with a comparable motor home, or accept return of the motor home from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges as well as the other fees and charges set forth in paragraph one of subdivision (c) of this section.
- (5) If an agent or authorized dealer of a motor home manufacturer or a repair shop to which they refer a consumer refuses to undertake repairs within seven days of receipt of notice by a consumer of a nonconformity, defect or condition within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor home to such consumer, whichever is the earlier date, the consumer may immediately forward written notice of such refusal to the motor home manufacturer by certified mail, return receipt requested. The motor home manufacturer or its authorized agent or a repair shop to which they refer a consumer shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty-day period, the motor home manufacturer or its authorized agent or repair shop to which they refer a consumer, fails to commence such repairs, the motor home manufacturer, at the option of the consumer, shall replace the motor home with a comparable motor home, or accept return of the



motor home from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price, and any trade-in allowance or other charges, fees, or allowances. Such fees and charges shall include but not be limited to all license fees, registration fees, and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.

- (6) If within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor home to such consumer, whichever is the earlier date, the same covered nonconformity, defect or condition in a motor home has been subject to repair two times or a motor home has been out of service by reason of repair for twenty-one days, whichever occurs first, the consumer must have reported this to the motor home manufacturer or its authorized dealer by certified mail, return receipt requested, and may institute any proceeding or other action pursuant to this section if the motor home has been out of service by reason of three repair attempts or for at least thirty days. The special notification requirements of this paragraph shall only apply if the manufacturer or its authorized dealer provides a prior written copy of the requirements of this paragraph to the consumer and receipt of the notice is acknowledged by the consumer in writing. If the consumer who has received notice from the manufacturer fails to comply with the special notification requirements of this paragraph, additional repair attempts or days out of service by reason of repair shall not be taken into account in determining whether the consumer is entitled to a remedy provided in paragraph four of this subdivision. However, additional repair attempts or days out of service by reason of repair that occur after the consumer complies with such special notification requirements shall be taken into account in making that determination. It shall not count as a repair attempt if the repair facility is not authorized by the applicable motor home manufacturer to perform warranty work on the identified nonconformity. It shall count as only one repair attempt for a motor home if the same nonconformity is being addressed a second time due to the consumer's decision to continue traveling and to seek the repair of the same nonconformity at another repair facility rather than wait for the initial repair to be completed.
- (7) Nothing in this section shall in any way limit any rights, remedies or causes of action that a consumer or motor home manufacturer may otherwise have against the manufacturer of the motor home's chassis, or its propulsion and other components.
- (8) (A) Each manufacturer shall require that each informal dispute settlement mechanism used by it provide, at a minimum, the following:
  - (i) that the arbitrators participating in such mechanism are trained in arbitration and familiar with the provisions of this section, that the arbitrators and consumers who request arbitration are provided with a written copy of the provisions of this section, together with the notice set forth below entitled "NEW MOTOR HOME LEMON LAW BILL OF RIGHTS", and that consumers, upon request, are given an opportunity to make an oral presentation to the arbitrator;
  - (ii) that the rights and procedures used in the mechanism comply with federal regulations

promulgated by the federal trade commission relating to informal dispute settlement mechanisms; and

(iii) that the remedies set forth under subdivision (c) of this section are awarded if, after a reasonable number of attempts have been undertaken under subdivision (d) of this section to conform the vehicle to the express warranties, the defect or nonconformity still exists.

(B) Notwithstanding the provisions of paragraph two of subdivision (m) of this section, the following provisions shall apply for purposes of this subdivision:

The following notice shall be provided to consumers and arbitrators and shall be printed in conspicuous ten point bold face type:

#### NEW MOTOR HOME LEMON LAW BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURERS, YOUR NEW MOTOR HOME, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST. HOWEVER, THIS ADDITIONAL WARRANTY DOES NOT APPLY TO THE LIVING FACILITIES OF MOTOR HOMES, WHICH ARE THE PORTION THEREOF DESIGNED, USED OR MAINTAINED PRIMARILY AS LIVING QUARTERS AND SHALL INCLUDE, BUT NOT BE LIMITED TO THE FLOORING, PLUMBING SYSTEM AND FIXTURES, ROOF AIR CONDITIONER, FURNACE, GENERATOR, ELECTRICAL SYSTEMS OTHER THAN AUTOMOTIVE CIRCUITS, THE SIDE ENTRANCE DOOR, EXTERIOR COMPARTMENTS, AND WINDOWS OTHER THAN THE WINDSHIELD AND DRIVER AND FRONT PASSENGER WINDOWS.

(2) YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER.

(3) UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.

(4) IF, WITHIN THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION OR DURING THE PERIOD OF TWO YEARS FOLLOWING THE DATE OF ORIGINAL DELIVERY OF THE MOTOR VEHICLE TO SUCH CONSUMER, WHICHEVER IS THE EARLIER DATE, THE MANUFACTURER OF A MOTOR HOME OR ITS AGENTS OR ITS AUTHORIZED DEALERS OR REPAIR SHOPS TO WHICH THEY REFER A CONSUMER ARE UNABLE TO REPAIR OR CORRECT ANY COVERED DEFECT OR CONDITION WHICH SUBSTANTIALLY IMPAIRS THE VALUE OF THE MOTOR HOME TO THE CONSUMER AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MOTOR HOME MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR HOME WITH A COMPARABLE MOTOR HOME, OR

ACCEPT RETURN OF THE MOTOR HOME FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE AND ANY TRADE-IN ALLOWANCE, PLUS FEES AND CHARGES, AS WELL AS THE OTHER FEES AND CHARGES, INCLUDING BUT NOT LIMITED TO ALL LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENTAL CHARGES, LESS AN ALLOWANCE FOR THE CONSUMER'S USE OF THE VEHICLE IN EXCESS OF TWELVE THOUSAND MILES TIMES THE PURCHASE PRICE, OR THE LEASE PRICE IF APPLICABLE, OF THE VEHICLE DIVIDED BY ONE HUNDRED THOUSAND MILES, AND A REASONABLE ALLOWANCE FOR ANY DAMAGE NOT ATTRIBUTABLE TO NORMAL WEAR OR IMPROVEMENTS.

(5) SPECIAL NOTICE PROVISION: IF WITHIN EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST, THE SAME COVERED NONCONFORMITY, DEFECT OR CONDITION IN YOUR MOTOR HOME HAS BEEN SUBJECT TO REPAIR TWO TIMES OR YOUR MOTOR HOME HAS BEEN OUT OF SERVICE BY REASON OF REPAIR FOR TWENTY-ONE DAYS, WHICHEVER COMES FIRST, YOU MUST HAVE REPORTED THIS TO THE MOTOR HOME MANUFACTURER OR ITS AUTHORIZED DEALER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND YOU MAY INSTITUTE ANY PROCEEDING OR OTHER ACTION PURSUANT TO THE LEMON LAW IF THE MOTOR HOME HAS BEEN OUT OF SERVICE BY REASON OF THREE REPAIR ATTEMPTS OR FOR AT LEAST THIRTY DAYS. THIS SPECIAL NOTICE REQUIREMENT SHALL ONLY APPLY IF THE MANUFACTURER OR ITS AUTHORIZED DEALER PROVIDES WRITTEN COPY OF THE REQUIREMENTS OF THIS PARAGRAPH TO YOU AND RECEIPT OF NOTICE IS ACKNOWLEDGED BY YOU IN WRITING. IF YOU FAIL TO COMPLY WITH THE SPECIAL NOTIFICATION REQUIREMENTS OF THIS PARAGRAPH, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON OF REPAIR SHALL NOT BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER YOU ARE ENTITLED TO A REMEDY PROVIDED IN PARAGRAPH FOUR. HOWEVER, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON OF REPAIR THAT OCCUR AFTER YOU COMPLY WITH SUCH SPECIAL NOTIFICATION REQUIREMENTS SHALL BE TAKEN INTO ACCOUNT IN MAKING THAT DETERMINATION.

NOTICE TO THE MANUFACTURER SHALL BE SENT TO THE FOLLOWING:

\_\_\_\_\_  
NOTICE TO THE DEALER SHOULD BE SENT TO THE FOLLOWING:

\_\_\_\_\_

(6) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE MOTOR HOME.

(7) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE MOTOR HOME OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM IS NOT COVERED BY THE LEMON LAW OR DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR MOTOR HOME.

(8) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE MOTOR HOME OR REFUND YOUR PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.

(9) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S FEES IF YOU PREVAIL.

(10) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(11) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU MAY HAVE TO PAY A FEE FOR SUCH ARBITRATION. CONTACT YOUR LOCAL CONSUMER OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.

(o) At the time of purchase or lease of a motor vehicle from an authorized dealer in this state, the manufacturer shall provide to the dealer or leaseholder, and the dealer or leaseholder shall provide to the consumer a notice, printed in not less than eight point bold face type, entitled "New Car Lemon Law Bill of Rights". The text of such notice shall be identical with the notice required by paragraph two of subdivision (m) of this section.

# **ARBITRATION PROGRAM REGULATIONS**

Pursuant to General Business Law  
Sections 198-a and 198-b

Title 13 NYCRR Chap. VIII  
Part 300

New York New and Used Car  
Lemon Law Arbitration  
Program Regulations

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**Section 300.1 Purpose**

(a) These regulations are promulgated pursuant to the "New York Lemon Law", General Business Law ("GBL") section 198-a, as amended by Chapter 799 of the Laws of 1986, and section 198-b, as amended by Chapter 609 of the Laws of 1989. They set forth the procedures for the operation of an alternative arbitration mechanism (the "Programs") as required by GBL §198-a(k) and GBL §198-b(f)(3).

(b) These regulations are designed to promote the independent, speedy, efficient and fair disposition of disputes concerning defective new and used motor vehicles.

**Section 300.2 Definitions**

(a) Unless otherwise stated, terms used in these regulations are as defined in GBL §198-a or GBL §198-b.

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

**Section 300.3 Appointment of Administrator**

(a) The Attorney General shall appoint an Administrator or Administrators to a definite 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 manufacturer'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 (3) shall not apply and the Attorney General shall take appropriate steps to assure the continued administration of the Program.

**Section 300.4 Consumer's Request for Arbitration**

(a) The Attorney General shall prescribe and make available "Request for Arbitration" forms for both GBL §198-a and GBL §198-b claims. To apply for arbitration under the Program, a consumer shall obtain, complete and submit the appropriate form to the Attorney General.

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

(c) For a GBL §198-a claim, the consumer shall indicate on the form his/her choice of remedy (i.e., either refund or comparable replacement vehicle), in the event the arbitrator rules in favor of the consumer. Such choice shall be followed by the arbitrator unless the consumer advises the Administrator in writing of a change in his/her choice of remedy prior to the arbitrator's rendering of a decision.

(d) Upon receipt, the Attorney General shall date-stamp and assign a case number to the form.

(e) The Attorney General shall review the submitted form for completeness and eligibility and shall either accept it or reject it.

(f) If the form is rejected by the Attorney General, the Attorney General shall promptly return the form, notifying the consumer in writing of the reasons for the rejection and, where possible, inviting the consumer to correct the deficiencies.

(g) If the form is accepted by the Attorney General, he shall refer it to the Administrator for processing. The Attorney General shall promptly notify the consumer in writing of the acceptance of the form and of its referral to the Administrator. Such notice shall also advise the consumer to pay the prescribed filing fee directly to the Administrator.

(h) 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 consumer in writing that unless such fee is received within 60 days from the date of the first notice, the form will be returned and the case marked closed. After such time, if the consumer wishes to pursue a claim under the Program, (s)he must submit a new form to the Attorney General.

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

#### **Section 300.5 Filing Date**

On the day the Administrator receives the prescribed filing fee, the Administrator shall date stamp the "Request for Arbitration" form. Such date shall be considered the "filing date".

#### **Section 300.6 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 GBL §198-a or GBL §198-b, whichever is applicable.

(b) The arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale or manufacture 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 Programs, and the substantive provisions of GBL §198-a for those arbitrators hearing GBL §198-a claims, and the substantive provisions of GBL §198-b for those arbitrators hearing GBL §198-b claims.

### **Section 300.7            Scheduling of Arbitration Hearings**

(a) Each manufacturer of cars sold in New York shall notify the Attorney General in writing, within 10 days after the effective date of these regulations, of the name, address and telephone number of the person designated to receive notices under the GBL §198-a Program. Such information shall be presumed correct unless updated by the manufacturer.

(b) The arbitration shall be conducted as an oral hearing unless the consumer has requested, on the "Request for Arbitration" form, 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.

(c) Within 5 days of the filing date, the Administrator shall send the manufacturer's designee or the dealer, as appropriate, a copy of the consumer's completed form along 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 one copy to the consumer.

(d) The consumer may respond in writing to the manufacturer's or dealer'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 manufacturer or the dealer.

(e) 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 8 days prior to its scheduled date.

(f) Hearings shall be scheduled to accommodate, where possible, time-of-day needs of the consumer and the manufacturer or the dealer, including evening and weekend hours.

(g) Hearings shall also be scheduled to accommodate geographic needs of the consumer. 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 consumer's residence, a hearing must be scheduled at the request of the consumer at a location designated by the Administrator within 100 miles of the consumer's residence.

(h) In unusual circumstances, a party may present its case by telephone, provided that adequate advance notice is given to the Administrator and to the other party. 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 300.8            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 300.9 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, bills, and all communications relating to the consumer's claim.

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

**Section 300.10 Representation by Counsel or Third Party**

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

**Section 300.11 Interpreters**

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

**Section 300.12 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 relevant evidence.

(d) The arbitrator shall receive in evidence a decision rendered in a previous arbitration which was not binding on the consumer 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 consumer's vehicle. Both parties shall be afforded the opportunity to be present and accompany the arbitrator on any such examination or ride.

(g) The consumer shall first present evidence in support of his/her claim, and the manufacturer or the dealer, as applicable, 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) 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 300.13      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 300.14      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 manufacturer or the dealer, fails to respond to the claim, the arbitrator shall render a decision based upon the documents contained in the file.

### **Section 300.15      Withdrawal or Settlement Prior to Decision**

(a) A consumer may withdraw his/her request for arbitration at any time prior to decision. If the Administrator is notified by the consumer of his/her request to withdraw the claim 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 300.16      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 Administrator and approved by the Attorney General. The decision shall be dated and signed by the arbitrator.

(b) In his/her decision, the arbitrator shall determine whether the consumer qualifies for relief pursuant to GBL §198-a or GBL §198-b, as appropriate. If the arbitrator finds that the consumer qualifies, (s)he shall award the specific remedies prescribed by the applicable statute.

(c) The decision shall specify the monetary award where applicable. A calculation of the amount, in accordance with GBL §198-a or GBL §198-b, as applicable, shall be included in the decision. The decision shall also award the prescribed filing fee to a successful consumer.

(d) The decision shall, where applicable, require that any action required by the manufacturer or the dealer, be completed within 30 days from the date the Administrator notifies the manufacturer or the dealer, of the decision.

(e) 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.

(f) 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.

(g) 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.

(h) 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 300.17 Record keeping**

(a) 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.

(b) The Administrator shall maintain such records and statistics for both Programs as are required by GBL §198-a(m)(3).

#### **Section 300.18 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.

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