

Used Car Purchases: What to Do When Your Car Doesn't Work Properly

Introduction

What can you do if your used car breaks down or needs costly repairs soon after purchase from a car dealer? This publication talks about some state and federal laws that may help. If you want to do more research, some of these laws are listed at the end of this publication.

◆ **Note:** You can't return a used car and cancel the sale simply because you've changed your mind. The law has no "cooling off" period after you buy a car. Once you sign the contract, the car is yours.

The car dealer didn't offer any warranties (guarantees) on my used car. Does this mean that my car isn't covered by any warranties even if it develops major problems soon after I bought it?

No. Every used car sold by a dealer in Washington has an "implied warranty of merchantability."

What's an implied warranty of merchantability?

It's a warranty that gives you the right to expect that your car will be:

- fit for ordinary driving purposes for a reasonable time
- reasonably safe and without substantial defects

- of the average quality of similar cars sold under similar conditions by other sellers in the same price range.¹ (That means you don't expect an older car sold for \$1,000 to have the same qualities as a newer car sold for \$10,000.)

The implied warranty does NOT cover problems that you should've noticed when you looked at the car (example: a bald tire) or took it for a test drive.

Is there a checklist I can use to see if my car problems are covered by an implied warranty?

No. What's acceptable quality for one used car may be unacceptable for the next. You should take into account factors like:

- the price you paid for the car
- the car's age
- the car's mileage
- the kinds of problems you're having
- when these problems occurred

We give some examples of when courts have ruled that problems were covered by an implied warranty at the end of this publication.²

A sticker on the car said the car was being sold “as is,” and the sales contract seems to say I waived (gave up) all warranties. Have I given up my right to an implied warranty of merchantability?

No. Neither a sticker nor a clause in your contract waives this warranty. Even if the car was sold “as is,” the implied warranty of merchantability is given up only if two conditions are met:

- You and the dealer must have expressly negotiated the waiver and reached an agreement that your car doesn’t come with an implied warranty;

AND

- The dealer must give you a written statement of the particular characteristics or parts of the car that aren’t warranted.³

Because dealers rarely meet *both* conditions, most used cars have an implied warranty of merchantability.

The dealer sold me a service contract. Does this mean I waived the implied warranty?

No. The implied warranty isn’t waived if the dealer sold you a service contract within 90 days after you bought the car.⁴ Service contracts often aren’t worth the extra money. If you can’t use your contract to get needed repairs done, you can try to claim that those same repairs should be covered by an implied warranty.

This publication doesn’t address how to get repairs done or pursue claims based on a service contract.

What can I ask the car dealer to do?

You can ask the car dealer to repair your car or pay to have it repaired. If the dealer won’t make all repairs for free, consider proposing a compromise. A compromise solution might not be ideal, but it will be faster, and may be better, than the other choices.

Any agreement you reach with the dealer should:

- be in writing
- say who will do the repairs
- say what the repairs will be
- say what your cost will be, if there’s a cost to you

Be careful, however, about bringing the car in if you owe the dealer money (on a down payment or on your monthly payments). Some dealers may refuse to return a car unless these payments are made.

You can ask the dealer (and your lender if you applied for your loan at the car dealer’s business) to cancel the contract, take back the car, and refund your money, but dealers (and lenders) usually don’t agree to cancel a sale.

What rights do I have with a lender?

It depends on who the lender is.

- If you applied for your car loan at the car dealer’s place of business, the lender is in the same position as the dealer. Under federal law the lender is liable (responsible) for any claims or defenses that you have against the dealer. This law also applies when the loan papers have been given to another lender and when the lender is someone with whom the car dealer regularly does business.⁵

- If you got the money to buy the car from your bank or credit union, neither the bank nor credit union is liable for any claims you have against the car dealer.

Can I get help resolving my dispute with the used car dealer if I can't do it myself?

Yes.

- You can seek help from the Attorney General's Office (contact info is listed at the end of this publication).⁶ If you file a complaint, they may be able to mediate your dispute with the car dealer.
- You can also contact your local Better Business Bureau, find out if a mediation service is offered by your local city or municipality, or try a local Dispute Resolution Center. For more information about using mediation as an alternative to going to court, see the Mediation publication.

I tried mediation, but it didn't help. What can I do?

You can sue in court to try to recover the cost of your damages. Your “damages” are the difference in the value of the car you got and its value as warranted.⁷ Repair costs are often used as another way to measure damages.⁸ The court you'll file in will depend on the amount of damages you're looking for.

Damages under and up to \$4,000: You can sue in Small Claims Court for up to \$4000. Small Claims Court is informal. Lawyers are generally not allowed. For more information about how to use Small Claims Court, see our Small Claims Court publication.

Damages of more than \$4,000: If you're suing for more than \$4000, you must sue in District Court or Superior Court. You'll probably need to hire a lawyer. Therefore, if your damages are slightly more than \$4000, it probably makes sense to take the loss and sue for \$4000 in Small Claims Court.

If your sales contract or loan document has an “arbitration” clause, read the next section.

What if my sales agreement or loan agreement has an “arbitration” clause?

Sales agreements and loan agreements often have an arbitration clause. This clause may require you to take any disputes you have with the car or lender to arbitration instead of going to court. Arbitrators are people who are selected to hear both sides and come to a decision. The hearings take place in private settings. They're less formal than court hearings.

Decisions made by arbitrators are legally binding. If you lose at your arbitration hearing, you won't be able to start a lawsuit over the same dispute.

Arbitration fees vary, but are much higher than small claims court fees. You must understand your responsibility for filing fees and the cost of the arbitrator. Some arbitration clauses give the winning side (the “prevailing party”) reasonable attorney's fees. If your case goes to arbitration and you lose, you may have to pay these costs.

Arbitration clauses aren't always effective to prevent someone from filing a case in court. Courts have refused to uphold arbitration clauses that are very one-sided or unfair.⁹ If you want your dispute resolved in court instead of arbitration, you'll have to convince the court that your clause is invalid.

You can find the state laws on arbitration at State laws on arbitration at Chap. 7.04A RCW.

Can I get a court order that requires the car dealer to make specific repairs?

You can't sue in Small Claims Court to get the car dealer to make specific repairs.

You can try to get this order in other courts. However, courts don't often grant this, it would take time, and you'd need a lawyer to help you.

What should I do if I want to cancel the contract, return the car, and get my money back?

Send a *timely* notice that revokes your acceptance of the used car sale.¹⁰ You must send the notice within a reasonable time of when you discovered or should have discovered the problems with the car.

If you paid cash for the car, send the notice to the dealer. If you borrowed money to buy the car *and* applied for your car loan at the dealer's place of business, also send the notice to the lender.¹¹ Keep a copy of the notice.

Offer to return the car in exchange for a refund of the money you've paid and a cancellation of the contract (and loan agreement).

If the dealer (or lender) isn't willing to cancel, you'll have to take your case to court (or to arbitration, if that's what your sales contract or loan agreement says). You'll have to convince the judge or arbitrator that you rightfully revoked acceptance of the sale and that the contract should be cancelled.¹²

Going to court or arbitration is usually difficult if you don't have an attorney. It's hard to get a contract cancelled. **Note:** The dealer and lender will probably have lawyers.

You can't sue to cancel the contract in Small Claims Court.

What should I do to prepare for trial if I decide to sue in Small Claims Court?

First read the "How do I Prepare for Trial?" section in our [Small Claims Court](#) publication. That section contains practical suggestions and tips to use as you prepare your case.

Important papers and documents you should bring to court include:

- your sales agreement
- loan agreement
- photographs of the car's condition
- repair bills or written damage estimates
- any letters you've sent the dealer or lender concerning the problems you've had with the car.
- any document you think you might need. (You can always decide not to use a document you've brought to court, but you can't have the court consider anything you've left at home.)

Contact mechanics who have looked at your car and would be able to support your case. Ask them to appear at the trial. You may need expert testimony about the value of your car for the court to determine the appropriate amount of damages.

If I've paid to have repairs done, can I deduct the cost from my car payments instead of going to court?

Yes, but this "self-help" strategy is risky. We don't recommend it. You must be able to hold the lender liable for any claims you have against your car dealer (as explained in a previous section) *and* you must give notice (which should be in writing) that you intend

to deduct the cost of repairs from your payments.¹³ As soon as you give this notice, you can expect a strong response from your lender.

- If your car loan gives your lender a security interest in the car (most car loans do), your lender may try to

- repossess the car

OR

- sue to get it back

as soon as you miss a payment.

- If your loan gives your lender the right to say the whole loan is due if you miss a payment (most car loans do), the lender might accelerate the loan by considering the entire amount you borrowed due.

- If the lender starts a lawsuit or files for arbitration, you're gambling that a court or arbitrator will agree that the implied warranty of merchantability applies to your case and with your calculation of damages. If the court or arbitrator rules against you, not only do you lose the car, you also may end up owing money on the loan, the lender's costs, and attorney's fees.

What should I know about the risk of repossession if I deduct the cost of repairs from my car payments?

Repossession is a serious threat no matter the reason that you've missed some of your car payments. Your lender doesn't need court permission to repossess your car and doesn't have to notify you that a repossession is about to take place.

Once the car is repossessed, you must sue to try to get it back. This means you must convince a court that you were entitled to stop making payments. (Note: You can't sue for the return of the car in Small Claims Court.)

The repossession will be lawful if it doesn't "breach the peace."¹⁴ Your lender can't threaten you with bodily harm or break into a locked garage.

◆ It's **not** a breach of the peace if you're not there or don't object *before* the repossession takes place.

It **does** breach the peace (the repo person can't take your car) if you're there and you object to the seizure *before* it takes place. You can object to the seizure by politely and firmly telling the repo person "Don't take my car." Don't shout.

Repossessions often take place during the night, with cars being towed away while parked on the street or even a driveway.¹⁵

If you've withheld payment, don't turn your car over to the car dealer or anyone else the lender would know for repairs. Don't leave your car where the lender can expect to find it. Leave as little personal property as possible in the car.

What will happen if my car is repossessed?

Your lender will sell the car, usually for much less than what the car is worth, and apply the sale price to what you owe. The lender can charge you for the costs of repossessing your vehicle and preparing it for sale. It can also sue you for the amount it claims is the difference between what you still owe on the loan and the sale price of the car.¹⁶

What else can I do if I don't want to keep the car and don't want to keep making payments on it?

You could turn the car in voluntarily to the lender in return for a written agreement that says you don't owe anything else on the loan. If you're already behind on your payments,

don't bring the car with you to your lender's place of business before you have a written agreement for its voluntary return.

Your lender may agree to this proposal (but often won't) because it saves the time and cost of repossessing the car, because it might not be entitled to receive more from you if your car had serious defects, or because you don't have the types of income and property the lender can lawfully take even if it wins. To learn what types of income and property

you can protect, see our [Debtor's Rights in a Lawsuit](#) publication.

Final Thoughts

You may have strong feelings about how your case *should* be resolved. At the same time, you must carefully look at the risks of taking certain actions (such as withholding car payments or canceling the contract) *before* taking them. Don't take these steps unless you're also prepared to justify them before a judge or arbitrator.

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¹ [RCW 62A.2-314](#).

² *Testo v. Russ Dunmire Oldsmobile, Inc.* 16 Wn.App. 39 (1976) (overheating and starting problems three hours after sale/car not drivable due to internal engine damage); *Faulkingham v. Seacoast Subaru, Inc.*, 577 A.2d 772 (1977) (car needed to be repaired six times during the first two weeks); *Ismael v. Goodman Toyota*, 417 S.E.2nd 290 (1992) (car returned for repairs six times in six months and driven only 700 miles before it was said to not repairable).

³ *Testo v. Russ Dunmire Oldsmobile, Inc.*, 16 Wn.App. 39 (1976).

⁴ [RCW 48.110.075\(e\)\(iv\)](#).

⁵ [16 C.F.R. § 433](#). Your loan papers should contain the following, in bold face type: "Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of good or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder." Under state law, this provision is part of your loan agreement whether or not it's in the written agreement. [RCW 62A.9A-403\(d\)](#) and [62A.9A-404](#). See also [RCW 63.14.020](#) and [RCW 63.14.150](#).

⁶ You can call 1.800.551.4636 (in Washington only), 206.464.6684, or 1.800.833.6384 for the hearing impaired..

⁷ [RCW 62A.2-714\(2\)](#).

⁸ *Federal Signal v. Safety Factors*, 125 Wn.2d 413, 440 (1994).

⁹ *Luna v. Household Finance Corp. III*, 236 F.Supp.2d 1166 (W.D. Wash. 2002).

¹⁰ [RCW 62A.2-608](#).

¹¹ [16 C.F.R. § 433](#)

¹² [RCW 62A.2-607\(4\)](#).

¹³ [RCW 62A.2-717](#).

¹⁴ [RCW 62A.9A-609 \(b\)\(2\)](#).

¹⁵ *Ragde v. Peoples Bank*, 53 Wn. App. 173 (1989).

¹⁶ [RCW 62A.9A.608 - .616](#).