

## Louisiana Lemon Law

The "Lemon Law" was enacted to provide consumer protection for those who purchase or lease new motor vehicles that do not conform to the manufacturer's express warranties. Generally, cars, vans and trucks are covered by this law, but not motor homes, trailers or motorcycles.

Under the law, if the vehicle does not conform to an express warranty and the consumer reports this to the dealer or manufacturer, the vehicle must be repaired. The manufacturer must repurchase or replace a motor vehicle if:

- ▶ The nonconformity is not repaired after four or more attempts within the warranty term or within one year of the vehicle's original delivery to the consumer, whichever is earlier, or
- ▶ The vehicle is out of service by reason of repair for a cumulative total of 90 or more calendar days during the warranty period.

If the manufacturer refuses to replace the vehicle or refund the money, you should determine if the manufacturer has established an informal dispute settlement procedure. If so, you must follow that procedure before the Lemon Law will apply. If you are not happy with the decision rendered at the conclusion of the informal settlement procedure, you can proceed with a lawsuit. The Lemon Law provides the consumer with reasonable attorney's fees if suit must be filed and a judgment is rendered in the consumer's favor.

*This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts because the facts may change the application of the law.*

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## Tenant Rights and Responsibilities

Be aware that leases are usually written to the landlord's advantage; so read the lease fully and carefully. Always request your copy of the signed lease and add any promises that the landlord makes into the lease by written note before signing and making copies. Ask for written rules governing the conduct of tenants. Study these rules carefully before signing the lease.

Some leases contain automatic renewal clauses, and some of these clauses will renew a lease for the full term of the original lease if the tenant fails to notify the landlord within a specified length of time before the expiration date that he intends to vacate. In other cases, the lease may continue on a month-to-month basis, in which case either party must give ten days written notification prior to the end of the monthly lease period.

If you decide to vacate the premises, check the lease to seek how much notice should be given. If there has been no prior agreement, you must give at least ten days written notice prior to the last day of the month for which rent was paid.

Normally, a landlord will require a security deposit. Find out before signing the lease whether the tenant or landlord is responsible for repairs. If necessary maintenance is not done properly within a reasonable time, the tenant may have a right to terminate the lease. However, a tenant is responsible for damages due to his abuse, misuse or negligence. Never alter the premises without first obtaining written consent from the landlord.

A landlord must return deposits within 30 days of the termination of the lease. If any part of the lease is retained, the landlord must send the tenant an itemized list of charges together with the remainder of the deposit. A deposit may be retained only to cover unreasonable wear to the premises or for nonpayment of rent. You may be entitled to damages if the landlord fails to return your deposit or timely provide an explanation of why the deposit is being withheld.

For good cause, such as nonpayment of rent, a landlord may sue to evict. You must have five days' notice of the eviction, unless you waived that right in writing in the lease. If you refuse to vacate the premises, you may be required to go to court and explain why you think you should not have to vacate. You must reply within three days after you are notified to appear in court. If you wish to assure yourself of an opportunity to appeal an adverse decision, you must answer the notice under oath and assert any defenses you may have. Should a judgment of eviction be entered, you have 24 hours to vacate. If you are not out within 24 hours, a warrant will be issued ordering the sheriff to clear the premises.



## Protecting Property Interests

Powers of attorney (or mandates as they are called in Louisiana), curatorships, and sometimes trusts, are ways to care for the financial and personal needs of persons who are unable to take care of themselves.

A power of attorney is a contract where one person (the principal) gives another person (the mandatary) authority to transact his or her affairs. The power of attorney may be general, in that it allows the mandatary to do whatever is appropriate under the circumstances, or it may be limited. A power of attorney should only be granted to someone who is trustworthy and capable of handling the principal's affairs competently. The principal may terminate the power of attorney at any time.

A curatorship may be appropriate in cases where an individual is physically or mentally incapacitated. A court may order a full interdiction of a person after it is shown during a hearing that the person is unable consistently to make or communicate reasoned decisions regarding the care of his person and property. The court may order a limited interdiction if it is shown that the person is unable consistently to make or communicate reasoned decisions regarding the care of his person or property, or any aspect of either. In the case of both full interdiction and limited interdiction, the court must also find that the person's interests cannot be protected by less restrictive means. Once the person is interdicted, a curator is appointed, and this person is charged with the care of the interdicted person and his estate. The court will also appoint an undercurator who should work to ensure that the curator performs his or her duties as required by law.

A power of attorney or curatorship may not be the best solution for every case. A trust or other arrangement may be more appropriate. Factors such as the size of the estate, the kind and length of illness at issue, and family relationships should all be considered when determining a course of action.

## Small Claims Procedures

Oftentimes, disagreements can be handled through an informal process known as "small claims court." The availability of this simple and inexpensive alternative depends on the amount of the dispute and the particular jurisdiction. Note that no injunctions or restraining orders shall issue from a small claims division, and small claims procedures cannot be used if the defendant is a state agency.

Before filing a claim in small claims court, you should demand payment from the other party, and if the claim is not paid, you may then begin your small claims proceeding. The small claims division of your local city or state court will give you the necessary papers to fill out and request that you pay a fee for every party made a defendant. If possible, know the full name and address of all parties you wish to make defendants in order to avoid delays.

The hearing or trial in small claims court is very simple. You will be asked to tell your side of the dispute, and the other side will do the same. All parties may bring witnesses and documents to support their arguments.