

§1476. Performance under warranty

1. Failure to perform warranty obligations prohibited. No dealer shall fail to perform his obligation under a warranty made in accordance with this chapter. It shall not constitute a failure to perform such obligations if a dealer refuses to act in accordance with the provisions of that warranty with respect to any mechanical defect that resulted from unreasonable use or maltreatment of that motor vehicle by the purchaser.

[PL 1975, c. 770, §57 (NEW).]

2. Conditions deemed failure to perform warranty. A dealer shall be considered to have failed to perform his obligations under warranty made in accordance with this chapter if:

A. He fails to perform repair or replacement of parts required under the warranty within:

(1) Five calendar days, excluding Saturday, Sunday and legal holidays, after the date on which the purchaser delivers the motor vehicle to him for such repair or replacement; or

(2) Thirty-five calendar days after the date on which the purchaser delivers the motor vehicle to him if necessary parts are not available to the dealer during the period set forth in subparagraph (1); or

(3) A reasonable period after the period set forth in subparagraph (2) if necessary parts are not available to the dealer because of a strike, natural disaster or other disaster affecting the manufacture, distribution or shipment of parts; or [PL 1975, c. 770, §57 (NEW).]

B. He fails to provide the purchaser with the use of an operating motor vehicle at no cost, except gasoline and oil, beginning at the conclusion of the time stated in paragraph A, subparagraphs (1) and (2), and continuing until repairs have been completed; or [PL 1975, c. 770, §57 (NEW).]

C. He transfers ownership of a used motor vehicle which does not conform to the warranty imposed by section 1474, subsection 1; or [PL 1977, c. 78, §34 (AMD).]

D. He fails in any other material respect to perform an obligation arising out of the warranty within a reasonable time. [PL 1975, c. 770, §57 (NEW).]

[PL 1977, c. 78, §34 (AMD).]

3. Purchaser's rights upon failure of dealer to perform warranty obligations. If the dealer fails to perform his obligations under the warranty, the purchaser, in addition to any other rights he or she may have, shall have the right to:

A. Rescind the contract of sale and recover the full consideration paid for the motor vehicle, including the fair market value of any property forming part of that consideration, reduced only by:

(1) The amount of damage caused to the motor vehicle by the purchaser, other than damage resulting primarily from a mechanical defect repairable under the warranty; and

(2) With respect to vehicles that have been in possession of the purchaser for more than 30 days, diminution, if any in the retail fair market value of the motor vehicle attributable to the period during which the consumer has had possession of said motor vehicle in useable condition. Fair market value for the purposes of this subparagraph shall be measured by the average retail price listed in an authorized used car guide, such as the National Automobile Dealer's Association Official Used Car Guide New England Edition, issued next before the sale and next before the rescission. [PL 1975, c. 770, §57 (NEW).]

B. Recover damages in an amount equal to the differences between the fair market value of the motor vehicle in its actual condition at the time the dealer fails to perform his obligations under the warranty and the fair market value of the motor vehicle had it been as warranted. Such damages may be deducted from any balance due on the contract or recovered by the purchaser in a civil action.

Before initiating a civil action pursuant to this paragraph, the purchaser must give the dealer written notice that the dealer has failed to perform his obligations under the warranty. The written notice shall be given to the dealer by registered or certified mail addressed to his usual place of business or to his last known business address. [PL 1975, c. 770, §57 (NEW).]

[PL 1975, c. 770, §57 (NEW).]

4. Attorney's fees. If the court finds, in any action commenced under this section, that the dealer failed to perform his obligations under the warranty, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action.

[PL 1975, c. 770, §57 (NEW).]

SECTION HISTORY

PL 1975, c. 770, §57 (NEW). PL 1977, c. 78, §34 (AMD).

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