

EIGHT MISTAKES TO AVOID WHEN PURSUING A LEMON LAW CLAIM



Consumer Awareness Guide

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1st Mistake to Avoid: Yelling at repair personnel and/or manufacturer representatives about your defective vehicle and its repair issues.

One of the most frustrating things in life is dealing with a defective supposedly “new” product. We get it. You paid a premium price for a *new* vehicle so you wouldn’t be forced to deal with *used* vehicle problems. It’s infuriating when you’re getting a vehicle repaired over and over again and it just keeps breaking down. It can add fuel to the fire when mechanics can’t find the problem or



even try and blame you for the product being defective. After things like this happen it is easy to become emotional, especially if you are experiencing a safety issue that you feel is putting you or your friends and family in danger. Although it may feel good in the moment to vent your frustration at the mechanic or the manufacturer’s customer service representative by raising your voice or yelling, **please do not ever do that!**

The reason why is simple—there are three things a consumer like you needs to win in a civil legal action where some type of compensation is being sought:

- ✓ **the facts** that show you are entitled to legal help (too many repairs or too much vehicle downtime);
- ✓ **the law** that applies to those facts (the Lemon Law); and
- ✓ **being a likable claimant.**

In court, guess which one of those three is the most important to a jury? That’s right—**being a likable claimant**. Of course, it shouldn’t be this way. Only the facts and law should matter. But we are dealing with human beings and human nature. In court, you are asking random strangers who normally don’t like lawsuits to order a company to compensate you. A jury is unlikely to do that if they feel you are a nasty person who is getting what you deserve because you’re being rude to others. Even if you are *totally* justified in being angry, studies of jurors routinely show that they are turned off by angry people and view them as unreasonable. We can complain about this fact or learn how to deal with it constructively, because manufacturers are well aware of this dynamic with jurors and will use it against you. They know that someone who has a history of losing their temper is unlikely to win a civil case if the matter ends up in court. Because of that

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the company is less likely to make a fair settlement offer out of court, or even worse, might not make any offer at all.

So please, no matter how bad a repair situation gets, do *not* take it out on repair personnel or the manufacturer's representatives. We suggest venting about these issues privately to family, friends, and/or your attorney, if you decide to hire one. Always ask yourself before reacting emotionally and losing your temper: *do I prefer to express my frustration and anger, or do I prefer to get out of this vehicle problem so I don't have to keep dealing with it?* Remember—you catch more flies with honey than you do with vinegar!

2nd Mistake to Avoid: Threatening repair personnel and/or manufacturer representatives that you are going to hire an attorney or file a Lemon Law claim.

After dealing with numerous to repeated defect problems that take too long to repair, most people reach a tipping point of being fed-up. If the dealer or manufacturer is unwilling to assist with getting you out of your Lemon vehicle, your first instinct may be to *threaten* to pursue a Lemon Law case or to hire an attorney. There are several reasons why you should NEVER do that:

- ✓ First, remember the point about being a likeable claimant and the fact that being rude or making threats will actually hurt your ability to get you out of this problem.
- ✓ Even if your vehicle has been in the repair shop a long time or numerous times, you will need a complete repair history and *all* of your vehicle repair records to pursue a Lemon Law claim. If you threaten an attorney or a Lemon Law claim, the dealer will go into defense-mode and could alter the records and *minimize* the repair issues or *fail* to document some of the problems.

Some typical ways they do this include: claiming that repairs were done for “goodwill” or not covered under warranty; claiming that the repair issues complained about “could not be duplicated”, there was “no problem found”, or the vehicle was “operating as designed”; or admitting there *is* an issue, **but blaming you for it**. All this greatly complicates proving a Lemon Law case as a he-said/she-said situation is much more challenging to prove the defects and repair history experienced by you compared to **having repair records where the vehicle issues are well documented and admitted**. Repair records are the number-one piece of evidence in Lemon Law cases and you don't want the records tampered with before they are given to you.

- ✓ Similarly, if you make threats to the actual manufacturer through its customer service representatives, it could flag your vehicle in its internal system, which may result in the same shenanigans with repair records or difficulty obtaining repairs. The *best* course of action is to bite your tongue and make sure you have complete records of everything that was done to diagnose and repair your vehicle under warranty. Then **you will have the ammunition you need to pursue a Lemon Law claim** for a refund or repurchase, or a breach of warranty claim for cash compensation.

3rd Mistake to Avoid: Publicly bashing the manufacturer on the Internet.



With social media (Facebook, Instagram, Twitter, Google +, Snapchat, etc.) it is easier than ever to share events in your life, whether they are positive or negative. If you're having repeated repair problems with a vehicle, you may be tempted to post about it on social media and to bash the manufacturer for poor customer service and/or making a bad product that can't be repaired properly.

But **just as it is easier than ever to post online in a moment of frustration or anger, it is also easier than ever to locate these old posts online, even *if* deleted.** As such, manufacturers can *quickly* find out if you are disparaging them and their vehicles. If a company is upset by a negative post or publicity about it, it may decide to refuse to try and settle a Lemon Law claim out of court and make a point by waging a court battle against you. Keep in mind that things you post online may also be used *against* you in court.

For these reasons it is best *not* to make any online postings about your vehicle situation. Of course you have the right to express your opinion, but if your goal is to resolve the issue and be rid of a defective product, it is better to see the forest through the trees and to keep your focus on fixing the problem, not making things worse. You're dealing with a *very* large company that has the power to quickly and easily provide you a repurchase, replacement, or cash compensation *if* it cooperates, but can give you *nothing* and spend lots of money in court fighting you if you antagonize it.

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4th Mistake to Avoid: Trading out of or selling your vehicle prior to a Lemon Law or breach of warranty resolution.

We've had consumers come to us with rock-solid Lemon Law cases, but when we find out they sold or traded out of their vehicle before contacting us, we have no choice but to decline the case. Unfortunately, **the sale or trade of your vehicle prior to a Lemon Law resolution will cause you to lose your case before it's even started.** Here's why—in order to have your vehicle bought-back or replaced under the Lemon Law, you must retain legal ownership of it, so the vehicle can be returned to the car, van, or truck company (via its local dealer). If you have sold or traded out of your vehicle, you no longer have it to give back to the company, which means you've *destroyed* your Lemon Law claim and your chances of receiving the cash compensation the law entitles you to.

If you feel that it is absolutely necessary to trade or sell your vehicle while the Lemon Law claim is ongoing—such as if it's a *major* safety issue and you can't afford another vehicle—you should notify your attorney ahead of time so that he or she can try and negotiate a cash compensation settlement before you get rid of the product. Once you have a signed settlement agreement for cash compensation, you can safely get rid of your vehicle while waiting for the settlement check. Holding off on trading out of or selling your vehicle while you have an attorney handling your Lemon Law or breach of warranty case can lead to a good chance of thousands of dollars in compensation to you.

5th Mistake to Avoid: Stopping to get your vehicle repaired or delaying getting your vehicle repaired if it is not repaired properly or the dealer has had trouble diagnosing the repair issue.

You're sick and tired of going to the repair shop over and over again for problems that don't get repaired. After all the time in the repair shop, you feel like you shouldn't have to keep going out of your way and turning your schedule upside-down to seek repairs that don't repair the problem or take way too much time. We feel your pain, but don't give up! Don't fall into the trap of failing to take your vehicle back in for repairs when it is not properly repaired or the dealer can't locate the problem.

We call it a trap because if you do not continue to seek out repairs and the problem gets worse or your vehicle falls apart completely, all of a sudden the manufacturer will have a defense it did not have before. **It will claim that you *abused or misused your vehicle by not seeking warranty repairs when you knew there was something wrong with the product.*** Keep in mind, every repair attempt makes your case legally stronger.

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The more *repairs* you have, the more *time* in the repair shop, and the *harder* it is for the manufacturer to defend the case and argue the product is not really defective. That gives you a *better* chance of getting your vehicle bought back or replaced under the Lemon Law or alternatively a *better* chance of getting higher cash compensation. If this were a card game, think of each additional repair attempt or day in the repair shop as giving you a *stronger* hand to play. But we realize this is not a game—it's real life. In the end, it is about experiencing **short-term *pain* (dealing with the inconvenience of continuing to seek out repairs) for the **long-term *gain*** of getting the "Lemon" *out of your life* with a repurchase, new vehicle replacement, or higher cash compensation.**

6th Mistake to Avoid: Having an unauthorized repair shop do repairs on your vehicle, which could *void* your warranty.

When you are repeatedly seeking repairs at a manufacturer's authorized dealership that don't ultimately repair the problem, you may be tempted to seek repairs at an independent (non-manufacturer) repair shop just so you can finally have the vehicle properly fixed. Resist this temptation! Besides being charged out of pocket for such repairs, **getting repair work done at a non-authorized repair shop could *void* your warranty**. The one exception to this advice is obtaining only a *diagnosis* (not a repair) to document and explain the source of the issue you're experiencing when a dealer is not confirming a problem. That can be helpful to show there really *is* a problem even if the dealer has previously been unable to pinpoint or diagnose the cause and source of the defect.



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7th Mistake to Avoid: Not responding to your attorney about your claim in a *timely* manner.

One of the biggest mistakes you can make is to not respond to calls or emails from your attorney or your attorney's staff. Most people are busy and have a lot going on in their life. There's pre-planned vacations, special events, or illness and emergencies that come up. That is perfectly understandable and you don't have to place your life on hold if you pursue a Lemon Law claim. As long as you communicate with your attorney about these issues, it should not be a problem for your case.

With that being said, one of the worst things you can do when you have a pending Lemon Law claim is to disappear without telling your attorney what's going on. We have had clients who don't respond to calls and emails for weeks or even months at a time. When the other side is told that a client is out of town or has an emergency to deal with, extensions are feely granted. However, when a client has disappeared without explanation, that could lead to an important deadline passing or even to the withdrawal of a settlement offer. At a certain point the company will close the matter out. Then you only have the choice to sue or drop the matter without receiving the compensation you would otherwise have obtained. If a matter is filed in court, failure to communicate with your attorney could lead to your case being dismissed and to potentially being barred from refiling the claim. So whatever happens in life—be it vacations, family events, or unplanned emergencies—you should always keep your attorney informed so your legal rights will not be impacted. That will prevent you from losing out on a valid Lemon Law claim.

8th Mistake to Avoid: Stopping your loan or lease payments or refusing to pick up your vehicle from the repair shop due to repeated vehicle problems.

It is understandable to think: "if they're not repairing my vehicle, why should I have to keep paying for it?" If the manufacturer is not sticking with its warranty promise to *repair* the vehicle, why should you be forced to stick to your promise to *pay* for the vehicle, or keep it if it can't be repaired? Although this thought process is logical, it is unfortunately not the way the law works under these circumstances. Under the law, two wrongs do not make a right. In fact, we strongly recommend that you **do *not* stop making payments on you loan or lease, no matter how bad the problems are.** Failure to make payments or pick up the vehicle from the repair shop could result in your vehicle being REPOSSESSED, which will greatly complicate (or even possibly *defeat* your case) and DAMAGE YOUR CREDIT RECORD. Similarly, if you refuse to pick your vehicle up when repairs are completed, it could be declared abandoned and *repossessed*.

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Thankfully, there is a legal process to help you out of this situation with the Colorado Lemon Law and other breach of warranty laws. You must follow this process if you want out of the problem—you **can't skip steps or take the law into your own hands without suffering *severe unintended consequences***. Sometimes these legal steps take longer than we would like, but if anyone could retaliate on their own, we would be living in chaos and not a society ruled by law.

Don't get us wrong. You absolutely *deserve* compensation and to be treated fairly when you've purchased a Lemon product. It's just about following the *right* steps to resolve the problem and not taking an action that would actually sabotage your legal rights and ruin your credit as well. You deserve to have the manufacturer *accept responsibility* and to be put in a better financial position by getting the defective product bought back or replaced, or by getting cash compensation.

Again—*never stop making payments on your vehicle or refuse to pick it up from the repair shop if you want to have your Lemon Law rights vindicated.* If you have hired an attorney, you should not take any action regarding your vehicle or your claim without conferring with your attorney *first*. Use your attorney as a resource. Your attorney is there to guide you through the process, to attempt to get you everything you're entitled to under the law, and to help you *avoid* pitfalls that could harm your claim.



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**To receive more information or have your case evaluated by one of
our attorneys for FREE, give us a call today!**



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