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Car buying 101

WHAT LEMON-LAW ATTORNEYS WISH YOU KNEW BEFORE YOU BUY A CAR

In an age where we have the power of the internet at our fingertips, why do we research where to eat for dinner more than a five- or six-figure car purchase? A combination of cute car commercials and a lack of education on what a car purchase entails might be to blame, and, as lemon-law attorneys, you could say our continuing education on this topic involves seeing the mistakes thousands of car buyers make on a regular basis. Luckily, a little bit of education can go a long way towards avoiding problems down the road, so here are our best tips to keep your investment protected and what to expect if your car really is a lemon.

Before your car purchase

The worst thing you can do is walk into a dealership expecting the car salesman to have your best interests in mind, so the best way to make sure you're walking out of the dealership with a vehicle and deal you're happy with is to come prepared.

Research

To start getting ideas on what brands tend to be the least problematic, we recommend taking a look at the Frontier Group's auto-lemon index, which can be found with a quick Google search. Every four years, Frontier Group puts together data on what brands have the highest likelihood of being involved in lemon law claims in California. Another great resource is J.D. Power's Annual Vehicle Dependability study. In addition to ranking auto brands in terms of reliability, this study also has insights on the most common problems affecting vehicles overall, as well as their top models for different categories from premium SUV to compact cars to minivans.

Once you have a general idea of what you are looking for and have narrowed down your options, you can perform

more detailed searches on the National Highway Traffic Safety Administration website at [NHTSA.gov](https://www.nhtsa.gov). There you can plug in different year/make/model vehicles and learn more about common customer complaints, recalls, and investigations pertaining to the car you are re interested in. As lemon-law attorneys, we generally see patterns of lemons, so we recommend plugging in the previous three model years of the vehicle that you are intending to buy in order to get a better understanding of any common problems with that model.

Last but not least, you will want to run a Google search for the make and model of car that you're interested in and the words "class action." Manufacturers don't tend to fundamentally change their vehicles from year to year, so if the brand you're interested in has had class actions for their engines for over a decade, that's an important detail to know before you sign a five- or six-figure contract for that car.

Where to buy

We get it, sometimes you find your dream car, but it's in another state. Or, for others, you're trying to find a way around the aggressive California sales tax.

But saving some money on the front end could end up costing you your whole investment if your car ends up being a lemon. This is largely because of venue issues – i.e., which state's laws will end up applying to your case. California has one of the most robust lemon laws in the country, but if you bought your car in a state with a limited lemon law, you could be in big trouble. Although the law on this is complicated, save yourself a headache and only buy vehicles in California to make sure you are protected under California lemon law.

New, used, or certified pre-owned

Both purchases and leases can qualify for the lemon law, so the more important

question is whether you should buy a new, used, or certified pre-owned vehicle. From a lemon-law perspective, your best option will always be buying brand new. You'll have the longest warranties if you buy new. Buying new means that you'll also be protected under the lemon law for the longest period possible.

The second-best option is to buy certified pre-owned. However, you must make sure you're buying a *real* certified pre-owned vehicle. A lot of used car dealerships throw around the phrase "certified pre-owned" when, in the eyes of the law, it's not. A true certified pre-owned vehicle will be one that is sold by a name-brand dealership that specializes in selling that particular brand of vehicle. For example, you can only get a true certified pre-owned Ford from a Ford dealership. This is because only those dealerships are authorized by Ford to sell certified pre-owned vehicles that come with a "new" certified warranty from Ford. (And, while we're on the topic of who you're buying your car from, do not buy your vehicle from someone you met online. Private party sales do not qualify for the lemon law, so make sure to buy from a dealership instead.)

Rodriguez v. FCA US LLC

That brings us to the riskiest option: buying used. In the recent case *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, the California Supreme Court held that consumers can no longer seek a restitution or replacement remedy against the manufacturer if the vehicle was used, regardless of whether the vehicle still had an unexpired manufacturer's warranty. This case has all but gutted used-car lemon-law cases in California.

Warranties

Having an understanding of the warranties that come with your vehicle is

crucial to knowing where you stand under the lemon law. There are generally three types of warranties: manufacturer warranties, dealership warranties, and extended warranties.

Most of us are familiar with the standard manufacturer's warranties like the bumper-to-bumper warranty and the powertrain warranty. These warranties are provided to car buyers at no cost as part of their vehicle purchase. The bumper-to-bumper warranty tends to cover most components in your vehicle like electrical, infotainment, and air conditioning. The powertrain warranty, on the other hand, covers the major and most expensive components in your vehicle, like the engine and transmission.

The second most common warranty is an extended warranty – but don't be fooled by the name. Most extended warranties only promise to keep paying for the repairs on your vehicle, but there usually aren't any consequences if they can't actually fix your vehicle in a reasonable amount of time. Contrary to popular belief, extended warranties are not going to give you lemon-law rights in the same way as manufacturer or dealership warranties would.

That brings us to dealership warranties. Used car dealerships are required by law to provide used-car buyers with a document called the "Buyers Guide." This document shows you what, if any, warranties the dealership is providing you with your vehicle purchase.

Pro tip: If the dealership is selling the car to you "as is," be careful. When they sell it "as is," they're saying that the second you sign the purchase contract, you're on your own as to any problems and repairs the car needs. This is hardly the sort of reassurance you should get from a dealership that is swearing up and down that the car is so reliable they'd even put their own grandmother in it.

You're more likely to get a better quality vehicle if the dealership is willing to put their money where their mouth is and provide you with a warranty. True

dealership warranties are free and typically only last 30-90 days, but those warranties are what will protect you if the car is unable to be repaired during that time.

Last but not least, if you absolutely insist on buying used, check the fine print on the Buyer's Guide for one of the most important rights you have as a used car buyer: the right to have the car inspected by a mechanic of your choice *before* you buy the car. Sometimes you don't even need to go through with the inspection. We've had clients tell the salesman that they want a pre-purchase inspection – and the defensiveness with which the salesman reacted told our clients everything they needed to know about the true quality of that car.

Aftermarket warranties and other additions

Especially since COVID, dealerships have been more aggressive with "take it or leave it" aftermarket addition packages on vehicles, but it's important to know what agreeing to those add-ons can mean for your car and your lemon law case.

A common add-on is an extended warranty. If you're leasing a car or tend to trade in your cars after a few years, extended warranties likely won't be worth it to you because they don't go into effect until after your manufacturer's warranties expire. That means for most cars, an extended warranty won't go into effect for five years or 60,000 miles. The other consideration is whether your car is likely to have repairs that are more expensive than the cost of the extended warranty itself. For example, a \$5,000 extended warranty on a Toyota may not make as much sense considering the reliability of the brand and the cost of repairs, but that same extended warranty on a Land Rover could be a fantastic investment.

From a lemon-law perspective, we don't recommend theft-deterrent devices because they tend to mess with components on your vehicle. If the dealership finds that the problems with your car are related to the theft-deterrent device, that can void your warranty coverage, and worse, ruin your chances of being able to "lemon" your car. What's

worse, some of the terms of these theft deterrents say they won't pay you anything if your car is found within 30 days or will only pay you pennies on the dollar if your car is unable to be found, so make sure to read the fine print before agreeing to have a theft-deterrent device installed in your car.

Last but not least, GAP insurance is the only aftermarket addition we recommend because it provides the most protection for situations that actually happen regularly, namely car accidents. Typically, your car insurance will cover the value of your car at the time of loss, and considering how quickly cars depreciate, chances are your car loan will exceed the car's value at the time of loss. That is where GAP insurance can "bridge the gap," so that you are not stuck paying for a car that has been completely totaled or stolen.

Are aftermarket additions refundable?

The lemon law recently went through its biggest change since its inception and as of the time of the writing of this article the lemon law is currently in a state of limbo. Under the "old" version of the lemon law, manufacturers did not have to reimburse vehicle owners for extras added to a vehicle contract such as extended warranties, GAP insurance, theft deterrents, surface protection, etc., meaning if those extras were included in the financing of the vehicle, they could actually be deducted from a vehicle owner's settlement.

However, with the new version of the lemon law under Assembly Bill 1755, these extras are now reimbursable as long as they were included in the original purchase or lease agreement for the vehicle. The only caveat is that as of right now, the legislature is considering an amendment to Assembly Bill 1755 via Senate Bill 26 that would allow manufacturers to choose whether to stick with the old law or go with the new law. The choice of law will have a big impact on the bottom line for vehicle owners with their lemon law settlements, so it's something to keep an eye on when deciding what brand of car to go with in the future.

During your vehicle purchase

Even the most well-researched car-buying plan can get derailed if you let your guard down at the dealership.

Timing

The car-buying process is a marathon, not a sprint. I recommend going to the dealership in the morning so that you're well rested, won't be rushed into signing something you haven't had a chance to read thoroughly, and there is enough daylight for you to thoroughly inspect the car you're going to be buying before you sign on the dotted line. Car salesmen have the reputation they have for a reason. They don't care about you; they care about their bottom line. You have to advocate for yourself.

Test drive the actual car you're buying

Not all cars of a particular model are lemons, so it's important to test drive the actual car you're buying. The last thing you want to happen is to test drive one car that feels fine, but then decide on getting that same car in another color without test driving that car before buying. As for the actual test drive itself, make sure to drive it in residential areas and on the freeway to get a feel for how the car handles at different speeds. Pro tip: Spend part of your test drive with the radio off so you can hear any weird noises the car makes. It is difficult to prove a car is a lemon based on noises alone, so if you hear something, it's best to move on and continue your car search.

Read the paperwork you're signing

In the age of e-signatures, it's common for dealerships to ask you for signatures without you actually reading what it is you're signing off on "because they're all standard forms." Don't be afraid to ask them to provide you with the complete document you'd be e-signing for review before signing. Most importantly, make sure you're reviewing the purchase or lease agreement line by line to make sure you understand every single charge that is listed.

In situations where there are cosmetic issues, the dealership is promising to fix for you after you buy the car, make sure it is written down on a document called the

Due Bill. Talk is cheap; make sure any promises they're making you are in writing.

Last but not least, before you walk out of the dealership, make sure you have copies of the actual terms of any warranties you have. You need to be able to know who is providing the warranty, how long the warranty is, and what's included or excluded from the warranty. It's not enough to just "know" you have a five-year/60,000-mile powertrain warranty, you need the written proof of that warranty to protect yourself in case something goes wrong with your car. This is especially important when it comes to certified pre-owned vehicles.

When is my car purchase final?

Believe it or not, your car purchase isn't final when you sign the contract, and it isn't even final when you drive off the lot. There is fine print in most purchase contracts about the seller's right to cancel. What this provision says is if the dealership can't assign your contract to a lender within 10 days, the dealership can cancel your contract and require you to bring the car back. If the dealership cancels within 10 days, you are required to return the car to them, and they are required to return your down payment to you to make it like the deal never happened. If this happens to you, my advice is to work with a bank directly to see what type of financing you qualify for, and then go back to renegotiate based on the terms you've already been approved for.

Unfortunately, dealerships tend to try to exploit this provision and may try to cancel after 10 days, or they may tell you that you have to sign a new contract with terms that benefit them and not you. This is called the yo-yo financing scam because they'll let you leave with the car, but then they'll reel you back in to try to sign a new deal. If they try to get you to sign a new contract, whether it is before or after 10 days have passed, know that you do not have to sign a new contract! They can never force you to sign a new contract if you don't want to.

Pro tip: Keep any mail, including the envelopes, for anything you receive from the dealership. I've seen dealerships backdate letters to try to fall within the 10 days even though the letter was actually mailed out several weeks later.

After your vehicle purchase

So, you're having problems with your car, and you may have even taken it in for repairs a few times, does that mean your vehicle is a lemon? Short answer: maybe. The Song-Beverly Consumer Warranty Act – commonly referred to as California's lemon law – provides robust protections for consumers who purchase defective vehicles. To give you an idea of what rises to the level of being a lemon under the law, let's talk about how to build a strong claim in the first place.

Documenting vehicle problems

When your vehicle starts malfunctioning, begin documenting the issues immediately. We recommend taking detailed notes, including dates, times, and the specific circumstances under which the problems occur. For intermittent or hard-to-describe problems, such as dashboard warning lights or unusual noises, take photos and record videos whenever safe and feasible. Keeping detailed records helps you to clearly express your concerns to the dealership and will also be useful if you are forced to file a lawsuit. It is also important to act quickly to have your concerns addressed because waiting can make the problems worse and might allow the dealership to claim that your delay contributed or even caused the problems.

If your vehicle is still under the manufacturer's warranty, it's essential to take it to a name-brand dealership authorized by the manufacturer to perform repairs. This not only helps you avoid paying for repairs that should be covered under warranty but also protects you if you need to proceed with a lemon law lawsuit against the manufacturer. By taking your vehicle to a manufacturer's authorized repair dealership, you are giving the manufacturer an opportunity to repair the vehicle according to the warranty terms.

Repair records you'll need

For example, when you visit a dealership, all of your concerns must be documented on what is commonly referred to as a work order. Before signing this document, review it carefully and ensure all issues you reported are accurate. If something is missing or incorrect, ask for corrections before proceeding. Once repairs are completed, you should receive a repair order or invoice detailing what was done by the technician – including whether they were able to verify your concerns, what repairs were performed, what parts were replaced, whether the repairs were covered under warranty, and how long your car was at the dealership.

Review this paperwork thoroughly before leaving the dealership. If any corrections need to be made or if you have any questions about what is listed, it's best to address your concerns before signing off on the final invoice. These documents are the most important evidence in lemon law claims.

Common causes of action: Breach of implied warranty

The implied warranty of merchantability is a legal protection that ensures products sold by merchants meet minimum quality standards. For a vehicle to be considered merchantable, it must be fit for the ordinary purposes of which such goods are used but what does that actually mean? For example, the court in *Isip v. Mercedes-Benz USA* (2007) 155 Cal.App.4th 19, rejected Mercedes-Benz's attempt to define a vehicle as unfit for its ordinary purpose only if it does not provide transportation from point A to point B. Instead, the court found that a vehicle that smells, lurches, clanks, and emits smoke over an extended period of time is not fit for its intended purpose, regardless of whether the vehicle is technically still drivable. Similarly in *Brand v. Hyundai Motor America* (2014) 226 Cal.App.4th 1538, the court found that a vehicle whose sunroof would spontaneously open and close while the vehicle was being driven could constitute a breach of implied warranty.

Common causes of action: Obligations based on a breach of express warranty

The Song-Beverly Consumer Warranty Act imposes service and repair obligations on those who provide express warranties such as a bumper-to-bumper warranty or a powertrain warranty. Unlike with implied-warranty claims, for claims based on obligations arising from a breach of express warranty, the vehicle owner must give the warrantor an opportunity to repair the vehicle to qualify for lemon-law protections. Civil Code section 1793.2, subdivision (d) then mandates that if a manufacturer or its representative cannot repair a new motor vehicle to meet express warranties after a reasonable number of attempts, they must either promptly replace the vehicle or promptly provide restitution to the buyer.

So, how many repair attempts is considered reasonable? As explained in Judicial Council of California Civil Jury Instructions (CACI) 3202, each time a vehicle is taken to the warrantor's authorized repair dealership counts as an opportunity to repair even if no repair work is completed. To determine whether a warrantor was given a reasonable number of opportunities to repair the vehicle, all circumstances surrounding each repair visit must be considered. Generally, the warrantor must be given at least two opportunities to fix the vehicle; however, under certain circumstances even one opportunity could be considered reasonable if, for example, only one repair attempt was possible because the authorized repair dealership refused to attempt further repairs.

The Tanner Consumer Protection Act, part of Song-Beverly, provides guidelines for determining what constitutes a "reasonable" number of repair attempts. It provides a rebuttable presumption that a reasonable number of attempts has been made if, within 18 months or 18,000 miles (whichever comes first) from having purchased or leased the vehicle one of the following occurs: two repair attempts for a substantially impairing defect likely to

cause death or serious injury with written notice provided to the warrantor; at least four repair attempts for the same substantially impairing defect with written notice provided to the warrantor; or the vehicle was out of service for more than 30 days due to repairs of the substantially impairing defect.

Proving a defect "substantially impairs the use, value, or safety" of a vehicle is a critical aspect of most California lemon law claims. Although the term "substantially impairing" lacks a precise definition, there are several factors outlined in CACI 3204 that should be considered in determining whether a defect is substantially impairing. These factors include the nature of the defect, repair costs and time, success of past repair attempts, vehicle usability during repairs, and alternative transportation availability. Notably, these factors must be evaluated within the context of a reasonable person in the vehicle owner's situation. For example, a vehicle's GPS intermittently failing might not substantially impair the vehicle for most people, but for a car owner with a brain injury who heavily relies on the vehicle's GPS, that defect could be substantially impairing.

Common causes of action: Breach of 30-day rule

Another common way in which manufacturers breach their obligations under Song-Beverly is by violating Civil Code section 1793.2, subdivision (b) in failing to begin repairs within a reasonable time or to complete repairs within 30 days. Failure to meet this timeline may constitute a breach, but does not automatically entitle consumers to repurchase or replacement unless the manufacturer has been given a reasonable number of repair opportunities.

Remedies: Repurchase

The most commonly sought-after remedies in California lemon law cases are restitution, often called a repurchase or a buyback, or a replacement. A repurchase means the manufacturer refunds your down payment, payments, reasonable rental, towing, and repair

expenses, and pays off your vehicle loan in exchange for you returning the vehicle to the manufacturer.

There are, however, a few deductions that manufacturers are entitled to, the first of which is a mileage offset based on the “trouble free” miles on the vehicle before it was taken to the dealership for repair for the defect it is being repurchased for. Secondly, prior to 2025 the manufacturer was not required to reimburse vehicle owners for optional additions such as extended warranties or theft deterrents so if those items were included in the financing of the vehicle, they were often deducted from the vehicle owner’s repurchase settlement. However, with the “new” lemon law resulting from Assembly Bill 1755, the manufacturer now cannot deduct the costs of those additions as long as they were included in the original purchase or lease agreement. With repurchase settlements, the manufacturer is obligated to pay for your attorney’s fees and costs.

Remedies: Replacement

As an alternative to the repurchase remedy, a buyer may seek to obtain a replacement, returning the lemon in exchange for a new vehicle that is substantially similar to the vehicle being replaced. However, we generally don’t recommend a replacement because unlike a repurchase in which your mileage offset is deducted from your total refund, with a replacement the buyer has nothing to offset that deduction, which results in them having to write a check for that amount to move forward with the replacement.

In addition, replacements often involve lengthy processing times and when an older model year vehicle is involved, this remedy is often unfeasible. Just like with a repurchase, the manufacturer is also obligated to pay for your attorney’s fees and costs with a replacement deal.

Remedies: Cash and keep

Although not specifically outlined as an available remedy within Song-Beverly, manufacturers sometimes offer what is commonly referred to as a “cash and keep” settlement, as an alternative to

restitution or replacement. In a cash and keep settlement the buyer keeps the vehicle and continues to be responsible for payments on the vehicle loan but receives a lump sum payment as compensation in exchange for dismissal of the lemon lawsuit and generally, a waiver of future lemon law claims. There are no separate attorney’s fees in cash and keep settlements, so attorneys typically charge a percentage of the total cash settlement as compensation. The way in which cash and keep settlements are calculated vary, but typically involve consideration of the vehicle’s resale value.

Additional damages: Incidental damages

Buyers are also entitled to compensation for incidental damages, which cover reasonably incurred costs in dealing with the defective vehicle. These costs can include expenses such as towing costs, rental car costs, registration renewal fees and insurance premiums related to property damage. However, as to registration renewals and insurance premiums related to property damage, a vehicle owner isn’t automatically entitled to all of those expenses throughout their ownership of the vehicle; rather they are entitled to those expenses incurred after the vehicle qualified as a lemon which is when the manufacturer’s obligation to repurchase or replace the vehicle arose.

Additional damages: Civil penalty damages

Although there are no pain-and-suffering damages in lemon law, Song-Beverly imposes civil penalties of up to twice the buyer’s actual damages to deter manufacturers from failing to comply with their obligations under the lemon law. A buyer is entitled to civil penalty damages where the manufacturer willfully disregarded its duty to repurchase or replace the vehicle once the vehicle qualified for lemon-law protections.

Although the manufacturer has an affirmative duty to repurchase or replace a vehicle once it meets lemon law criteria, one of the most effective ways to build a civil penalty case is to give the manufacturer the opportunity to do the right thing by explicitly asking them to

repurchase or replace your vehicle. If they do, great; however if they refuse to or fail to promptly do so, you have a great set of facts showing that they had the opportunity to comply with the law yet they willfully chose not to do so.

How long do I have to file a claim?

The new changes to California lemon law have significantly altered the statute of limitations for claims. Previously, consumers had a general four-year window to file, typically starting from when the vehicle qualified for lemon law remedies. The revised statute, while providing more clarity, introduces two deadlines that may limit consumer options.

The first deadline is tied to the expiration of the express warranty, giving consumers one year after this point to file a claim. For vehicles with problems covered under longer warranties, such as a five-year powertrain warranty, this effectively extends the filing period to six years from delivery. However, for shorter warranties like three-year or 36,000-mile bumper-to-bumper warranty, consumers face increased pressure to act swiftly once the warranty expires if they experience covered defects.

The second deadline is aimed at older vehicles and is six years from the date of original delivery. This second deadline will have its biggest impact on certified pre-owned vehicles as well as vehicles with longer warranties, like Kia’s 10-year or 100,000 mile powertrain warranty, as it will be limiting the amount of time for vehicle owners to build and file a claim to six years regardless of whether there is warranty coverage past the six-year mark. For example, with a certified pre-owned vehicle the six-year statute begins to run when the first owner of the vehicle took delivery, not when the second owner took delivery, often leaving a vehicle owner with only a year or two at best of lemon law protection depending on how old the vehicle is.

When to consult an attorney

Navigating lemon law independently is possible but challenging – especially

given the likelihood that manufacturers may soon have the ability to choose what version of the law applies to them if Senate Bill 26 is passed. What's worse is that many dealerships will try to take advantage of vehicle owners by saying they'll "buy the car back" when in reality, they're having the vehicle owner trade-in the lemon at a loss, and then making money off the vehicle owner both by reselling the lemon to another unsuspecting buyer and by selling the vehicle owner another car.

On the other hand, if the manufacturer offers to buy your vehicle back, how would you know if you're leaving money on the table or whether the manufacturer is complying with all its obligations under the law? It's better to be safe than sorry, so if you ever receive any type of offer from a dealership or manufacturer or have any questions about whether you qualify for the lemon law in the first place, run it by a lemon-law attorney. Lemon-law attorneys not only work on contingency, their fees and costs

are covered under a one-way fee-shifting provision, meaning that, provided they win your case, the vehicle manufacturer has to pay your attorney's fees and costs.

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