

## Car Law: From A to Z

Note: All information provided is for cases and matters occurring in North Carolina, unless otherwise stated. The information provided is not meant to be legal advice and should not be construed as such. Every case is different and you should seek the advice of an attorney to review and discuss your situation.

**A**s-is        The Uniform Commercial Code allows a seller to disclaim all warranties so long as the disclaimer is written and clearly understood by the prospective buyer. So be sure to get any promises in writing.

**B**uyer beware        Before purchasing any vehicle you should consider having a trusted mechanic inspect it for damage and problems. If you fail to have your vehicle inspected prior to purchase, you are taking a real risk especially if you do not get a warranty or vehicle service contract.

**C**ontract        When purchasing a vehicle you sign many documents which will constitute legally binding contracts. The rule of thumb to use is that you should read and understand every document you sign. Too often the document that you sign without understanding is the one that can come back to bite you.

**D**iminished value        If your vehicle is damaged and you have it repaired, you have the right to make a claim for the fact that your vehicle is now worth less than what it would be if it was not damaged. You should make your diminished value claim to the insurance company within 30 days after repairs are completed. There is no mathematical or legally recognized formula to calculate how much you would be entitled to but you should contact 1 or 2 local dealers and get a statement (written if possible) of how much they would pay to purchase your vehicle based on the fact it has sustained damage. The more damage, the less they or any buyer would pay for your vehicle hence the diminished value of your vehicle.

**E**xtended Warranty        This provides some additional protection for your vehicle.

**F**TC Used Car Rule        This applies to most vehicle dealers (those who sell over 5 vehicles in a 12-month period). The Rule requires dealers to post a Buyer's Guide in the window of every vehicle offered for sale. Sorry, no Buyer's Guide is required for motorcycles.

The Buyers Guide must be posted prominently and conspicuously on or in a vehicle when a car is available for sale. This means it must be in plain view and both sides must be visible. The dealer can hang the Guide from the rear-view mirror inside the car or on a

side-view mirror outside the car. He also can place it under a windshield wiper. The Guide also can be attached to a side window. A Guide in a glove compartment, trunk or under the seat is not conspicuous because it is not in plain sight.

The Guide must be printed in 100% black ink on white paper cut to at least 11" x 7 1/4." The Buyer's Guide tells consumers:

- whether the vehicle is being sold "as is" or with a warranty;
- what percentage of the repair costs a dealer will pay under warranty;
- that oral promises are difficult to enforce;
- to get all promises in writing;
- to keep the Buyers Guide for reference after the sale;
- the major mechanical and electrical systems on the car, as well as some of the major problems that consumers should look out for; and
- to ask to have the car inspected by an independent mechanic before they buy.

The dealer must provide you with an original or copy of the Buyer's Guide upon your purchase of the vehicle. It is a violation of federal law for a dealer to sell a used vehicle without a Buyer's Guide affixed on the vehicle.

**G**race period      People often labor under the misconception that there is an automatic grace period for vehicle payments or insurance payments. Unless your contract specifically provides a grace period one does not exist. A late payment or non-payment of a vehicle on which you are still making payments can be costly. The finance company/lender can repossess the vehicle or take other action as allowed under your retail installment sales agreement. A lapse in insurance will result in notification to the finance company/lender who can consider you in default of the loan and take contractual action including but not limited to "force placing" insurance on the vehicle and adding the premium to your vehicle payment. Strive to make your payments on time and keep your accounts in good standing.

**H**older Rule      This is a little known doctrine in federal law that may allow you to withhold payments on a vehicle which is giving you a headache. The Preservation of Claims and Defenses Rule (the "Holder Rule"), 16 C.F.R. § 433.2 was designed to allow consumers to achieve redress from the entities that were collecting their debts-- the assignee/holder of the consumer credit contract. The regulation required all sellers to insert a clause in every consumer credit contract. That clause provides that the holder of the contract is "subject to all claims and defenses which the debtor could assert against the seller...." Before you unilaterally decide to stop making any further payments, consult with a knowledgeable attorney to review your vehicle purchase documents, the facts of your situation, and legal options.

**I**mplied warranty    An implied warranty is one that is not specifically stated. With respect to vehicles, there are two implied warranties: implied warranty of

merchantability (promise the vehicle will do what vehicles are supposed to do—operate safely on the roads and highways) and implied warranty of fitness for a particular purpose (promise that the law says a seller makes when a customer relies on the seller's advice that the vehicle can be used for some specific purpose). Implied warranties cannot be excluded---but can be limited----if you are provided a warranty or a vehicle service contract. Implied warranties can only be excluded if the vehicle is sold “as is” with no warranty and a clear written disclaimer of implied warranties is provided to the customer at the time of the transaction.

**J**urisdiction            This can be an important factor in assessing the viability of pursuing your claims in court. In North Carolina there are three levels of trial court jurisdiction. Small Claims Court covers cases in which the amount in dispute is \$5,000.00 or less. District Court jurisdiction is generally for cases in which you are seeking \$10,000.00 or less. Superior Court is for more serious cases----damages in excess of \$10,000.00. In addition to considering which level of court you should file your case you must also assess in which county you can file. Some cases even require you to determine if your case should be or is required to be filed in Federal Court. In essence, when you have made the decision to go to court, contact a lawyer.

**K**nowledge            In failure to disclose cases, knowledge of the defendant can be a key element. The law recognizes two types of knowledge, actual knowledge and constructive knowledge. Actual knowledge is when the defendant is actually informed of material information (ex: title disclosure form, verbal statement) while constructive knowledge is where the facts and circumstances support the inference that the defendant should have known the material information (ex: inspecting a used vehicle and seeing water damage and rust stains). Fraud requires proof that the defendant intended to deceive you and thus you have the burden to establish what knowledge the defendant had of the facts to which he deceived you. Since knowledge is such an important issue in many vehicle cases and it is one that is easily denied, you may need an attorney to secure the testimony and evidence needed to obtain a favorable result in your case.

**L**emon Law            A powerful tool. First and foremost, the North Carolina lemon law statute (N.C.G.S. § 20-351. et seq.) only covers new vehicles. If your new vehicle has been in for warranty-related repairs on at least 4 separate occasions or for at least 20 business days in any 12-month warranty period, your vehicle is deemed a lemon. The problems with your vehicle must be material or major---no cosmetic defects or things that do not seriously affect the operation of your vehicle---and the problems must begin within the first 24 months or 24,000 miles of your ownership of the vehicle. The lemon law allows you to make a claim against the vehicle manufacturer (not the dealership or seller) to either provide you a substantial refund or an equivalent replacement vehicle and the law requires the manufacturer to pay your reasonable attorneys’ fees.

**Magnuson-Moss Act** Applies to new and used vehicles and other consumer items. The Act allows you to seek a refund or replacement vehicle after you provide the seller with a reasonable number of attempts to repair your vehicle. You may be required to submit your claim to arbitration before you can file suit. If you file suit, you are entitled to recover the reasonable costs of the litigation and attorneys' fees.

**Notice of default** If you are subject to a retail installment sales agreement (i.e. making payments on a vehicle) and the finance company/lender deems you to be in breach of the agreement, you could receive notice of default. Sometimes you are able to resolve the breach or default but this is not always the case. On some occasions, you may not even receive any notice of default—the finance company/lender may take immediate action. Lenders have been known to undertake wrongful repossession of vehicles based on clerical mistakes or a desire to “make an example”. If you do not believe that you are in default of the agreement, you should consult an attorney immediately to discuss your situation. Often an attorney can intervene or assist you in reaching an equitable and favorable resolution by reviewing the legal documents, your facts, and the applicable law.

**Odometer fraud** For all vehicles less than 10 years old, vehicle transferors are required to provide purchasers and lessors with odometer disclosure statements at the time of purchase. In North Carolina this is commonly done on the reverse side of the vehicle title. Bad guys roll back odometers and even make fraudulent representations as to vehicle mileage in an effort to maximize their profit in selling a vehicle. Such actions are against federal and state law. If you suspect you have been the victim of odometer fraud, you should obtain an official copy of your vehicle title from DMV and also consider obtaining a CarFax or Autocheck report. Be sure to contact an attorney as soon as possible. Serious penalties here including possible treble damages and attorneys' fees for you and criminal prosecution for the violator.

**Parts** Under the NC Motor Vehicle Repair Act you have the right to inspect and retain any parts removed from your vehicle [provided you make the request at the time you authorize repairs] and you have the right to receive an itemized invoice for all work performed which includes the cost of all parts used in the repair or service. It is a deceptive practice for a repair facility to misrepresent that certain parts are required to repair your vehicle. Another problematic practice is the unauthorized use of substitute, recycled, or remanufactured parts on your vehicle when the repair is pursuant to an insurance policy. Bad parts affect the performance, and in some cases, the safety of your vehicle.

**Question** When you go to purchase any vehicle, you should ask plenty of questions. Ask about the vehicle's history, condition, previous owners, any major defects, etc. If it is a used vehicle, ask if you can arrange to have your mechanic inspect the vehicle prior to you completing any paperwork to purchase the vehicle. Ask to take the vehicle on a test drive and possibly even to keep it for a day so you can get a feel for the vehicle's

handling and operation. Ask the seller if she has the owner's manual and any of the vehicle's service records. Ask the seller to pay for a warranty on a used vehicle. Ask as many questions as you feel necessary to make a well-informed decision. In deciding whether to purchase, consider the sellers' willingness to answer your questions and/or provide the information you have requested. Then once you begin the paperwork, ask questions about any forms or documents that you either do not understand or that seem incorrect or inconsistent. Ask questions now rather than later because, legally speaking, later may be too late.

**R**epair Act North Carolina has a Motor Vehicle Repair Act that establishes the rights of the consumer and the obligations of the repair shop/service facility. As a consumer you have the right to several things including the following: to receive a written repair estimate for estimates of repair over \$350.00, to inspect and retain any parts removed from your vehicle [provided you make the request at the time you authorize repairs], and to receive an itemized written invoice for parts and labor provided to repair/service your vehicle. Violations of the Act can lead to treble damages (see below) and court costs and attorneys' fees for you.

**S**alvage vehicle Under North Carolina law, a salvage vehicle has sustained damage for which the cost to repair exceeds 75% of the vehicle's value at the time of the damage. Sometimes it is referred to as a "totaled" or "total loss" vehicle. A salvage vehicle is not required to be taken to the junkyard; it can be repaired and put back on the highway but the vehicle title must be marked/branded to show it is a salvage vehicle. If a car has been salvaged, that information must be disclosed in writing before the car is sold.

**T**reble damages If the facts and evidence in your case indicate you were the victim of unfair or deceptive acts regarding your vehicle-related problem, the court has the power to award you three times the amount of your actual compensatory damages. Treble damages most often occurs in cases of fraud such as odometer rollbacks or failure to disclose vehicle damage but can also be appropriate in cases with extremely egregious violations of law or bad conduct by the defendant(s).

**U**niform Commercial Code This is a set of rules that applies to commercial transactions including vehicle sales and leases. The UCC has ten articles and some of them provide useful rights and remedies applicable to vehicle-related problems. Repossession, required contract language and disclosures, defenses against making vehicle payments on a defective vehicle, and liens are just some of the topics covered within the UCC.

**V**ehicle Service Contract Often called an "extended warranty", a vehicle service contract may give you the same rights as if the seller had provided you with an actual warranty. If, at the same time as or within 90 days of you acquiring your used vehicle, you purchase a separate service contract from the selling dealer, the Magnuson

Moss Warranty Act can provide you with valuable rights regarding your defective vehicle. A key requirement for coverage under the Act is that you purchased the warranty or service contract from the dealer.

**W**arranty Used in its properly intended context, a warranty is the guarantee you receive from the manufacturer when you purchase a new vehicle. The warranty provides you with legal rights including the ability to obtain a refund or replacement vehicle if your vehicle turns out to be a lemon. However, the word “warranty” is often used to describe any promise or assurance made by a seller to a buyer of a consumer product. American law values the right for individuals to engage in contracts so there are federal and state laws that preserve the integrity of warranties while establishing requirements and some restrictions on warranties.

**EX**pert Cases involved motor vehicle repairs and vehicle defects often require the use of experts to testify as to the nature and causes of the vehicle problems and any repairs contemplated, needed, or actually performed. You may need to hire an expert to help establish that a defendant rolled back or otherwise altered your vehicle’s odometer reading. Vehicles are complex creatures and the right expert can make or break your vehicle case. Believe it or not, you may even need an expert to testify about illegalities and improprieties in a vehicle financing/consumer fraud case. Speaking of experts, in considering your case you should consult an attorney who has some level of experience with vehicle cases. The attorney can help locate or determine which experts will be needed to investigate and prosecute your case.

**Y**o-yo Sale Often called “conditional delivery” or “spot delivery”, this is legal under North Carolina law however the dealer/seller must disclose to you in clear, written form any conditions under which he has delivered the vehicle to you (usually that you are able to obtain financing for the vehicle). If you have possession of a vehicle, new or used, and get word from the dealership that “there is a problem with the financing” or that you “need to bring the vehicle back”, you should review your retail installment sales agreement and other purchase documents to see if there is any conditional delivery language. If you have any questions or are unsure, consult an attorney *before* you take the vehicle back to the dealership.

**Z**ealous Any attorney you retain to represent you regarding a vehicle issue (or any legal issue) should be a zealous advocate for your rights. Zealous means to fight vigorously and with active interest. Obviously knowledge is power for you and your attorney so be honest with your attorney, provide all relevant documents, and good luck with your case.

*---For more information on your rights, visit [www.oneallawoffice.com](http://www.oneallawoffice.com). If you have questions regarding a vehicle issue or would like a free consultation, contact Attorney John O’Neal of the O’Neal Law Office.*