

New Vehicle Problems

Only new vehicles can be lemons. The North Carolina lemon law statute (N.C.G.S. § 20-351 *et seq.*) covers new vehicles, leased or purchased. Since it is a North Carolina statute, it applies to purchases made in North Carolina. The law requires the manufacturer to provide either a refund (not full---see below) or replacement vehicle [consumer's choice] if a new vehicle has a defect that cannot be repaired after a reasonable number of repair attempts. The defect must occur no later than 24 months or 24,000 miles of the original delivery of vehicle. "Reasonable number of attempts" means either four repair attempts for the same defect.

Be sure to have your vehicle serviced and maintained as set forth in your vehicle's owner's manual. Wear-and-tear and abuse are potential defenses to a lemon law claim. Before you can call for a refund or replacement, the vehicle has to have either (1) gone through the 4 repair attempts for the same defect or (2) have been out of service a total of 20 business days during any 12-month warranty period. Assuming you have established one of these you have to provide written notice to the manufacturer of the defect or series of defects and give the manufacturer no more than 15 calendar days to repair the defect(s). The address to which you send your written notice must be displayed conspicuously in your owner's manual and if it is not, you have no obligation to provide written notice.

If you have no success dealing with the manufacturer regarding your lemon, you can file a civil lawsuit. At least 10 days prior to filing a civil lawsuit, a consumer must send a letter to the manufacturer stating intention to file suit. NOTE: The manufacturer can require the consumer to submit to an informal settlement procedure (i.e. arbitration) prior to litigation if the procedure is clearly mentioned in the warranty and warranty instructions provided to consumer. The procedure must also comply with several provisions of federal law designed to allow an efficient, fair opportunity for the parties to settle disputes.

If the consumer is not satisfied with result in the settlement procedure(s) mandated by the warranty, he or she retains the right to pursue litigation in state or federal court to recover the following damages:

1a. Refund

The consumer can choose to return the vehicle and receive a refund. The actual amount of refund to the consumer is calculated according to a formula set forth in the statute. This formula allows for a refund of the full contract price including, but not limited to dealer prep and delivery/transportation charges, cost of installed options and even the nonrefundable portions of extended warranties and service contracts, sales tax, tag and title fees, all finance charges incurred after the consumer first reported the defect to the manufacturer or dealer, and incidental and monetary consequential damages. This formula also reduces the refund amount by a "reasonable allowance" for the consumer's use of the vehicle.

The refund could be trebled if the manufacturer was unreasonable in dealing with the consumer's demand for a refund or replacement.

1b. Replacement

The consumer can choose to receive a comparable new motor vehicle.

2. Recovery of attorneys' fees

Special note on damage disclosure for new vehicles: Dealers are required to disclose in writing any damage and repair that exceeds 5% of the manufacturer's suggested retail price before you enter into a contract to purchase the vehicle. There is no disclosure requirement, however, regarding damage to glass, tires, or bumpers if the damaged item has been replaced with original or comparable equipment.

Buying a Used Vehicle

North Carolina law provides limited protection regarding used vehicle purchases so be sure to do your homework before buying. The Uniform Commercial Code (UCC) governs the sales of goods worth more than \$500. Depending on the nature of your used vehicle problem, how soon [after the purchase] it occurs, and the seller's actions and statements, you may be able to revoke acceptance of the vehicle. However, the seller may still have an opportunity to repair the problem. The UCC is a very technical set of laws so if you have a problem with your used vehicle, call a lawyer immediately to review your options.

Here is the homework you should complete before buying a used vehicle:

- Review Consumer Reports Buying Guide or some other reputable source for narrowing your search to a quality used vehicle. Price, safety, and reliability are key factors in purchasing any vehicle and they are especially important when you are contemplating purchasing a used one.
- When you settle on a particular vehicle, purchase a vehicle report from www.carfax.com. If you are an AAA member, you can get a discount on your CarFax report. The CarFax report lists items such as accidents, vehicle history, title issues (ex: salvage, flood). Realize, however, that CarFax is not always a reliable source for a car's complete and accurate history. In the event the report misses certain occurrences involving your vehicle, CarFax states it will buy back the vehicle from you.
- Determine ranges for vehicle value. Check websites such as www.edmunds.com, www.nada.com, and www.kbb.com for vehicle pricing based on make, model, mileage, color, features, and vehicle condition. After your independent vehicle inspection is completed (see below), you can further refine your target price range for the vehicle. This is an important part of your homework since paying too much for a vehicle is generally not a sufficient legal reason to void the vehicle's sales contract. The law presumes you have done your research prior to negotiating and deciding on the final vehicle price.
- Obtain a complete title history for the vehicle from the North Carolina Division of Motor Vehicles. To obtain the request form (called a MVR 605a) you can go to your local DMV office, call the DMV at 919-715-7000 to have the form mailed to you, or download the form at <http://www.ncdot.org/dmv/forms/vehicleregistration/download/mvr605a.pdf>. The cost of the title history is \$1 for an uncertified version and \$10 for a certified version. You can obtain information on prior vehicle owners as well as whether the vehicle has been involved in any collision that resulted in damage over 25% of the vehicle's value. Anticipate two to three weeks for delivery of the vehicle history.

- Ask the seller or vehicle dealer for service and maintenance records on the vehicle. These can provide you with valuable information about the vehicle's history but realize that some people are not the best record-keepers. To the extent you get anything here, you are ahead of the game but your job is not done.
- Ask the seller or vehicle dealer if the vehicle has ever been involved in a collision or otherwise sustained damage. For used cars that are fewer than five years old, North Carolina law requires the seller or vehicle dealer to disclose damage that exceeds 25% of the vehicle's fair market value. NC law also requires a seller or vehicle dealer to provide written disclosure whether a vehicle has been salvaged, damaged in a flood, or reconstructed.
- Next, ask the seller or vehicle dealer if you can have the vehicle inspected by your own mechanic. If he or she refuses, this is a sign that they may be hiding something. Perhaps it is time to look elsewhere. If he or she allows an inspection, it will take place at the site where the vehicle is located. Contact an independent car inspector and be prepared to spend the money (usually under \$150.00) to have an expert check the vehicle to reveal any problems or other concerns. Have the inspector provide you with some written report or documentation of his inspection and review it carefully.
- After you have determined the existence and nature of problems with the vehicle, it is time to negotiate with the seller regarding vehicle price or an obligation to pay for any needed repairs. If you and the seller come to any agreement on these issues, be sure to get the agreement(s) in writing and signed by the seller.
- If you are dealing with a vehicle dealer, ask for *at least* a 30-day warranty. The dealer is not required to provide you with a warranty but to the extent you get one, you have some legal protection regarding vehicle problems. Be sure that any warranty specifically identifies all vehicle systems that are covered and have the warranty signed by the dealer.
- Negotiate a good deal and be sure to have a sales contract signed by you and the seller. The contract need not be complicated and should identify essential terms such as full names and addresses of the seller(s) and buyer(s); year, make, model, color and vehicle identification number (VIN) for the vehicle; date of vehicle sale; purchase price and any other fees paid; and all interest rate and financing terms. If you decide not to create your own contract form, you can buy a preprinted version or have one created by an attorney.

Hopefully, after the above steps your homework has paid off and you will walk away with a good deal and a good vehicle!

11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

The commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer shall base any further settlement offer not only on published regional average values of similar vehicles, but also on the value of the vehicle in the local market. Local market value shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer shall give due consideration to the condition of the claimant's vehicle prior to the accident.
- (2) Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.
- (3) If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.
- (4) If a written statement is requested by the claimant, a total loss payment by an insurer shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.
- (5) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined in accordance with this Rule, an insurance carrier shall "total loss" the automobile by paying the claimant the preaccident value, and in return, receiving possession of the legal title of the salvage of said automobile. At the election of the claimant, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the claimant subject to the insurance carrier abiding by Subparagraphs (3) and (6) of this Rule. No insurer, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75% of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would exceed 75% of the vehicle's preaccident value.

- (6) The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address, and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the consent of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.

History Note: Authority G.S. 58-2-40; 58-63-65;
Eff. December 15, 1979;
Amended Eff. April 1, 1993; April 1, 1989; July 1, 1986.

11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES

The commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims submitted when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates shall be borne by the insurer.
- (2) No insurer shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.
- (3) When the insurer elects to have the claimant's property repaired, the insurer shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by a repair service, the name and address of that service. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage shall be clearly stated in the estimate.
- (4) If requested by a claimant, an insurer shall provide to the claimant copies of the estimate and all supplements thereto that it uses to offer a settlement.

History Note: Authority G.S. 58-2-40; 58-63-65;
Eff. December 15, 1979;

Amended Eff. April 1, 1993; April 1, 1989.

11 NCAC 04 .0420 WRITTEN CONFIRMATION OF ORAL AGREEMENTS

(a) If an insurer, by telephone or otherwise, accepts liability or advises a claimant to have damaged property repaired with the understanding that the insurer will pay or reimburse the claimant, the insurer shall, if requested by the claimant, promptly confirm the understanding in writing. Such writing shall clearly state the responsibility assumed by the insurer for payment of incurred costs.

(b) If so requested by the claimant, the insurer or its representative shall confirm in writing all other oral agreements between itself or its representative and the claimant.

*History Note: Authority G.S. 58-2-40; 58-3-100; 58-63-15;
Eff. December 15, 1979.*

11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS

The commissioner shall consider as prima facie violative of G.S. 58-3-100 and 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

- (1) Loss and claim payments shall be mailed or otherwise delivered within 10 business days after the claim is settled.
- (2) Unless the insured consents, no insurer shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.
- (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by a claimant, involving a repair to a motor vehicle, it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle, which damages were directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair shall be considered promptly asserted.
- (5) If a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted.

*History Note: Authority G.S. 58-2-40; 58-3-100; 58-63-65;
Eff. December 15, 1979;
Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1,
1986.*

Vehicle Insurance Coverage

Below is an explanation of the different types of coverage available on a North Carolina vehicle insurance policy. For more detailed information, call the North Carolina Department of Insurance at 800-546-5664 or go to http://www.ncdoi.com/consumer/consumer_publications/automobile/a%20consumer%20guide%20to%20automobile%20insurance.pdf where you will find “A Consumer Guide to Automobile Insurance”. For those of you interested in insuring your motorcycle, go to http://www.ncdoi.com/consumer/consumer_publications/automobile/a%20consumer%20guide%20to%20insuring%20your%20motorcycle~.pdf.

Liability—protects you if you or an authorized driver of your vehicle causes an accident resulting in injury or damage to another. Liability is required for all NC auto insurance policies and must cover *at least* \$30,000 bodily injury maximum per person, \$60,000 total bodily injury maximum per incident, \$25,000 property damage maximum per incident. Liability is the only coverage required on NC auto insurance policies.

Umbrella—an extra layer of liability coverage. This coverage becomes relevant if you cause bodily injury or property damage that exceeds the limits of your liability policy and the injured and damaged parties lack other sources of insurance coverage. In this situation, these other parties could seek to hold you *personally* financially responsible for the excess which could jeopardize your assets (ex: home, vehicle). To determine the sufficient amount of insurance coverage you need, discuss this with your insurance agent. This coverage may not be available for all drivers.

Collision---pays for repairs to your vehicle if it is involved in a crash with another vehicle or object.

Comprehensive---pays for repairs to your vehicle for damage not caused by a collision (ex: cracked windshield from rock).

Underinsured—pays for injuries and damages caused by a driver who lacks liability insurance coverage.

Uninsured---pays for injuries and damages caused by a driver with insufficient liability insurance coverage.

Medical payments---pays for reasonable and necessary medical and funeral expenses incurred by any persons injured while riding in your vehicle. Also pays for medical and funeral expenses for you and other family members injured in some incidents not involving your vehicle.

Rental reimbursement---pays for vehicle rental required if your vehicle is damaged or stolen.

Towing---pays for towing of your vehicle in the event your vehicle is disabled or you are locked out of your vehicle.

Gap --- if your vehicle is stolen or totaled, it pays the difference (or “gap”) between what you recover for the fair market value of your vehicle and any unpaid balance on your vehicle loan. NOTE: Ask about this coverage whenever you lease or purchase a new vehicle.

What to Do In Case Of an Accident

Call the police—probably. Unless it is a collision resulting in no injuries and less than \$1,000 damage to all vehicles, you should contact the police so that they can investigate and complete an accident report. If you determine it is a minor collision you and the other driver should exchange information about your respective driver's licenses, vehicle insurance, and vehicle identification (make, model, color, and VIN). Do not merely rely on the driver's verbal statements about this information. Be sure to actually view the other driver's driver's license, vehicle registration and, if possible, insurance card.

Move your vehicle from the roadway surface—possibly. If your vehicle is drivable and there are no injuries, state law requires you to move your vehicle out of the roadway and onto a shoulder or other nearby location. Otherwise, leave your vehicle and try to alert oncoming traffic of your vehicle's existence in the roadway by using highway cones or emergency flashers.

Make your own notes. While you are waiting for the police to arrive you can use the time to do some of the following: draw a diagram of the accident scene and the locations of the vehicles before and after the accident; record the time, date, and location of the accident; write a summary of how the accident occurred and the nature of any injuries or physical discomfort you experience after the accident; list the names and contact info for any witnesses; take pictures of the accident scene and vehicles.

Hold your peace. Do not make any comments or discuss the facts of the accident with anyone other than the law enforcement officer(s) investigating the accident.

Seek medical attention. If you are injured or feel that you have an injury, go to a local hospital or medical provider to be examined. It is better to be safe than sorry with respect to your health and physical well-being after an accident. It is important to have any injuries or complaints of pain documented, diagnosed, and treated by a medical professional. There is no official legal time limit as to when you must receive medical treatment as a result of an accident but delaying treatment can pose serious problems for your personal injury claim.

Get a copy of accident report. It may be several days before the report is available depending on the severity of the collision, depth of the investigation, and when the law enforcement officer completes and submits his or her report. In Greensboro you can obtain a free copy of your accident report by going to <http://p2c.greensboro-nc.gov/AccidentDetail.aspx>. Note this site only contains accident reports prepared by the Greensboro Police Department.

Contact a lawyer. Car accidents can present many issues and you need an experienced professional who can guide you through the process. You may not need a lawyer but why not contact one and make that choice after having a consultation with a lawyer? Most lawyers offer free initial consultations regarding personal injury cases.

Contact the insurance company. If the wreck was the other driver's fault and you have vehicle damage and/or personal injury, call that driver's insurance company to make your claim. There is no need to contact your own insurance company unless the other insurance company is being uncooperative or taking too long to process your claim. If you choose to use your own insurance company to handle the damage to your vehicle, be prepared to pay your deductible. NOTE: if you contact a lawyer, your lawyer will likely deal with the insurance company.

SPECIAL NOTE: Contributory negligence. North Carolina is one of a few states that applies the doctrine of contributory negligence. The doctrine essentially states that if a person making a claim of negligence against another is found to be at fault (even 1% fault is sufficient), that person is barred from any recovery. This doctrine is often used by insurance companies to deny claims where there is a dispute as to the actions of the drivers or individuals involved in the incident. Depending on the facts of your accident, you may need a lawyer to pursue your claim.

North Carolina Motor Vehicle Repair Act

The Act ((N.C.G.S. § 20-354, *et seq.*) applies to the majority of vehicle maintenance and repair except for tire purchases and installation. It does not apply to repairs and maintenance on vehicles over 26,000 pounds gross vehicle weight or to certain third party repairs.

Your rights:

- To receive a written estimate when the cost of repairs will exceed \$350 unless you (1) you sign a written waiver, (2) you leave your vehicle at the repair facility when it is closed, (3) a proper estimate cannot be provided until diagnostic work has been completed. In the event of (3), the repair facility has an obligation to provide you a written estimate once the necessary diagnostic work has been completed. NOTE: After you receive and review the written repair estimate, if you decide not to have the repairs or maintenance completed the repair facility can charge you for parts and labor for the diagnostic work and vehicle “teardown”. However, this charge is allowed only if the facility forewarned you of these potential costs in the written estimate or at the time you told the facility to reassemble your vehicle.
- To be told, in advance, if there will be a charge for preparing the estimate.
- To request inspection of any parts removed from your vehicle. This request must be done at the time you provide authorization for repairs to be performed on your vehicle.
- To retain all parts removed from your vehicle. You must request these parts by no later than two days after the vehicle repairs are completed.
- To receive a legible copy of any repair invoices for your vehicle. The invoice must have a statement of work or repairs performed, itemization of the nature and cost of all labor and parts required to perform the work or repair, and a statement identifying any replacement part as being used, rebuilt, reconditioned, etc.

The Act lists several prohibited acts and practices which include but are not limited to being charged for repairs not performed, misrepresentations as to the nature of repairs performed, or misrepresentations as to the safety or condition of your vehicle. Although violations of the Act do not constitute criminal offenses, you have the right to file a civil lawsuit and the potential to recover compensatory damages, case costs, court costs, and reasonable attorneys’ fees.

Vehicle Mileage and Odometer Disclosure

The North Carolina Vehicle Mileage Act (N.C.G.S. § 20-340, *et seq.*) provides valuable protection for consumers damaged by odometer alteration. The Act prohibits odometer-tampering as well as operating a vehicle with a disconnected or nonfunctional odometer. Note that the Act only applies to vehicles 10 years or older. Further the Act does not apply to large vehicles (vehicles over 16,000 pounds gross vehicle weight).

If an odometer is no longer able to register the correct mileage, it, state law requires the owner of the vehicle to reset the odometer to zero and post a notice on the driver's side door frame "...specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced." Alteration of an odometer is a felony and other violations of the Act constitute misdemeanors.

When transferring ownership of a vehicle, odometer disclosure can be made on the rear of the vehicle's title or on a standard North Carolina DMV Odometer Disclosure Statement. The disclosure must contain:

1. name and address of all sellers and buyers (or lessors and lessees);
2. identification of the vehicle;
3. statement of either the vehicle's mileage (no tenths of miles);
4. and certification by the transferring party that to the best of his knowledge the odometer reading
 - i. Reflects the actual mileage; or
 - ii. Reflects the amount of mileage in excess of the designed mechanical odometer limit; or
 - iii. Does not reflect the actual mileage and should not be relied on.

Sellers or dealers must keep a copy of an odometer disclosure statement for five years. Intentional violations of the Vehicle Mileage Act can be remedied by filing a civil lawsuit within four years of the date of the violation. The Act allows for the recovery of treble damages, case expenses, court costs, and reasonable attorneys' fees.