

## **Chapter Ten Automobiles**

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## INTRODUCTION

SO, YOU PLAN TO BUY A CAR. The thought might excite you, or maybe it makes you anxious. But no matter how you feel about it, the bottom line is that you are about to make a major purchase to part with a substantial amount of hard-earned dollars for an item that is going to be around for a while.

### Buying a New Car

As with any other big-ticket item, it is important to do your homework - decide in advance what kind of car you need, and how much you can afford to spend. Think about size - a big family car or a jazzy sports car? Think about options - do you care if you have power everything, or do you mind cranking open your windows yourself? Do you prefer cloth, vinyl, or leather seats? What features are important to you?

After you have analyzed your needs and your finances, you are ready to begin looking. Before you start pounding the pavement, check out some of the consumer-oriented publications that have information on cost, reliability, comfort factors, and other features of many cars. The Internet, your local library and bookstores should have many of these references. Also, see the "[Where to Get More Information](#)" section at the end of this chapter.

### Advertising\Sales Practices

#### **Q. What information should an automobile ad include?**

**A.** This is an area largely regulated by statute, and it varies from state to state. In some places, the ad must state the number available of that type of vehicle. Other items that may be required include price, dealer and factory-installed options and warranty terms. In addition, if the vehicle is "on sale," the ad should state the date the sale ends.

#### **“BAIT AND SWITCH” ADS**

"Bait and switch" is advertising a vehicle that the dealer does not intend to sell. Usually this is done to lure the unsuspecting customer toward buying an unadvertised, often higher-priced vehicle. The ad draws the customer into the showroom, but the advertised car is not available at that time or stated price.

If you suspect that you have been the victim of such advertising, contact the consumer protection division of your state attorney general's office. If they have received a number of reports about this kind of advertising, they may file a claim against the dealer on behalf of all of the duped customers. If they find that yours is an isolated incident, they may still help you pursue an individual claim. In either case, it may be possible to hold the dealer to providing the vehicle at the publicized price.

#### **Q. What if the ad omits details?**

**A.** If the dealer knows of important facts about the vehicle, but fails to reveal them, the law may consider that as a deceptive act that could enable you to cancel the deal and even recover damages in court. Clearing up the missing facts later does not erase the dealer's deceitful act. (For more information, see the "[Lemon Laws and Other Consumer Protection Statutes](#)" section that appears later in this chapter.)

## **The New Car Contract**

### **Q. Must a car contract be in writing?**

**A.** Yes, according to the Statute of Frauds of the Uniform Commercial Code (UCC). The UCC, which is in effect in some form or another in every state but Louisiana, regulates sales of goods and securities and governs many kinds of commercial transactions. Since it has been adopted, with minor variations, by every state legislature except Louisiana's, it governs most auto transactions in the country, and it will be referred to often in this chapter.

The UCC says any sale of goods of five hundred dollars or more must be in writing and signed by the party against whom enforcement is sought. If the contract is challenged, the courts will not be permitted to enforce it unless it is in writing.

### **TERMS THAT THE CONTRACT SHOULD INCLUDE**

The sales contract should describe the car and include the vehicle identification number (VIN). You can find it on the driver's side of the dashboard near the windshield. The contract also should state whether the car is new, used, or has had a previous life as a demonstrator, rental car or taxicab. In addition, the contract should include price terms consistent with your oral agreement, and details on any trade-in you will supply, including mileage and the dollar amount credited. Insist on a cancellation provision that enables you to get your deposit back. The contract should state the warranty terms very clearly. (See the "[Warranties](#)" section of this chapter.) The contract's financing terms should state price, deposit, trade-in allowance, annual percentage rate of interest (APR), and length of term.

### **Q. Who signs the contract?**

**A.** Besides you, either an authorized salesperson or a supervisor or manager signs it. Before you sign, make sure you understand and accept all the contract terms, because you'll probably have to abide by a contract you have signed, even if you have not read it. Read the contract carefully. Ask questions. Cross out blank spaces to avoid any additions after you sign. Make sure that the dealer's promises appear in the contract. Do not sign until the contract satisfies you. The contract you sign binds you, and escape from the contract is both difficult and expensive.

### **Q. May I change a seller's preprinted contract?**

**A.** Yes, if the seller agrees. If you do change terms, cross out the unwanted language, and write or type in the substitute terms. Both you and an authorized dealer representative

should initial the changes. Handwritten or typed changes to both copies of a printed contract overrule printed terms.

**Q. May I cancel the contract even after I sign it?**

**A.** It depends. If you were a minor when you signed it (under 18 in most places), and you contracted with an adult, you can dodge the agreement at any time for any reason while you are still underage, or within a reasonable time after reaching the age of majority, as long as the car is not considered a "necessary" akin to food or clothing. For example, if you are a minor but you are out on your own, and you must have the car in order to get to the work that supports you, the car will be considered a necessary, and your youth will not be an acceptable excuse for you to cancel the contract. The law protects inexperienced young people from being bound by bad deals with tricky adults. Most car dealers know this rule, however, so they will avoid contracting with a minor. These dealers will insist that the car be bought by, or in the name of, a financially responsible adult.

**Q. How else may I get out of the contract?**

**A.** If, for example, the car you buy is not what the dealer promised, the dealer may have breached its warranty. (See the "[Warranties](#)" section in this chapter.) If so, then you might attempt to cancel the contract because of the breach. Or you might try canceling for no reason. However, you risk losing your deposit. The dealer also might file a lawsuit to recover lost profits, for time spent with you and on your car, and other damages.

**WHAT HAPPENS TO YOUR DEPOSIT IF YOU CANCEL THE CONTRACT?**

If you cancel the sales contract, what happens to your deposit depends on the stage of the transaction and on the contract terms you signed. The earlier in the deal, the more likely the dealer will refund your deposit and the less likely you will be sued. Some states entitle you to a refund if, for example, you decide to cancel before the dealer representative signs the contract. Some states also allow you to get a refund if you cannot get financing, despite your best efforts, provided the contract is subject to getting financing.

**Q. If we wind up in court in a contract dispute, may I offer information in addition to the contract?**

**A.** The court, under the "parol evidence rule," may ignore any additional routine terms that don't appear in your original document. Consistent additional terms that explain or supplement, but don't change the contract's meaning, may be considered by the court. Generally, though, the court confines itself to the "four corners" of the document that you present. The court assumes that both parties read and understood the contract before signing it, and disallows prior inconsistent terms that vary or contradict the contract. You may be able to present evidence of an oral agreement made after the written agreement. Also, you may admit outside facts to prove that there actually was no contract or to prove that fraud induced you to sign.

**Q. What if I want to add something after I sign the contract?**

**A.** Ask the dealer to write a contract addendum (a supplement), or write it yourself. Both parties should sign it. Make sure that whoever signs for the seller has the legal power to do so. Mention the original contract in the addendum, state that everyone should consider it an inseparable part of the original contract and that the addendum overrides any inconsistent terms in the two documents. This will help you avoid the parol evidence rule discussed above.

### **Bank Loan Versus Dealer Financing**

**Q. What if I do not have enough cash to buy my new car, even after my trade-in?**

**A.** Then you need financing. Banks, credit unions, loan companies, and car dealers are all potential funding sources. Interest rates will vary among these options. Shop around for the best deal by comparing the various loan terms and annual percentage rates (APRs). The APR is the actual interest you will have to pay on the unpaid balance of the loan, and may depend partially on your credit history. For further information on comparing terms and APRs, [see the "Consumer Credit" chapter](#).

**Q. What must the creditor tell me?**

**A.** The creditor (the person or institution to whom you will owe money) must inform consumers of

1. the annual percentage rate (this must be conspicuous, for example printed in red or in much larger type than the rest of the document);
2. how the creditor sets the finance charge;
3. the balance on which the creditor computes the finance charge;
4. the dollar amount of the finance charge (this also must be conspicuous;)
5. the amount to be financed (the loan);
6. the total dollar amount that will be paid (loan plus finance charge); and
7. the number, amount, and due dates of payments.

### **MAKING SURE A CREDITOR TREATS YOU RIGHT**

The Truth in Lending Act (TILA) protects consumers. Congress passed it in 1969 to ensure that consumers get enough facts to enable them to make an informed decision about financing. It applies to consumers who seek credit for money, property, or services for personal, family, or household purposes. (TILA does not cover business, commercial and agricultural credit. It applies to financing for personal, family or household uses.) Creditors, either people or organizations, who regularly extend consumer credit that is payable in more than four installments are subject to the Act, as are creditors who require (or may require) a finance charge.

**Q. What if the creditor does not follow the rules?**

**A.** Creditors who disobey the rules may have to pay you any actual damages that you have sustained. For example, if you paid more than you should have, you may be able to recover the excess. They also may have to pay your court costs and lawyers' fees, as well

as a fine to the state. In a class action lawsuit with many complainants, the penalty paid to the government could be much larger.

**Q. What is the maximum APR that I have to pay?**

**A.** That depends on the laws of the state in which you live or where the deal occurs. States that regulate "usury" allow different maximum APRs, depending on their laws. Remember, an APR is negotiable, though a creditor may not exceed a statutory upper limit.

**Title**

**Q. When do I get title to my car?**

**A.** In most states, in any sale of a car, new or used, title passes when the previous owner endorses the certificate of title or ownership over to the new owner. Check with your local Department of Motor Vehicles for the law in your state. Many state DMVs have information available on line.

**Q. Suppose I sign the contract, but do not yet have title. What if something happens to the car?**

**A.** The answer depends on who has the risk of loss. Usually, the party who possesses the vehicle bears the risk and is more likely to have insurance against the loss. Under the Uniform Commercial Code (UCC), which is discussed below and on pages 3, 7, and 13-15 if the seller is a merchant (for example, a car dealer), the risk of loss passes to buyers when they receive the car.

If the seller is not a merchant, as in a private sale of a used car, the risk passes to the buyer on "tender of delivery."

**Q. What is "tender of delivery"?**

**A.** Tender of delivery occurs when the seller actually tries to deliver the car, or makes the vehicle available for a pick-up arranged by a contract.

**Q. What if I have title but the dealer still has the car?**

**A.** A merchant seller who keeps physical possession may bear the risk of loss long after the title has passed and after the dealer has received payment.

**Q. May the risk of loss move from the seller to me?**

**A.** Yes, the Uniform Commercial Code (UCC) provision governing risk of loss allows this. A sales contract that specifies when the risk of loss passes will override the standard UCC provision.

**Q. How may I lose title?**

**A.** You may lose title if you fail to make your payments as they become due. The creditor is then permitted to repossess your car.

**THE RIGHT TO REPOSSESSION**

When you buy a car on credit, you may have to give the creditor rights in your property (the car) that are superior to the rights of your other creditors. When you are loaned the money, you sign a "security agreement," which gives the creditor a "security interest" in your car (the collateral). You are agreeing to give the creditor a lien on the car. If you don't pay, the creditor may try to get the car back and apply its value toward your debt.

**Q. So if I don't pay, can the secured creditor just come and take my car away?**

**A.** Afraid so. The only limitation on automobile repossessions is that the reposessor does it without breaching the peace. In many states, the creditor does not even have to sue the debtor, or notify the debtor of the default before reclaiming the vehicle.

**Q. What is a breach of the peace?**

**A.** A breach of the peace generally is any act likely to produce disorder or violence, such as an unauthorized entry into your home. If you protest strongly enough when a reposessor appears, it may create a breach of the peace, and any repossession may be invalid.

**Q. What happens after the repossession?**

**A.** Eventually, the creditor has the right to resell. However, before that happens, the debtor has the right to buy back the car (in legal terms, redeem the collateral).

**Q. How does redemption work?**

**A.** The debtor must pay the entire balance due, plus any repossession costs and other reasonable charges. Watch out for consumer credit contracts containing acceleration clauses. These force the debtor to pay the entire outstanding debt, not just the amount of overdue payments. Because a default and repossession have already occurred, it is unlikely that the debtor will have enough money to pay the entire balance. Redemption rarely takes place.

**Q. What if I do not redeem the car?**

**A.** The UCC gives the creditor two choices. First, it may sell the car to satisfy the debt. If the profits from the sale are not enough to pay expenses and satisfy the debt, you would be liable for the difference. The only limitation placed on the creditor by the UCC is that the sale be "commercially reasonable." As the UCC is applied in some states, that means first getting court permission to hold a sale. The sale may be public or private. However, the creditor must give you reasonable notice of the time, place, and manner of the sale. If it is a public sale, you have the right to take part (bid on the car). If the sale produces too much money, the creditor must pass that along to you. For example, if the amount of debt and expenses totals \$5,000, and the creditor gets \$5,600 from the sale of the car, the overage of \$600 is due to you and the UCC obliges the creditor to refund the money to you.

**Q. What is the second choice?**

**A.** The creditor may keep the car to satisfy the debt fully. The law refers to this as "strict foreclosure." There is no duty to return excess money in a strict foreclosure. Creditors seldom use it, because dealers want to sell, not keep, cars.

## **USED VEHICLES**

Buying and selling a used car has some unique features, but it is similar to buying a new car. The advertising rules are largely the same, so you must still beware of "bait and switch" ads that look too good to be true.

Basically, the law about forming and executing the contract for purchase or sale is the same for new and used cars, and the car's title transfers via the same mechanism. Lenders may examine the purchase a little more closely to ensure they receive adequate collateral for their money, but the procedure for getting the money does not change. As with a new car, if you fail to pay, you lose it to the "repo" man.

### **Buying or Selling a Used Car**

#### **Q. What is a used vehicle?**

**A.** It is a vehicle that was driven farther than the distance necessary to deliver a new car to the dealer or to test drive it.

### **Dealer Versus Private Sale**

#### **Q. Should I buy from a dealer or a private seller?**

**A.** Go with whoever gives you the best deal and with whom you are most comfortable. Some experts believe you may be better off buying from a private seller. They think a private seller may give a more accurate description of the car's faults based on personal knowledge, and you may get a lower price from a private seller. Private sellers, however, seldom give warranties, which dealers sometimes offer. (See the "[Warranties](#)" section in this chapter.) Also, some states have regulations governing used car sales that may apply only to dealers.

#### **Q. Do I need a written contract if I buy from a private seller?**

**A.** If you are paying more than \$500, you should have a written contract. Courts usually cannot enforce an oral contract to sell a car for over \$500 under the Statute of Frauds. Even under \$500, it is always best to put the contract in writing if you are not going to conclude the deal immediately with a Bill of Sale (see next question).

#### **Q. Do I need to get anything else in writing?**

**A.** You should have a Bill of Sale. Many states require you to present a Bill of Sale to register your car. A Bill of Sale also may serve as a receipt. The Bill of Sale should contain the:

- date of the sale;

- year, make, and model of the car;
- Vehicle Identification Number (VIN);
- odometer reading;
- amount paid for the car, and in what form (cash, check, and the like); and
- buyer's and seller's names, addresses, and phone numbers.

The seller should sign and date the Bill of Sale, and both you and the seller should get a copy.

### **SPECIAL RULES FOR USED CAR DEALERS**

The Federal Trade Commission has issued a Used Car Rule for dealers. Under the rule, "dealers" are those who sell six or more used cars in a twelve-month period. The rule forbids used car dealers from misrepresenting the mechanical condition of a used car or any warranty terms, and prohibits them from representing that a car comes with a warranty when none exists. They must make available the terms of any written warranty they provide, and they must post a "Buyers Guide" on the side window of the car.

#### **Q. What is the Buyers Guide, and what must it say?**

**A.** Information contained on the Buyers Guide includes:

- whether or not the car comes with a warranty. If there is a warranty, the specific coverage must be outlined;
- whether the vehicle comes with implied warranties only, or is sold "as is," that is, with no warranties at all;
- a statement that you should request an inspection by an independent mechanic before you buy;
- that you should get all promises in writing; and
- what some of the major problems are that may happen in any car.

If you do buy a used car from a dealer, you are entitled to receive a copy of the actual Buyers Guide that was posted in your car. If you have negotiated any changes in the warranty, it should be noted on the Buyers Guide. The Buyers Guide becomes part of your contract, and its terms override any conflicting terms in that contract.

#### **Q. Are there other facts that a seller must tell the buyer?**

**A.** The seller, whether a dealer or a private individual, should be truthful about the car. If the buyer is disappointed because it is not as described or does not perform as it was supposed to, a breach of warranty action may arise against the seller who has deceived the buyer. If possible, the seller should provide the buyer with the car's complete service records.

#### **Q. Does the seller have to tell the buyer the car's mileage?**

**A.** Yes, federal law entitles the buyer of a used car to receive a mileage disclosure statement from the seller, even if the seller is not a dealer. On request, the seller must give a signed written statement to the buyer stating the odometer reading at the time of transfer. The statement also should certify the odometer's accuracy, to the seller's

knowledge. If the seller knows it is incorrect, the seller must admit it. Refusal to provide such a statement, or illegally tampering with the odometer, exposes the seller to stiff penalties.

**Q. Are there other ways to find out about a car's history?**

**A.** Yes. Internet websites now make it easy to find services that will provide you, on line or by telephone, mail or fax, with detailed repair, odometer and histories for many used cars on the market. To some extent this is done in cooperation with participating used car dealers. The information is retrieved based on the car's VIN number. Search the Internet for "used car history" or "vehicle history" and compare the prices and offerings of these services. Feel free to confront the seller if the information in a vehicle history report is inconsistent with what you have been told about a car. And, of course, any seller who refuses to inform you of the VIN in question should be avoided.

**INSPECTION BEFORE THE SALE**

Not only are you allowed to take the car to your mechanic before the sale is final but you should. The Buyers Guide sticker, which applies to used car dealers, urges you to do so. If the seller, whether a dealer or a private party, will not allow your mechanic to inspect the car, do not buy it unless it is such a good deal that you will not mind paying for car repairs later.

**Seller Withdrawing from the Deal**

**Q. May I get out of a contract to sell my used car?**

**A.** The same contract laws that govern a new car purchase also cover a used car purchase. Again, it depends on the stage of the contracting process and on the contract's language.

**Q. May a court force me to sell my car to a buyer after I have decided I do not want to sell?**

**A.** Probably not. In legal jargon, courts try to "leave the parties as they find them," and usually will not force a buyer to make a purchase or a seller to sell an item. If the car is an antique or unique in some way, however, the court might order the seller to perform the contract (specific performance). In cases like this, money damages might not suffice to satisfy a buyer who wants your specific car. Because the buyer cannot reasonably find a substitute for this car, the seller will have to take the money, and the buyer will get the car.

**LEMON LAWS AND OTHER CONSUMER LAWS**

**Lemon Laws**

What can you do if the car you just bought is a real "lemon"? What if the car you purchased is in the repair shop almost as much as in your garage? To protect consumers from such situations, most states have passed some form of "lemon laws," which usually

apply to new cars purchased for personal, family, or household use. These laws entitle you to a replacement car or a refund if your new car is so defective that it is beyond satisfactory repair by the dealer. You must, however, give the dealer a reasonable opportunity to repair the car.

How do you know if the law considers your car a lemon? States vary in their specifics. Do an Internet search for "lemon law" along with the name of your state to see if your state has a law – if it does, chances are that a government agency or a private law firm or consumer protection organization has posted a website on the topic. As a general rule, a lemon normally is a car that continues to have a defect that substantially restricts its use, safety, or value, even after reasonable efforts to repair it. This often means four repair attempts on the same problem or a directly related problem within six months or one year (the time period varies by state). Or, it might mean the car is out of commission for more than thirty nonconsecutive days during either: (1) The year after the dealer sold it; or (2) the duration of any express warranty, whichever is shorter.

**Q. What must I do to make lemon laws work for me?**

**A.** First, you must notify the manufacturer, and, in some states, the dealer about the defect. Second, you should keep a copy of every repair or service receipt you are given. This serves as your record that the required number of repair attempts has been made, and is especially important if your car's defect had to be repaired at another garage or in another city because it was physically impossible to drive the car back to the seller's repair location.

Most states require that you go through an arbitration procedure before you can get a replacement or refund. Some states sponsor arbitration programs, which may be more objective than those run by manufacturers. Arbitration is usually free, and results often are binding only on the manufacturer; if you don't like the result, you can still take the manufacturer to court. Some states require arbitration only if the manufacturer refuses to give you a satisfactory replacement or a refund. You also may have the option of bypassing arbitration and going directly to court.

If you successfully pursue a lemon law claim, you may get a refund of what you paid for the car, as well as reimbursement for things like taxes, registration fees, and finance charges. If you choose, you may get a replacement car. Be sure that it is of comparable value to the lemon it is replacing, and that it satisfies you completely.

**Q. Do lemon laws cover used cars?**

**A.** Yes, they cover used cars in a growing number of states. In some places, the law applies both to dealer and private seller purchases.

The laws may have a connection with the safety inspection sticker requirement. (See the "[Inspections](#)" section later in this chapter on page 20.) These sticker laws usually protect you if two conditions occur. First, the car must fail inspection within a certain period from the date of sale. Second, the repair costs must exceed a stated percentage of the purchase price. Then you are permitted to cancel the deal within a certain period. You probably will have to notify the seller in writing of your intention to cancel, including your reasons. You must return the car to the place of sale even if it requires towing. If the seller offers to make repairs, you can decide whether to accept the seller's offer or get your money back.

**Q. What if the car passes the safety inspection but still turns out to be a lemon (by requiring costly repairs or repeated repair attempts for the same problem)? Is it still considered a lemon?**

**A.** It might pass the safety inspection and still be a lemon. Some state laws define "lemon" for used cars the same way they do for new cars: by using a formula of repair attempts/time spent in the shop. These laws protect buyers of used lemons in much the same way as buyers of new lemons. (See the previous questions and answers for details.)

**Q. May I drive the car while we are deciding whether or not it is a lemon?**

**A.** Yes, you may drive the car (if it is drivable), but be aware that, if the car does indeed turn out to be a lemon, the law usually allows the seller to deduct a certain amount from your refund based on the miles you have driven. This applies to both new and used car sales.

## **Other Consumer Protection Laws**

### **ADDITIONAL PROTECTION FOR CAR BUYERS**

Other statutes protect car buyers besides lemon laws:

- the federal Anti-Tampering Odometer Law prohibits acts that falsify odometer mileage readings (the Maine Attorney General has a useful site on this topic at <http://www.state.me.us/ag/clg10.htm>);
- the federal Used Car Law requires that dealers post Buyers Guides on used cars;
- the federal Automobile Information Disclosure Act requires manufacturers and importers of new cars to affix a sticker, called the "Monroney label," on the windshield or side window of the car. The Monroney label lists the base price of the car, the options installed by the manufacturer, along with their suggested retail price, how much the manufacturer has charged for transportation, and the car's fuel economy (miles per gallon). Only the buyer is allowed to remove the Monroney label.

By far, the statutes providing the strongest protection are those prohibiting unfair and deceptive acts and practices. Every state has enacted such laws. Car buyers may recover from the seller (the dealer and/or the manufacturer), regardless of who might have done the deceiving.

**Q. What is an unfair or deceptive practice?**

**A.** The Federal Trade Commission (FTC) defines "unfair conduct" as that which, although not necessarily illegal,

- offends public policy as established by statute, common law, or other means;
- is immoral, unethical, troublesome, or corrupt; and
- substantially injures consumers (or competitors or other businesspeople).

"Deceptive conduct" is behavior that could have caused people to act differently than they otherwise would have acted. It does not have to involve the product's qualities, but it might include any aspect that could be an important factor in deciding whether to buy the goods. An example would be stating that the engine has six cylinders when it

really has four. The quality may be fine, but the buyer may have been seeking a car with a six-cylinder engine. The FTC regulations are the basis of many states' laws.

**Q. Must the unfair or deceptive act be intentional?**

A. No, in most states, the seller does not even have to know about the deception. Rather, the court considers the effect that the seller's conduct might possibly have on the general public or on the people to whom the seller advertised the product.

**Q. What must I do in order to use an unfair and deceptive practices statute?**

A. In many states, you must make a written demand for relief before you sue. The law allows the seller one last chance to make good.

If you have to sue, many states require proof of "injury" before you may recover. Loss of money or property is enough to prove this. You should be able to show that the seller's actions actually caused the injury. For example, only if you were determined to buy the car no matter what the seller said would you have a hard time showing that the seller's conduct caused you injury or loss. If you based your decision to buy on what the seller told you, or if you were coerced into buying something that you didn't really want, then you may be able to use the statute. Remember to begin the procedure before the statute of limitations expires. This time limit varies by state, but is typically three or four years.

**Q. What happens if I win?**

A. Many states permit you to recover double or triple damages, and lawyers' fees. The purpose of these harsh penalties is to discourage sellers from committing unfair or deceptive acts in the future.

**VIOLATIONS OF UNFAIR AND DECEPTIVE PRACTICE LAWS**

Each statute differs about what actions could violate unfair and deceptive practices statutes. The most common violations include:

- hiding dangerous defects;
- failing to state that service is not readily available;
- not revealing that the dealer advertised the car at a lower price;
- odometer tampering;
- failure to reveal that the dealer is charging excessive preparation costs; and
- withholding facts about the car's previous use as, for example, a racing car.

Generally, a dealer's failure to disclose any important facts about the car, or an attempt to make such facts too hard to see, is illegal, and could lead to your recovery under your state's unfair and deceptive practices law.

**Warranties: Uniform Commercial Code (UCC)**

**Q. What is a warranty?**

**A.** It is a guarantee of the product's quality and performance. A warranty may be written or oral. Three kinds of warranties could be given by a car seller under the UCC. These are an express warranty, an implied warranty of merchantability, and an implied warranty of fitness for a particular purpose. A seller may also sell a car "as is."

**Q. How does a seller create an express warranty?**

**A.** Whenever a seller makes any declaration of fact, description, or promise on which the buyer relies when deciding to make the purchase, the seller creates an express warranty. A seller may create an express warranty orally, in writing, or through an advertisement.

**Q. What about the seller's opinion of the car?**

**A.** An opinion or recommendation does not form an express warranty. Sales talk, called "puffing," will not create an express warranty. An example is "This car runs like a dream." Statements such as "This car needs no repairs," or "This car has a V-8 engine," however, will create an express warranty.

**Q. When does the implied warranty of merchantability arise?**

**A.** It occurs automatically if the seller is a merchant, such as a car dealer. It requires that the car be of a quality that would pass without objection in the trade, and be fit for the ordinary purposes for which the buyer will use it. This warranty essentially provides for the overall quality of the car, and means that the car will do what it is supposed to do.

Most people agree that the implied warranty of merchantability is part of a new car purchase. All states provide for implied warranties for used cars bought from dealers, unless the warranty is disclaimed specifically, in writing, by words like "as is" or "with all faults."

**Q. How does someone create the implied warranty of fitness for a particular purpose?**

**A.** Suppose that you tell the seller that you need the vehicle for a special purpose, such as towing a trailer, and the seller recommends a specific vehicle. You buy it, relying on the seller's skill or judgment. This creates an implied warranty that the vehicle can do what you told the dealer you needed it to do.

**Q. What if I bought my car "as is"?**

**A.** Then you accepted the car with all its faults. Any post-sale defects are your problem. A car may be sold "as is" through a dealer or a private person. The implied warranty of merchantability does not automatically arise in "as is" purchases. Some states do not permit "as is" sales for used cars.

**Q. Do I get these warranties every time I buy a car?**

**A.** Not necessarily. A seller may disclaim or change warranties. Obvious language that mentions merchantability may exclude or modify the implied warranty of merchantability. An obvious disclaimer in writing may exclude the implied warranty of fitness for a particular purpose. Language such as "sold as is" cancels implied warranties. If the seller has given you an express warranty, however, courts will not uphold any attempted disclaimer that is inconsistent with or cancels the express warranty.

**Q. What if the seller gives me express and implied warranties that are inconsistent?**

**A.** According to the Uniform Commercial Code, the parties' "mutual intention" decides which warranty takes priority. If there is no way to decide this, the following rules determine priority:

1. Specific or technical language usually wins over descriptive language that is inconsistent and general.
2. Express warranties override inconsistent implied warranties of merchantability.
3. Implied warranties of fitness for a particular purpose survive other inconsistent warranties.

**Secret Warranties**

Strictly speaking, a "secret warranty" is not a warranty at all. Rather, it is more in the nature of a deceptive practice that is secret because it is an unpublicized policy. A secret warranty develops when a manufacturer knows that many cars have the same problem, but tells dealers to charge customers for the repairs unless they complain. Unlike a [recall](#) (discussed later in this chapter on page 17), the manufacturer is not required to notify owners of the problem. By hiding what it knows about the defect, the manufacturer makes a lot of money from unsuspecting consumers.

If you suspect that a warranty should have covered your car repair or that the defect is widespread, complain to the dealer. Perhaps the dealer will fix your car without charging you. Follow up with a complaint to the consumer protection division of your state attorney general's office. If they find that a secret warranty exists, the manufacturer may be required to notify owners, to pay for repairs, and to reimburse those owners who have already paid to fix the problem.

**Remedies for Breach of Warranty**

**Q. What are my options if the seller will not honor its warranties?**

**A.** If you have not already accepted the car, reject it. You may reject only within a reasonable time after delivery of the car. What constitutes a "reasonable time" is a question of fact to be decided by the court, if it goes that far. You must give the seller specific information about what is wrong. You need only show the car's nonconformance in any way to the contract; the defect need not be major. You have the option of allowing the dealer to attempt to remedy ("cure") the defects within a reasonable time. Once you reject the car, behave as if you are no longer the owner or not drive it, except to return it. You may hold the car for the seller to reclaim, or you may return it yourself.

These steps should enable you to reject the car. However, to take the next step and force the seller to live up to its warranties, you may need to consult a lawyer.

**Q. How do I know if I have already accepted?**

**A.** Unfortunately, sometimes the law considers just driving the car off the dealer's lot as acceptance, as long as you had a chance to inspect the car, even if you do not

discover the defect for some time. At most, you have a week or two to reject the car. Acceptance may also occur if you take possession of the car despite knowing about its defects.

**Q. What may I do if I have accepted a car that proves to be defective?**

**A.** First, once you have accepted, you must continue to make your car payments; for the time being, at least, you are considered the car's owner, and are responsible for its costs. (You may be able to get your money back later.) You may not reject a car already accepted, unless you accepted it based on the assumption that the seller would repair the defect within a reasonable period. Your option now is to revoke your acceptance. You must give the seller notice of the defect, and show that it substantially impairs the value of the car to you.

Revocation involves a higher standard than rejection, and different states have various standards. Generally, the defect will have to be major to allow revocation. After revoking acceptance, you must act as if you had originally rejected the car. Leave the car in your driveway until the seller reclaims it, or return it yourself.

**Q. May I get my money back if I reject or revoke acceptance?**

**A.** You should be able to recover your money. If your written demand for a refund is denied, you will have to sue the seller. The seller has the right to deduct an amount per mile driven from your refund. If your rejection is found to be wrongful, the seller may recover damages against you.

**Q. May I simply use lemon laws and consumer protection statutes instead of warranties?**

**A.** You may use them all. If you can prove seller fraud or deception, the unfair and deceptive practices statute in your state will help. You could invoke the lemon laws by showing that you tried to get the defect fixed the required number of times, or that your car was in the shop longer than the legal minimum before you rejected or revoked acceptance. This requires you to keep your records and receipts.

**THE MAGNUSON-MOSS WARRANTY ACT**

The federal government protects consumers through laws like the Magnuson-Moss Warranty Act, passed in 1975. It applies to all cars manufactured after 1975 that dealers sell and warrant in writing, and provides that you have the right to see a copy of the dealer's warranty before you buy. The information provided in the warranty will be more detailed than that provided on the Buyers Guide, and includes an explanation of how to obtain warranty service. The Magnuson-Moss Warranty Act also provides remedies for breach of warranty. An aggrieved consumer can sue based on breach of express warranties, implied warranties, or a service contract. If you win, you can recover attorney's fees and your court costs. Under the Act, if a written warranty is given, then implied warranties may not be disclaimed. However, the duration of any implied warranties can be limited. The Act mandates that if the seller does give you written warranties, they must be conspicuously labeled as either "limited" or "full."

Note that the Magnuson-Moss Act does not apply to "as is" sales, or to cars bought from private sellers.

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**Q. What is the difference between "limited" and "full" warranties?**

**A.** If a dealer offers a full warranty, it is promising: to replace a defective car or part for free, within a reasonable time; that the owner will not have to do anything unreasonable to get the repairs done; that the warranty applies to anyone who owns the car during the warranty period; a refund or free replacement part, including installation, if the dealer cannot fix a car or part after a reasonable number of attempts. A limited warranty is anything else. At least one of the above promises is missing. Most car dealers do not give full warranties on the entire car, but may do so on a specific part, such as the battery. Most used car warranties are limited.

## **RECALLS**

**Q. What is the recall system?**

**A.** The recall system identifies defective automobiles that are already on the road, by notifying car owners about how to get them fixed.

**Q. What defects does the recall process include?**

**A.** Generally, it includes defects that affect the car's safety, cause it to fall below federal safety standards, or both, and that are common to a group of the same kind of cars or equipment. The defect can be in performance, construction, components, or materials found in the car or in related equipment, such as child safety seats.

**Q. How does the recall process begin?**

**A.** Many recalls result from the manufacturer's response to owner complaints. However, the National Highway Traffic Safety Administration (NHTSA) influences and orders many of the recalls. The NHTSA receives safety-related complaints through letters and its telephone toll-free hotline. (This hotline number is listed at the end of this chapter, under "[Where to Get More Information.](#)") When the NHTSA registers enough complaints, NHTSA engineers perform an engineering analysis. Then the NHTSA engineers contact the automobile's manufacturer. The manufacturer must either remedy the defect or launch its own defect investigation.

**Q. How is a defect investigation conducted by the automobile's manufacturer?**

**A.** It begins with a press release, and opening a public file to receive comments and information. If this confirms the defect and the manufacturer still will not voluntarily recall the vehicle, agency engineers recommend an initial determination of a safety defect to the NHTSA administrator. If approved, this results in a public hearing and notification to the manufacturer of the basis for the finding. After the hearing, the NHTSA decides if a final defect determination and recall is proper. Occasionally, the NHTSA administrator first seeks the transportation secretary's approval.

## **WHAT HAPPENS IF THE NHTSA ORDERS A RECALL**

If the manufacturer refuses to obey voluntarily and challenges the recall in court, it faces a huge fine unless the court overturns the NHTSA order. Once the recall campaign begins, the NHTSA assigns a campaign number and file. During the campaign's first six quarters (year and a half), the manufacturer must report its completion rate based on the number of vehicles actually repaired. The NHTSA may verify these figures.

### **Q. How effective are recall campaigns?**

**A.** Usually about 60 percent of the vehicles targeted by the recall receive repairs.

### **Q. Who pays for the recall the automobile's manufacturer or the owners?**

**A.** The manufacturer must remedy the defect for free. This does not apply when the first buyer bought the car more than eight years earlier. In comparison, the standard for tires is three years.

### **Q. What must the manufacturer do?**

**A.** The manufacturer has the option of repairing the defect, replacing the car, or refunding the purchase price. If it refunds the money, the manufacturer may deduct a certain amount for depreciation (loss in value). The manufacturer reimburses the dealer who makes the repairs. If the manufacturer chooses to repair the defect, it must do so within a reasonable time. Otherwise the manufacturer must replace the vehicle or refund the purchase price.

## **AUTOMOBILE LEASING AND RENTING**

### **Requirements**

#### **Q. What are the prerequisites if I want to rent or lease a car?**

**A.** First, you must have a valid driver's license. Increasingly, you may be required to show a good driving record. In several states, the major car rental companies have electronic links to government computers and are obtaining driver records (motor vehicle reports) when someone wants to rent a car. They refuse a rental contract if the driver has had too many accidents or violations on his or her record. Some of the major rental and leasing companies set a rental age minimum of eighteen and require a major credit card. Other companies rent only to credit card holders aged twenty-five or older. The company may waive the age requirement if you have an account number in your name through a motor club or other association, or if you have a rental account through your business. You must sign a contract when you rent or lease a car.

#### **Q. How does leasing differ from renting?**

**A.** A lease is essentially a long-term rental. Leases usually have a one year minimum. Rentals may last one day.

## **LEASE OR BUY?**

Whether it is better to lease or buy a car depends on many factors. A car lease means lower monthly payments. After all, your installment payment depends on the purchase price minus the car's estimated value at the end of the lease term. Thus, your installment payment does not depend on the full value of the car. Leasing usually avoids a down payment and sales tax. There also may be tax advantages if you lease mainly for business use. On the other hand, a leased car does not gather any equity (cash value). Buying a car on credit does. Finally, when your lease is up, you must return the car.

## **Car Lease Contracts**

### **Q. Are there different kinds of leases?**

**A.** Yes, several forms exist. Under the "closed-end" lease contract, sometimes called a "walk-away" lease, the car's value when you return it does not matter unless you have put extreme wear on the car. You return the car at the end of the term and "walk away." Payments are higher than under an open-end lease because the lessor (the leasing company) takes the risk on the car's future worth. An "open-end" lease involves lower payments. However, you gamble that the car will be worth a stated price, the "estimated residual value," at the end of the lease. If it's appraised value at the end of the term equals or exceeds the specified residual value, you owe nothing and may be refunded the difference, if your contract provides for a refund. However, if it is worth less, you pay some or all of the difference, often called an "end of lease" payment.

### **Q. What will a lease cost me?**

**A.** You probably will have to pay a security deposit and lease fee for the first month and possibly the last. You may have to pay an initial "capitalized cost reduction." This is similar to a down payment when you buy a car. By paying a large amount up front, you could, in effect, reduce your monthly payments. But by doing this, you lose one of the advantages of leasing: lower up-front costs. Other expenses may include sales tax, title, and license fee, though the lessor may pay them. A lease may include insurance. If not, you must provide your own. You might have to pay for repairs and maintenance after any warranty period expires, unless the lessor agrees to pay in your contract. At the end of the lease term, you may have to pay an excess mileage cost if you have a closed-end lease. (Under an open-end lease, the final appraised value of the car will reflect any excess mileage.) Excessive wear and tear also may cost you.

### **Q. May I renew or extend my lease at the end of the term?**

**A.** Yes, if your lease contained this option or you negotiated for it. Such an option may reduce your initial costs.

### **Q. May I escape my lease early?**

**A.** You have signed a binding contract that obligates you to make payments for a stated term. However, your contract may contain an early termination clause. This usually requires a minimum number of monthly payments before you may cancel, and may require you to pay a penalty.

**Q. What is a purchase option?**

**A.** It allows you to buy the car when your lease term ends. The lessor must state the purchase price or the basis for setting this price in the initial lease contract. Purchase options are more common in open-end leases than in closed-end leases.

**Car Rental Contracts**

**Q. What should my car rental contracts include?**

**A.** It should list the base rate for the rental car and any extra fees. The length of the rental period should also appear.

**Q. What extra fees could there be?**

**A.** The rental company might offer you the Collision Damage Waiver (CDW) option. The rental company covers damage to your rented car if you accept CDW. However, coverage does not include personal injuries or personal property damage. Before accepting this expensive option, make sure your own automobile, medical, and homeowner's insurance policies do not already protect you in an accident involving a rented car. If traveling on business, your company's insurance policy might cover you. Sometimes, charging rentals on certain credit cards automatically covers you.

Other additional fees might include drop-off fees, if you leave the car in a different city than where you picked it up. More costs might be fuel charges, extra mileage fees, and fees for renting equipment like child safety seats or ski racks.

**INSPECTIONS**

States have an interest in your car beyond collecting taxes. They care equally about vehicles meeting minimum safety standards. As a result, many states have an inspection sticker requirement. The number of inspections required in a year vary from state to state.

**Q. What exactly does the state inspect?**

**A.** It varies. Most states check the car's lights, brakes, windshield wipers, and horn. Some inspect the tires, windows, body and seat belts. Many states also test the emission levels, taking into account the automobile's make, model, and age.

**Q. What if I am buying the car?**

**A.** A new car should pass inspection easily. Someone other than the seller should inspect a used car. In many states, a used car sale is not final until the car passes inspection. In other states, failing inspection cancels the sale at the buyer's option. Contact your state Department of Motor Vehicles for further information.

**Q. Where do I get my car inspected?**

**A.** States often authorize certain private repair shops and car dealers to make inspections. A few states have government-operated inspection stations.

**Q. What will happen if my car does not pass the state's safety inspection?**

**A.** Procedures vary, but you may get a "failed" sticker attached to your windshield. You have a grace period either to make repairs or get your car off the road. If you do neither, you could be subject to fines and other penalties.

**Repairs: Dealer or Mechanic?**

**Q. Where should I take my car for repairs?**

**A.** You can take it to a car dealer, which warranty terms may require. Other choices include an independent garage, a franchise operation specializing in specific repairs, or repairing it yourself. Each option has its advantages and disadvantages.

**Q. What if I choose a dealer?**

**A.** Dealers may charge more. However, they are more familiar with your make of car than other repair shops, and may have new and better equipment to service your car. Manufacturers want to ensure that dealerships run quality repair operations, so they invest in training mechanics.

**Q. What if I bring my car to a service station?**

**A.** This is a good option for non-warranty work if the mechanics have adequate training and test equipment. Parts might cost more, but labor might be less expensive than dealer repairs. If you often use the service station, the mechanics get to know your car. Then they might spot potential problems early.

**Q. What about the highly advertised repair chains?**

**A.** Specialty shops may repair one part of a car, such as brakes or mufflers. Or, they may advertise complete car care services. Sheer size and volume means lower costs than dealers and independent mechanics. If you know what repairs your car needs, franchise shops can be a good deal.

**MECHANIC QUALIFICATIONS**

To help determine whether a mechanic is qualified, ask if the National Institute of Automotive Service Excellence (NIASE) has certified the mechanic. A certified mechanic has taken one or more written tests in areas such as engine repair and electrical systems. The NIASE certifies a mechanic who passes all the tested areas as a General Automobile Mechanic.

Of course, certification is not everything. Often, you can discover the best mechanics from friends' recommendations and word of mouth.

## **The Repair Contract**

### **Q. What should appear in a repair contract?**

**A.** The repair contract, often called the repair order, is essential for getting a satisfactory repair job done on your car. The repair order describes the work to be done, and, once signed, creates a contract authorizing the mechanic to make the described repairs.

The repair order should contain:

- the make, model, and year of your car;
- the repair date; an accurate description of the problem;
- a list of parts to be used and their charges; the amount of labor estimated to be needed (time to be spent fixing your car);
- the rate to be charged, either per hour or the flat rate to do the work; and your name, address, and telephone number.

The mileage and repair date are important. They verify warranty terms and simplify service records. Also, your telephone number is critical should unexpected problems arise. If the mechanic cannot reach you, the mechanic has to decide whether or not to proceed, and you may have to live with the results of that decision.

Note that in many states, if you do not sign the repair order, you do not have to pay for any services done by the mechanic.

### **Q. Must I receive a cost estimate for the repairs before work actually begins?**

**A.** It is a good idea, and a required practice in some states. In those states, the final cost must not exceed a certain percentage or dollar value of the original estimate without the customer's consent. Repair shops generally have the right to charge for making estimates, but you must receive advance notice.

## **REPAIR WARRANTIES**

The law may entitle you to some repair warranties. If the repair shop makes an express warranty, you are protected as long as you abide by the terms of the warranty.

Likewise, if a manufacturer's warranty covers the car or part, you should not have to pay as long as you satisfy warranty conditions. Some state courts have held that the implied warranty of merchantability covers car repairs.

Beware of "unconditional" guarantees offered by many franchise repair shops. There are always some limitations on written guarantees. Be sure to read the fine print; there may be special procedures that you are required to follow in order to obtain the benefits of the warranty.

## **False and Deceptive Repair Practices**

Most drivers don't understand how cars work. To protect consumers against fraudulent practices, mechanic incompetence, and overcharging, many states have enacted

statutes specifically governing car repairs, or have included car repairs in their unfair and deceptive practices statutes.

**Q. How do the state unfair and deceptive practices statutes protect me from a repair shop rip-off?**

**A.** As discussed earlier, they usually require price estimates and repair orders. Also, many states give you the right to keep or examine replaced parts, and require repair shops to prepare a detailed invoice, which must state the labor and parts supplied, warranty work done, guarantees, and installation of any used or rebuilt parts. In some states, you may have the right to same-day repairs, unless you agree to a longer period or the delay is beyond the shop's control. Shoddy repair work must be corrected at no charge, especially in states where the implied warranty of merchantability has been extended to repair work. Finally, many states require repair shops to post price lists conspicuously. If you think a repair shop has intentionally cheated you, you should notify your state attorney general's office and call your lawyer to discuss possible legal action.

**Q. What can I do if the automobile mechanic makes unauthorized repairs?**

**A.** First, you may wish to complain to your state attorney general's office, or the local branch of the Better Business Bureau, or even to the Chamber of Commerce. For many mechanics, their business depends on a good reputation, and they will take care to maintain that reputation. If you do not get satisfaction, you may wish to sue if, for example, the shop made unneeded repairs or reinstalled the original part rather than a replacement. If the shop tried its best to correct the fault by fixing something that was broken, though not the problem's ultimate cause, you should pay the shop. After all, the repair shop did fix one of your car's problems.

### **The Mechanic's Lien**

**Q. What if I do not pay for the repairs?**

**A.** In most states, if you refuse to pay for completed repairs, the shop may keep your car. For example, if you have authorized extensive work, but decide that the car isn't worth that much after the shop completes the work, the shop obtains a "mechanic's lien" on your car. The car's actual value, and the actual cost of the repairs, do not matter. If you abandon your car in this manner, the mechanic may ultimately sell your car so that it can recover as much of the cost of repairs as possible.

In states that require written estimates and repair authorization, the mechanic's lien does not attach if the repair shop has not complied with these requirements. Of course, if you do pay for the repairs, the repair shop must return your car.

### **Service Contracts**

**Q. What is a service contract?**

**A.** A service contract specifically covers car repairs and maintenance for a set period of time. Manufacturers, contract companies, insurance companies, and car dealers offer service contracts.

**Q. Should I purchase a service contract on my automobile right away?**

**A.** If you buy one at all, you should consider waiting until your warranty period expires. After all, why pay extra for duplicate coverage?

**HOW A SERVICE CONTRACT DIFFERS FROM A WARRANTY**

Unlike a warranty, a service contract may not come from the manufacturer. Service contracts are optional and expensive, and often, coverage overlaps the warranty protection. Also, a service contract often contains more limitations and exclusions than a warranty, may require you to pay a deductible fee, and might not cover all parts and labor or routine maintenance. If a service contract is available on a used car, the appropriate box must be checked on the Buyers Guide.

Finally, if you believe that your service contract has been breached, in addition to any state remedies available to you, you may be able to sue under the Magnuson-Moss Warranty Act, and recover your attorney's fees and court costs, as well as your damages.

**YOUR AUTO AND THE POLICE**

Although the area of automobile law is in constant flux and the degree of protection offered by states widely variant, there are some fundamental points to remember if the police stops your vehicle.

**The Stop**

**Q. What should I do once I realize that the officer is signaling me to pull over?**

**A.** Pull over to the side of the road as quickly and safely as possible. Remain in your vehicle until the officer otherwise directs you. Get ready to produce your license and registration, because you may be asked to do so.

**Q. The officer is at my window. Now what?**

**A.** Stay composed and politely ask why you were stopped. If you have any doubt that you were stopped by a real police officer if, for example, you were pulled over by an unmarked vehicle politely ask to see the officer's photo identification, not just his or her badge. If you are still not certain that he or she is a real police officer you may ask that a supervisor be called to the scene or request that you follow the officer to a police station.

**The Search**

**Q. Suppose the officer wants to search my car?**

**A.** Ask why the officer wants to conduct a search. If you have absolutely nothing to hide, expediency might dictate that you let the search proceed. If you don't want the search to proceed, you do not have to consent. Usually, the officer is not permitted to conduct the search unless you consent, the officer has probable cause (see below), or the officer reasonably believes that he must search the auto for his or her own protection. Ask courteously whether the officer has a search warrant or if you are under arrest. If the officer replies that you are under arrest, ask for an explanation.

**Q. What if the officer insists on searching my car?**

**A.** Don't interfere. You can always challenge the legitimacy of the search later in court.

**Q. Can the police legitimately search my vehicle without a warrant?**

**A.** That depends on the circumstances. The police would not usually have the right to search your automobile when you are stopped only for a minor traffic offense such as speeding, but if the violation requires that you be taken into custody (for example, a "Driving Under the Influence" [DUI] arrest or driving with a suspended license), the search would generally be permitted. If the officer has arrested you, the officer does not need a warrant to pat down your body in searching for weapons.

In general, when an arrest is not involved, the police have more latitude to search a vehicle than to search a home. The U.S. Supreme Court recognizes an automobile exception to the Fourth Amendment's protection against warrantless searches. The Court has held that a person expects less privacy in an automobile than at home. (No one ever said "A man's Chevy is his castle.") The rationale for permitting warrantless searches of cars is that the mobility of automobiles would allow drivers to escape with incriminating evidence in the time it would take police to secure a search warrant. For a warrantless search to be valid, however, the officer must have probable cause. (See the "[Criminal Justice](#)" chapter for more details on this topic.)

**Q. What is probable cause?**

**A.** Probable cause, in this context, is a reasonable basis for the officer to believe that the vehicle contains incriminating evidence, so that the officer is legally justified in searching it.

**Q. What part of the vehicle may the police search if they have probable cause?**

**A.** Generally, the police officer may search the immediate area at the driver's command, that is, under and around the front seat. The law is always changing. Sometimes state constitutions offer greater protection against searches than the U.S. Constitution. Therefore, if you have questions about a search the police have made of your vehicle, it is best to consult a lawyer in your state.

**Q. May the officer search in my glove compartment?**

**A.** Yes, the Supreme Court has held that such a warrantless search is permissible. The reason is that the glove compartment is within the arrested driver's reach.

**Q. May the officer search a closed container inside my car?**

**A.** Police are permitted to search containers or packages found during a legitimate warrantless search of a vehicle. The container must be one that might reasonably contain evidence of a crime for which the officer had probable cause to search the vehicle in the first place. In 1982, the Supreme Court ruled that the police do not need a warrant to search closed containers found in the passenger compartment of an automobile whose occupant is under arrest.

**Q. May the police search my car without a warrant after they have impounded it?**

**A.** The police do not need a warrant to undertake a routine inventory of an impounded vehicle. The reason is that such an inventory protects the driver's possessions against theft, and also protects the police against claims of lost or stolen property. Such an inventory also protects the holding facility from dangerous materials that may be in the impounded vehicle, and it may aid in the identification of the arrested person.

**Q. Suppose the officer sees a packet of marijuana on the back seat?**

**A.** When the police can see evidence readily from a place in which they have a right to be, the law does not consider it a search. Rather, it is a plain view seizure. As long as the officer has a legitimate reason to be standing by the car and easily sees what the officer has probable cause to believe is evidence of a crime, the officer can make the seizure. Then the officer probably could conduct a warrantless search of the rest of the passenger compartment of the vehicle and possibly the trunk (if probable cause exists to believe the trunk may contain evidence).

**Q. Can the police pull me over in a roadblock and demand to check my license and registration?**

**A.** The U.S. Supreme Court has said that such roadblocks do not constitute an unreasonable search as long as police stop all the cars passing through the roadblock or follow some neutral policy, such as stopping every fourth car. The police can't single out your car unless they have an articulable suspicion that you don't have your driver's license, your vehicle is unregistered, or that you or your car are otherwise seizable for violating the law.

**Q. Is it legal to design a roadblock to catch drunk drivers?**

**A.** Yes, provided the selection of vehicles to be stopped is not arbitrary and it minimizes the inconvenience to drivers. Courts have upheld such roadblocks as constitutional. States' legislatures disagree, however, about whether the prosecution needs to show that a roadblock is the least intrusive way to enforce drunk driving laws. Also, some states require that the ranking police officer who supervised a roadblock testify at the offender's trial.

**Q. I got stuck in a speed trap. What can I do about it?**

**A.** If the speed limit was clearly marked and you were exceeding it grit your teeth and pay the fine. If you think you've been unfairly prosecuted, you might report the trap to your auto club or state authorities to spare other drivers the same expense.

**Q. I was stopped for speeding by a radar gun. Do those things work?**

**A.** Courts today regularly take judicial notice of the ability of radar to measure accurately vehicular speeds. That doesn't mean that you can't try to prove that the particular radar gun in your case was poorly maintained or that its operator misread the results or was inadequately trained to use the device, but it is an uphill fight.

**Q. Aren't "fuzzbuster" devices the best way to avoid speed traps and radar guns?**

**A.** Depends where you drive. Some states have declared them illegal, subjecting drivers who use them to fines.

## **The Arrest**

### **Q. What should I do if the police arrest me?**

**A.** Better to discuss what you shouldn't do. Do not:

- speak to anyone about your case;
- answer police queries or waive your right to advice of counsel;
- submit to a lineup or any kind of tests without your lawyer;
- dodge news photographers or cover your face (looks guilty);
- be impolite to the police.

Some people cooperate with the police by making statements in the hope that the officer will let them go. Remember that once you have been arrested you will be charged with an offense, and any statements you make, if incriminating, will be used against you.

### **Q. What do I tell my lawyer while I'm in custody?**

**A.** Be prepared to tell your attorney where the police have taken you, where the arrest occurred and if it was made by uniformed or plainclothes police, the charges against you, and the amount of bail you can afford.

### **Q. If the police arrest me and issue a citation, can I dispose of the case in a non-criminal way?**

**A.** No. Once you've been arrested, you must go through the criminal process.

## **DRIVING UNDER THE INFLUENCE**

Statistics indicate that at least one-third of all drivers involved in fatal accidents were alcohol impaired at the time. Groups such as Mothers Against Drunk Driving and legislators are spearheading a nationwide crackdown on drunk drivers that includes passage of tougher laws, including every state hiking the legal drinking age to twenty-one. Although it is a traffic offense, drunk driving is classified as criminal in the ordinary sense of prohibited conduct willfully undertaken.

### **Q. How come police never say "you're under arrest for drunk driving?"**

**A.** Different states call the offense different names. These include driving under the influence (DUI), operating under the influence (OUI), and driving while intoxicated (DWI).

### **Q. Does the language really matter?**

**A.** Yes, "operating" jurisdictions (those charging OUI), for example, do not require that the vehicle be in motion. In most states a person may be charged with OUI if he or she is in actual physical control. Actual physical control may be shown when the person is seated in the driver's seat, in possession of the ignition key, and capable of starting the motor.

**Q. What does "drunk driving" mean?**

**A.** The elements of the offense vary from one state to another. However, the Uniform Vehicle Code says proof is necessary that the person is under the influence of alcohol or drugs. Most states agree that a person is under the influence if he or she is less able, either physically or mentally, to exercise clear judgment and to operate a vehicle with safety. As noted above, the person must be driving or in actual physical control of a vehicle. If a particular state's statute includes language such as "on a public highway" or "intoxicating liquor," the state also must prove that point. Some states treat "driving while impaired by alcohol" as a lesser offense of DWI.

**Q. How does the state prove its DWI case?**

**A.** The prosecution relies heavily, sometimes solely, on the arresting officer's testimony about the offending vehicle's operation and the defendant's behavior (observations of the defendant's appearance, speech, and an odor of alcohol), and results of field sobriety tests and chemical tests (breath, blood, or urine). The officer might say, "The car was weaving over the center line of the highway," or "The driver had slurred speech, heavy odor of alcohol, glassy bloodshot eyes, and could not walk straight."

**Q. May the police force me to give a sample of my blood or my breath?**

**A.** Every state has "implied consent" laws for chemical testing of intoxication. The law views people who have a driver's license as automatically agreeing to submit to blood, breath, or urine tests to determine whether they are sober. In 1983, the U.S. Supreme Court ruled that a driver may be forced to submit to a blood alcohol test without the driver's consent or a warrant and without violating the driver's right against self-incrimination if the driver has already been arrested for another offense, such as vehicular homicide; the driver's blood has already been taken for another purpose, such as medical care; and such action is permissible under the state's implied consent law.

While police generally will not compel you to submit to a blood test, the Supreme Court decision discussed in the previous paragraph permits a blood test taken by force so long as the officer has probable cause to believe that you are under the influence.

If you can refuse to take the test, should you? There is no hard and fast answer to that question.

On the one hand, unless you are certain that you have had less than three or four drinks in the past hour, or less than five drinks in the past several hours, common wisdom holds that it is a good idea to refuse the tests. It generally is more difficult to convict a driver of drunk driving if no field sobriety or chemical tests are taken.

On the other hand, if you refuse to take a breath testing device test, your driver's license probably will be suspended automatically for a long period of time. In some states, for example, it will be suspended for six months, but only three months if you take and fail the test (if you are a first offender).

**Q. What are field sobriety tests?**

**A.** Every police department has its own preferred tests. The police may ask you to do several things after you have gotten out of the vehicle, such as standing on one foot for a specified time or walking a straight line. The police also may ask you to touch your nose

with your index finger with your eyes closed and head back, and have you stare at a flashlight or a pen so that the officer can see how your eyes respond.

**Q. Suppose I fail the tests?**

**A.** It is not like school. You cannot promise to study harder next time. A skilled lawyer, however, may challenge whether the police administered the tests properly, or whether the tests effectively measure what they intend to. In addition, a lawyer may present qualifying evidence. For instance, a chronic knee injury may prevent you from supporting your weight on one foot.

**Q. How does a breath testing device work?**

**A.** The person blows into the machine, which measures the percentage of alcohol in the person's body. The law considers a standard measure as legally intoxicated. This measure might be .10 (one-tenth of one percent blood-alcohol concentration), or .08, depending on the state. The rules vary from one state to another. However, the law often entitles the defendant to two breath tests that must measure within .02 (or some other percentage) of each other.

**Q. If the breath-testing device hits .10, am I in serious trouble?**

**A.** Probably, but a lawyer may show that the machine's operator received inadequate training, the operator's certification has lapsed, or the operator did not maintain the machine well. Other factors may also affect the breath testing device reading and may be established through an expert witness. Diabetics, for example, have high levels of ketone (a naturally occurring chemical), which could yield false results when diabetics are tested. However, in most cases the result of a breath test will be allowed into evidence.

**Q. May I change my mind after declining to take a blood or breath test?**

**A.** There is no right for a person to change his mind once he or she has refused. The law still considers a change of heart as a refusal so far as it concerns a license suspension. It is a good idea to call a lawyer while you are thinking over a decision, if the police allow you to do so. However, unless you have a statutory right to a lawyer in your state, which could delay the test for several hours while the attorney is en route to the police station, you will have to decide whether to submit to the test fairly soon after being asked to do so. In some states, you must immediately decide.

**THE NATIONWIDE CRACKDOWN ON DRUNK DRIVING**

Tragic stories of victims killed by drunk drivers proliferate in the news media. The ranks of groups, such as Mothers Against Drunk Driving (M.A.D.D.) and Students Against Destructive Decisions (formerly Students Against Drunk Driving [S.A.D.D]), continue to swell. State legislatures have responded by introducing harsh new drunk driving laws at a dizzying clip. Society is no longer satisfied with giving offenders a slap on the wrist when it comes to drunk driving. See websites for MADD (<http://www.madd.org/>) and SADD (<http://www.saddonline.com/>)

The legal drinking age is twenty-one in every state in the Union. In addition, the majority of our states have enacted so-called "per se" laws, which prohibit a person from driving an automobile if the person has a blood-alcohol reading of a certain amount or more. When the per se law is used, the prosecution need not show that the person is under the influence. Rather, the prosecution need only prove that the person was driving and showing a blood-alcohol reading of the certain amount or more at the time. A blood alcohol reading of .10 remains the legal presumptive level of intoxication in some states, but a growing number of states have lowered their per se limit to .08.

Another trend nationwide among legislatures is to pass laws that create harsher penalties for higher breath testing device results. Some states provide for enhanced penalties for blood alcohol readings of .20 and higher. Other states have created lesser offenses, such as driving "impaired," with a blood alcohol level of .07.

In civil courts throughout the country, "dram shop" cases and "social host" cases are gaining wider acceptance, and expanding the liability for negligence. Taverns, restaurants, and individuals who furnish alcohol to intoxicated persons knowing that they are likely to drive are liable to third persons who are injured as a result of the conduct of the intoxicated individual.

**Q. What kind of penalty am I likely to get for DWI?**

**A.** Consult a lawyer in your state because penalties vary widely and depend on several factors, such as whether you are a repeat offender. A number of states require minimum penalties for first-time offenders, for example, which might involve enrollment in an alcohol treatment program and a license suspension of a month or so. A second-time offender might suffer a two-year license suspension or revocation of license. Some states impound the license plates or vehicles of habitual drunk drivers, and others revoke the licenses of habitual offenders.

This is an extremely volatile area of the law. Jail terms for first offenders are more common than they used to be. Community service and enrollment in mandatory alcohol programs, as well as heavy fines, are doled out by courts in various combinations with regularity as a result of changing public perceptions about drunk driving and the efforts of highly visible groups such as Mothers Against Drunk Driving.

**License Suspension/Revocation**

**Q. Suppose the police stop me and I've forgotten my license at home?**

**A.** Driving a motor vehicle on a public street or highway without a license is an offense in most states. Often, a person accused of failing to have a license in his or her possession can avoid conviction if able to produce a license in court that was valid at the time of the police stop.

**Q. What is the difference if the state suspends, cancels, or revokes my license?**

**A.** Suspension involves the temporary withdrawal of your privilege to drive. The state may reinstate that privilege after a designated time period and payment of a fee. You may

also restore the privilege by remedying the underlying cause of the suspension, such as buying automobile insurance.

Cancellation involves voluntarily giving up your driving privilege without penalty. Cancellation allows you to reapply for a license immediately.

Revocation aims both to discipline the driver and protect the public. Revocation involuntarily ends your driving privilege. Revocation generally is permanent until you are eligible after a minimum period set by law to apply for a new license. The state may conduct a reinstatement hearing. You may have to retake a driver's license examination.

### **DRIVING WITH A SUSPENDED OR REVOKED LICENSE**

The police probably will arrest you for driving with a suspended or revoked license. This usually is a serious misdemeanor that carries with it a stiff fine and possibly some time in the local jail. In some states, however, it may be a felony that lands the offender in state prison or with a significant amount of community service to work off, particularly if the suspension or revocation was based upon a DUI.

If you are stopped while driving with either a revoked or suspended license, you can expect to be arrested and taken to the police station to post bond. If you cannot raise the required amount of bond money, you will be taken to court for a bond hearing (usually within twenty-four hours), where a judge, in his or her broad discretion, will set bond.

You will remain in jail until the bond is posted. The bond you will need to post depends on the crime you are alleged to have committed and on your previous driving record. A monetary bond might be set, or you might be released on a personal recognizance bond, which requires only your signature and promise to return to court as ordered and not to violate any other laws.

### **Q. If State A has suspended/revoked my license, but I have a valid license in State B, can I drive in State A?**

**A.** Under the law of some states, a valid driver's license from another jurisdiction does not enable you to drive on the highways of a state that has cancelled, suspended, or revoked your license. However, other states have held that a license properly issued by a foreign state under the Driver's License Compact ends the suspension or revocation of a motorist's original license.

### **Q. What are the grounds for license suspension?**

**A.** They vary by state. A local lawyer will be able to give you details about your state laws. Generally, however, a state might provide that three moving violations within one year warrant a three-month suspension. Refusal to submit to a field sobriety or breath testing device test also will result in suspension.

### **Q. What are the grounds for license revocation?**

**A.** They are based on violating specific laws, such as habitual reckless driving, drunken driving, nonpayment of your motor vehicle excise tax, using a motor vehicle to commit a felony, and fleeing from or eluding the police. Again, they vary by state.

**Q. Does the law entitle me to notice and a hearing before the state revokes my license?**

**A.** Barring an emergency, due process under the Fourteenth Amendment generally requires notice and a chance to be heard before the state ends a person's license privileges. However, for certain serious offenses, the state may simply rely on the court conviction to revoke the person's license without the need for any hearing.

**Q. What if the state charges me with an offense that requires a license suspension?**

**A.** Unless another law says otherwise, no notice is necessary before a state may suspend your license under the mandatory provisions of a law. As a driver, you are presumed to know the law.

**Q. If the state does notify me, what should the notice say?**

**A.** The time, place, and purpose of the hearing should appear on the notice of a hearing to suspend or revoke your license.

**Q. Does the law entitle me to a jury?**

**A.** No. A suspension/revocation hearing is an administrative, not a judicial proceeding. You are entitled, however, to confront and cross-examine witnesses against you at such a hearing. You are well advised to be represented by counsel at such a hearing.

**Q. What must the state prove before a court can convict me of driving on a suspended or revoked license?**

**A.** The law varies from one state to another. The state, however, usually has to show that:

- the accused's license or privilege to drive was revoked or suspended on the occasion in question; and
- the accused was driving a motor vehicle on a public highway at the time of the offense.

## **License Renewal**

**Q. Must I take another examination to renew my license?**

**A.** Check with your state's division of motor vehicles. Some states permit renewal by mail. Most states require a vision test, and in some instances, a new photograph for renewal. A few require a written test. Prerequisites for license renewal could include as much as a vision test, written test, thumbprint, signature, and photograph.

Some states impose additional requirements if a driver has amassed a number of traffic convictions or if the driver is of a certain age or has certain physical problems. Some states require a road test for “elderly” drivers (those over a specific age that is set by state law) prior to renewal.

**Q. May a physical or mental affliction prevent me from driving legally?**

**A.** Yes. A few states require doctors to report physical and mental disorders of patients that could affect driver safety.

## **Seat Belt Laws**

**Q. My kids hate wearing seat belts. Must they wear these?**

**A.** All fifty states and the District of Columbia require children to be restrained while riding in motor vehicles. State laws vary, however, concerning the age of the child subject to the child restraint law. Seat belts are desirable when one considers that approximately 700 children under the age of five die in passenger vehicles annually and that 45 percent of the deaths of children between ages one and fourteen are caused by car accidents.

**Q. Do I have to wear a seat belt?**

**A.** It depends where you live and perhaps where you sit in the car. Thanks to variations in state law, you may only be required to strap in children up to a certain age or merely be required to wear belts if in the front seat.

**Q. May I still recover payment for my injuries if I am in an accident and not wearing my seat belt?**

**A.** Yes. Most states reject the so-called "seat-belt defense," and will not permit evidence that plaintiffs did not buckle up as proof that they were negligent in a way that contributed to the injuries. In some jurisdictions, however, evidence of the plaintiff's failure to use a seat belt may reduce the amount of damages awarded to the plaintiff.

**Speeding and Other Offenses**

This chapter cannot possibly discuss the many traffic offenses and statutory variations that exist among the fifty states. Generally, minor infractions are those in which a first offense is likely to yield a fine and no jail time. Examples include parking offenses, speeding, failure to keep to the right of the center line, driving an unregistered car, and driving a vehicle with defective equipment. More serious offenses carry stiffer fines and the possibility of a jail sentence. These include reckless driving, leaving the scene of an accident, and driving after a license revocation.

**Q. How could I have received a speeding ticket when I was being careful?**

**A.** A lack of due care is not an element of the charge of speeding. Simply because you were not in an accident does not prove that you were driving at a reasonable speed.

**Q. What are the elements of a speeding charge?**

**A.** It depends on whether your state bases its speeding laws on "absolute/fixed maximum limits" or "prima facie limits." It is a violation to exceed a fixed maximum limit regardless of the circumstances at any time. On the other hand, prima facie limits allow drivers to justify the speed at which they were driving by considering traffic and road conditions and visibility.

**Q. Does the type of speed limit change the nature of the complaint against me?**

**A.** Yes. The complaint and notice or summons to appear for a fixed maximum violation will specify both your alleged speed and the maximum speed allowable within the locality. In contrast, in prima facie jurisdictions, driving above the posted speed limit is not the offense. The police must charge you with driving above a speed that was

reasonable and proper given the existing conditions. One example might be driving fifty miles per hour in a school zone.

Speeding laws vary greatly from state to state. Therefore, it is a good idea, for legal and safety reasons, to get into the habit of reducing your driving speed whenever you approach a railway crossing or intersection, drive around a curve, or encounter special hazards, such as severe weather.

**Q. Are there any excuses I can offer that might prevent a police officer from writing up a speeding ticket?**

**A.** If you are taking a pregnant or sick person to the hospital, you might be spared a speeding citation, and you might even get a police escort to the hospital. Sometimes a court emergency (be sure to display the court papers to the officer), or a broken speedometer (be prepared to give the officer a test ride) may succeed but only, of course, if they are truthful reasons.

**Q. What kind of information is included on a traffic ticket?**

**A.** The color, model, and registration of your vehicle, and the date, time, and place of the alleged offense is provided on the ticket. Also, the specific violation charged (if it's a parking meter offense, the meter number as well), the officer's name and badge number, the fine schedule, and a notice of your ability to have a hearing to contest the ticket will probably be on a ticket as well. However, each jurisdiction has its own form. If the officer includes incorrect information in writing the ticket, such mistakes may provide you with a defense against the citation.

**Q. What does "leaving the scene of an accident" mean?**

**A.** Consult a lawyer about your state's law. Generally, drivers of vehicles involved in an accident in which personal injury or property damage occurs must stop and identify themselves and their vehicles. Drivers must also notify police, and help any injured persons. Neither the driver's intent nor the ownership of either vehicle involved in the collision are elements of the offense. (See the "Accidents" section immediately following this section.)

**Q. What are the defenses to such a charge?**

**A.** It is a complete defense if no personal injury or property damage resulted from the accident, or if you had no knowledge that an accident had occurred. On the other hand, claiming that you left intending to drive directly to the police station to report the accident probably would not be a good defense.

**Q. What is "reckless driving"?**

**A.** The language varies from jurisdiction to jurisdiction, but increasingly, states are following the Uniform Vehicle Code, which defines it as "willful or wanton disregard for the safety of persons or property." Essentially, the prosecution must show that reckless drivers were indifferent to the probable harmful results of their driving, and that the reckless drivers should have realized that such driving posed a hazard.

**Accidents**

**Q. According to the law, how safely must I drive?**

**A.** You have to use reasonable care under the circumstances. Negligence the failure to exercise such care is the most common basis for liability. However, ordinary negligence does not mean you are guilty of reckless driving in the criminal sense. For such driving to be unlawful, it must be willful or wanton as defined above.

**Q. Do I owe a higher standard of care toward pedestrians?**

**A.** No, the same standard applies. Motorists must exercise reasonable care under the circumstances toward pedestrians. In practical terms, this means keeping a careful lookout for them, and maintaining control over your vehicle to avoid injuring them. You must also sound your horn to warn of your approach when you believe that the pedestrian is unaware of the danger. In some states, you must stop if you see a pedestrian anywhere in a crosswalk.

The law does not, however, expect you to anticipate a pedestrian darting out into the roadway.

**Q. Do I owe the same duty of care toward my passengers?**

**A.** Generally, yes, although it may change based on your passengers' relationship to you. However, as in all accidents, you will not be liable if a passenger sustains injury through no fault of your own.

**Q. To what standard of care am I held if someone else is driving my car in which I am a passenger?**

**A.** The law in some states will assume you still have "control" over the vehicle. Other states require the owner to take steps to stop the negligent driving as soon as the owner becomes aware of it. In other words, as a car owner, you can be liable for more than just your own negligent driving.

**Q. Am I legally responsible even if I am not in the car if an accident occurs?**

**A.** Possibly. You still might be liable for property damage, injuries, and even death if you permit someone else to operate your defective vehicle, or if you allow an inexperienced, habitually intoxicated, or otherwise incompetent person to drive your car. The law refers to this conduct as "negligent entrustment."

**Q. What if my child is driving my car and an accident occurs?**

**A.** Some jurisdictions recognize the "family purpose doctrine," under which the "head" of the family who maintains a car for general family use may be held liable for the negligent driving of a family member who was authorized to use the vehicle. The fewer than twenty states that adhere to this doctrine treat the family member as an agent of the vehicle owner, who is presumed to be better able to satisfy property damage and injury claims.

**Q. If I am involved in an accident, must I identify myself to other involved parties?**

**A.** In the past, common law did not require you to give your name before leaving an accident scene. Modern laws that require you to identify yourself after an accident in which someone is hurt or killed have survived court challenges. You should identify yourself to a police officer (see below), and show your license and proof of insurance coverage if asked. Otherwise, you do not have to, and probably should not, say anything. Specifically, do not reveal how much insurance coverage you have, or admit liability.

### **WHAT YOU SHOULD DO IF YOU HAVE AN ACCIDENT**

If possible, park on the shoulder of the road and do not obstruct traffic. Use your car's flashers or flares to warn approaching motorists of the accident. If asked, give your name, address, vehicle registration certificate, and proof of insurance to the other driver. Get the same information from the other driver.

Write down the names and addresses of all passengers and possible witnesses. Also, get the names and badge numbers of any police officers who respond to the scene. If you have a camera handy, photograph damaged cars, skid marks, and the accident scene. Draw a diagram of the accident and make notes about the weather, lighting conditions, and road conditions. Most important, help any persons who are injured.

Do not make any statements about who you believe was at fault. Also, do not admit blame to the other parties or witnesses. As soon as possible after the accident, notify your insurance company. If you sustained any personal injury, seek medical attention promptly. Consult an attorney if you intend to file suit.

### **Q. If I collide with a parked car, am I required to do anything?**

**A.** The law requires you to try to find the owner. Alternatively, you are permitted to attach a written note to the parked car identifying yourself and your vehicle. You also should notify the police.

### **Q. Must I tell the police if I am in an accident?**

**A.** Alert the police immediately if someone is hurt or killed. Generally, if the accident involves a death, personal injury, or property damage above a specific amount that varies among states, you must notify the police and file a written accident report immediately, or within a short time span, usually five to ten days. Often, states require you to file the report with the bureau of motor vehicles or similar state authority. Some states do not require you to report an accident if no one is injured or if property damage is less than a certain dollar amount. Other jurisdictions require a report only if no police officer responded to the accident scene.

### **Q. What if I do not fill out an accident report?**

**A.** Failure to file a written report is a misdemeanor in most states. Some states may suspend your driver's license until you file the report. Remember, by completing an accident report, you are verifying that the report contains a recital of all important facts

known to you. Providing false information in a written report is illegal, and typically is punished by a fine.

**Q. Should I contact an attorney after the accident? What should I tell the lawyer?**

**A.** If you are filing a lawsuit against the other driver, you will hire your own lawyer. If the other driver is suing you, your insurance company will provide a lawyer for you.

At the initial client interview, supply information about:

- your family status and employment situation;
- the accident, including witnesses' names and addresses; and
- your injuries.

If you are filing suit, tell the lawyer about all your out-of-pocket expenses, such as doctors' bills, ambulance and hospital costs, automobile repairs, rental car costs, and any lost income.

**Q. What might happen if I believe the collision is at least partly my fault?**

**A.** You may not be in the best position to determine how the accident happened. Defective equipment in your vehicle, a malfunctioning traffic signal, or the other driver's intoxication are among the many possible causes of the accident. Accepting blame and apologizing to the other driver may be used as evidence against you at trial. Leave it to the judge or jury to decide who is at fault.

**Q. If the accident is partly my fault, may I still receive payment for my injuries?**

**A.** The answer depends on whether you live in a contributory negligence, comparative negligence, or no-fault jurisdiction. (See the discussion of no-fault insurance in the "Insurance" section immediately following.)

**Q. What is contributory negligence?**

**A.** Essentially, contributory negligence bars you from recovering money for your injuries if your own negligence in any way contributed to the accident's occurrence. The other driver must prove that you were negligent.

**Q. What is the logic behind this legal doctrine?**

**A.** The reasons behind contributory negligence range from punishing you for your own misconduct to discouraging you from acting negligently again. Only a few states still accept the concept of contributory negligence, which once was widely supported.

**Q. What does "comparative negligence" mean?**

**A.** Adhered to in the vast majority of states, comparative negligence divides the damages among the drivers involved in an accident based on their degree of fault. In "pure" comparative negligence states, you can receive payment for your injuries regardless of how much of the blame you carry for the accident, as long as the other driver is at fault to some degree. In "modified" comparative fault states, you may recover payment only if your own fault is below a certain threshold, such as 50 percent.

**Q. How does comparative negligence work?**

**A.** As an example, you are involved in an accident in which you were driving ten miles above the posted speed limit on an icy road. You believe, however, that the accident occurred because the other driver ran a red light.

In a comparative negligence state, it is up to the fact-finder, be it judge or jury, after hearing your case, to assign the degree of fault for each of you in terms of a percentage. Suppose the fact-finder decides that your speeding was responsible for 20 percent of your injuries, and the other driver's going through the red light contributed the remaining 80 percent. If the total amount of damages were \$100,000, you would only recover \$80,000.

## **Insurance**

### **Q. Does my bank have a say in the amount of insurance I buy?**

**A.** Possibly. Many states allow lenders from whom you borrowed to buy a car to protect their collateral by requiring you to purchase insurance options such as "collision," which pays for damage to your car regardless of fault, and "comprehensive," which pays for damage to your car caused by theft, fire, and vandalism.

### **Q. What is a deductible?**

**A.** A deductible is the amount of each claim that you agree to pay for by yourself. The higher the deductible you choose, the lower your annual insurance premium, though you need more cash on hand to pay for damages when you select a high deductible. Typical deductibles are \$50, \$100, \$250, and \$500.

### **Q. May my insurance agent force me to pay my premium in a lump sum?**

**A.** Check your particular state's law. Some states limit the amount an agent may demand before renewing your insurance to a certain percentage of the premium. If you have not paid your premium payments in the recent past, however, an insurance agent may legally ask you to pay your entire premium before renewing your policy.

### **Q. May my insurance agent charge me a service fee for issuing or renewing a policy?**

**A.** Consult your state's law. Some states forbid agents from charging service fees for issuing or renewing auto insurance policies, and do not require you to pay for services that your agent performs without your consent.

### **Q. How are insurance rates determined?**

**A.** A classification system based on objective criteria helps actuaries to determine the risk of an accident and thereby set the varying rates that drivers pay. Criteria include your age, sex, marital status, and geographic location; the age, make, and model of the car; and the car's primary use (cars used for recreation are statistically less likely to be involved in an accident than a vehicle used for commuting). In some states, the insurance rates are set by the state's insurance commission, which regulates insurance companies.

If you have been involved in a several accidents over a short period of time, you are a high risk, so insurance companies would add a surcharge to the basic premium you pay. On the other hand, insurance carriers might offer safety discounts if your vehicle is equipped with automatic safety belts, anti-lock brakes, or air bags.

Insurance companies will offer other types of discounts as well, such as for senior citizens, "good students," if you join a car pool, or if you insure multiple vehicles with the same carrier.

**Q. My teenage son's insurance premium is much higher than mine. Is it unconstitutional to discriminate based on age?**

**A.** No. Actuaries cite research that persons under age 21, especially males, have the highest rate of car accidents. This is the justification for the disparity in rates between adults and minors.

**Q. Will my insurance premium automatically increase if I have an accident?**

**A.** Not necessarily. If the insurance carrier has to dole out \$300 to \$500 or more in claims, you are likely to see a premium increase. If you have been accident-free for the previous three years, the surcharge, if any, might still be less than your costs to pay for the repairs out-of-pocket. If you are on your third accident and just getting warmed up, prepare yourself for a 20 percent to 50 percent premium hike.

**Q. Do I have to buy uninsured motorist coverage?**

**A.** It depends where you live. Some states now require drivers to purchase such coverage, which enables you to collect from your insurer if you are injured in an accident caused by an uninsured driver. The insurance carrier, in turn, receives subrogation rights against the uninsured wrongdoer; that is, the carrier takes your place (and your rights) as the legal claimant against the uninsured driver. Skyrocketing hospital costs, combined with a tight economy that has forced people not to adequately insure their vehicles, if at all (where not required by the state), make this coverage desirable, even if not mandated by your state.

**Q. How do I collect on my uninsured motorist coverage?**

**A.** Generally, you must prove both that the other driver was at fault and without liability insurance to compensate you. An uninsured motorist actually may have no coverage, or may be "uninsured" if underage, unlicensed, or otherwise ineligible for protection under the policy covering the vehicle that caused the accident, as, for example, when the driver at fault used the vehicle without the owner's permission. Practically speaking, if the insurance carrier of the driver at fault denies coverage, you are dealing with an uninsured motorist.

**Q. How much can I recover on an uninsured motorist claim?**

**A.** Check your state's law. Some states, for example, prohibit adding together the liability limits for two policies to determine how much coverage is available to injured persons.

**Q. How does underinsured motorist coverage work?**

**A.** Underinsured motorist coverage, which exists in a majority of states, provides indemnification from the injured person's insurer in a sum equal to or greater than what

the injured insured person could have realized had the driver at fault carried the statutorily prescribed liability insurance minimum. If, for example, you have underinsurance coverage with a "trigger" provision in the amount of \$100,000, and the other driver who injured you has only \$50,000 in bodily injury coverage, but you have \$70,000 in damages, once you recover from the other driver's carrier, you can look to your own insurer, up to a maximum \$50,000, to cover the excess damages.

**Q. Do underinsured motorist policies differ?**

**A.** Yes. A minority of those states that recognize this insurance option weigh the insured accident victim's damages against the driver at fault's liability coverage, compensating the injured person only if the driver at fault's liability coverage is less than the damages the victim suffered or was entitled to receive. Other states examine the injured person's uninsured motorist coverage and the driver at fault's liability insurance, with the insurance carrier paying out only when the driver at fault's liability insurance limit is less than the victim's underinsured motorist coverage. Most policies enable the insurer to deduct ("set-off") the amount the victim receives from the driver at fault from the sum it pays to the victim carrying the underinsured motorist protection.

**THE AUTO INSURANCE JUNGLE**

"No-fault," "choice," "financial responsibility"—most drivers would rather drive cross-country, nonstop, in a Yugo, than attempt to decipher the mysteries of automobile insurance. Virtually each state has its own insurance regulations, yet not every state has mandatory insurance. A detailed analysis of the issues and options associated with automobile insurance is beyond the scope of this chapter, but here's a quick guide to some of the major issues.

**Q. What is no-fault insurance?**

**A.** Under this type of insurance, which is usually compulsory, insurance carriers compensate their own policyholders for medical and other costs associated with automobile accidents. This type of insurance is designed to protect you, any passengers in your car, and any pedestrian you may injure, without having to enter a court of law to determine who is at fault for the accident. Most no-fault statutes apply only to bodily injury claims, and do not encompass property damage claims.

**Q. What are the pros and cons of no-fault?**

**A.** The purported advantage of no-fault is that the injured party is reimbursed relatively promptly by his or her insurance company, saving the party from a protracted court case. On the debit side, no-fault laws restrict the injured person's right to sue the other driver for general damages. For example, often a dollar "threshold" in medical expenses and damages must be satisfied before an injured party can bring suit against a negligent driver. Some states have a so-called "verbal threshold," which uses words not figures to determine when a suit may be filed. A typical statute precludes an individual injured in a car accident from initiating a tort action unless his or her injuries resulted in death, permanent serious disfigurement, or serious impairment of a body function. Under this

verbal threshold, sprains, strains, and other so-called "soft tissue" injuries, which are most common in automobile accidents, would not be compensable. Critics also lambaste no-fault for: 1) not providing an incentive to drive safely, because both the careless driver and the innocent victim are entitled to the same compensation, and, 2) for not resulting in reduced insurance premiums, as promised by insurance companies.

**Q. What are choice statutes?**

**A.** These laws enables drivers to choose between a no-fault policy that limits the driver's rights to sue the other party to an accident but allegedly carries with it a lower premium, and a straight tort-based negligence plan, at a supposedly higher premium, that gives drivers a broader right to sue.

**Q. What are "financial responsibility" laws?**

**A.** These laws require drivers either to have insurance or post a bond or have a sum of money in cash. "Security-type" financial responsibility laws require, following an accident, that each driver demonstrate an ability to pay damages that might be assessed against the driver in subsequent litigation. Another type of financial responsibility law involves a minimum requirement of financial responsibility covering death or injury of a person, death or injury of more than one person, and property damage.

**Q. What are "compulsory insurance" statutes?**

**A.** These laws mandate that drivers file proof of financial responsibility as a condition of receiving their vehicle registration. Many states require drivers to purchase certain insurance options, such as "collision," which pays you for damage to your car irrespective of who was at fault, and "comprehensive," which pays you for damage done to your car caused by theft, fire, and vandalism.

**WHERE TO GET MORE INFORMATION**

The following list is a starting point for getting more details or registering various types of complaints.

**Manufacturer/Dealer/Associations**

The National Automobile Dealers Association—[www.nada.org](http://www.nada.org)—is a major trade association of U.S. automobile dealers. It publishes a number of brochures for consumers on topics such as automotive safety. For details, call (703) 821-7000 or 1-800-252-6232 or write to:

National Automobile Dealers Association  
8400 Westpark Drive  
McLean, VA 22102

The Recreational Vehicle Industry Association—<http://www.rvia.org>--is a national trade association representing manufacturers of motor homes, travel trailers, truck campers, multi-use vehicles, and component part suppliers. It publishes brochures offering hints for

buyers, tips for campers, and safety and driving tips, among other topics. For details, call (703) 620-6003 or write to:

Recreational Vehicle Industry Association  
1896 Preston White Drive  
PO Box 2099  
Reston, VA 20195-0999

The Automobile Importers of America represents foreign-car manufacturers in the U.S. For details, call (703) 525-7788 or write to:

Automobile Importers of America  
1725 Jefferson Davis Highway  
Arlington, VA 22202  
[www.iam.org](http://www.iam.org)

The Rubber Manufacturers Association--<http://www.rma.org/>--offers information on tires and other rubber products. For details, call (202) 682-4800 or write to:

Rubber Manufacturers Association  
1400 K Street, NW  
Suite 900  
Washington, DC 20005

For information and publications on using certified car technicians for repairs, contact:

National Institute for Automotive Service Excellence  
13505 Dulles Technology Drive  
Suite 2  
Herndon, VA 22071-3421  
877-ASE-TECH  
website: <http://www.asecert.org/>

You also can call the car manufacturers' headquarters or their regional offices directly. Ask your local dealer for details.

### **Consumer Groups**

The website of the Better Business Bureau—[www.bbb.org](http://www.bbb.org)—is full of good information. Almost every state has a Better Business Bureau (BBB). Every local BBB has a hot line for automobile-related complaints, particularly regarding warranties. The BBB arranges arbitration hearings for participating manufacturers. Check your local telephone directory or write to:

Council of Better Business Bureaus, Inc.  
4200 Wilson Boulevard, 8th Floor  
Arlington, VA 22203

(703) 276-0100

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Mothers Against Drunk Driving (MADD) is the definitive source for information on drunk driving. There are many local chapters, which can easily be located in an Internet search or on the MADD website. Their national contact information is as follows:

MADD

P.O. Box 541688

Dallas, TX 75354-1688

800-GET-MADD

<http://www.madd.org/>

Ralph Nader's consumer protection organization is the Center for Auto Safety. It provides information on automobile defects for various models of cars and may follow-up on consumer complaints: Write to:

Center for Auto Safety

Suite 410

2001 S Street, NW

Washington, DC 20009

<http://www.autosafety.org/>

The American Automobile Association (AAA) has an affiliate dedicated entirely to traffic safety. You can reach it at:

AAA Foundation for Traffic Safety

1440 New York Ave NW

Suite 201

Washington, DC 20005

202-638-5944

<http://www.aaafoundation.org/>

A private website with extensive information about lemon laws including a state-by-state listing can be found at [http://www.autopedia.com/html/HotLinks\\_Lemon.html](http://www.autopedia.com/html/HotLinks_Lemon.html).

The Consumer Information Center has various booklets that might be of interest to you.

Call or write them at: Consumer Information Center-N, P.O. Box 100, Pueblo, Colorado 81002; telephone, (719) 948-3334 or find them on the web at <http://www.pueblo.gsa.gov/>.

Consumer Federation of America

1424 16th Street, NW

Suite 604

Washington, DC 20036

(202) 387-6121

<http://www.consumerfed.org/>

The National Safety Council also address auto safety issues.

National Safety Council  
1121 Springlake Drive  
Itasca, IL 60130  
(708) 285-1121  
<http://www.nsc.org/>

## **Government**

The Federal Trade Commission (FTC) has many pamphlets related to automobiles. It has regional offices, which are listed in the "[Where to Get More Information](#)" section of the "[Consumer Credit](#)" chapter. You also can call the FTC's Bureau of Consumer Protection at (202) 326-2222 or write to:

Federal Trade Commission  
Bureau of Consumer Protection  
6th and Pennsylvania Avenue, NW  
Washington, DC 20580  
<http://www.ftc.gov/>, <http://www.ftc.gov/bcp/menu-auto.htm>

You may also want to look at this specialized site that deals with the Magnuson-Moss Act:  
<http://www.ftc.gov/bcp/online/pubs/buspubs/warranty/undermag.htm>

The National Highway Traffic Safety Administration (NHTSA) provides information on car recalls and defect investigations. You also can report safety-related defects. The NHTSA offers a toll-free auto safety hot line. In the D.C. area, you can call this hot line at (202) 366-0123. In the continental U.S., call the hot line at 1-800-424-9393. Or write to:

National Highway Traffic Safety Administration  
400 7th Street, SW  
Washington, DC 20590  
<http://www.nhtsa.gov/>

The State of California Department of Consumer Affairs has a helpful website for consumers who want to understand more about vehicle leases, at  
<http://www.dca.ca.gov/legal/l-6.html>.

The United States Consumer Product Safety Commission is a federal agency that offers safety-related information on most, but not all, products available to the consumer market. In Maryland, call (301) 504-0580 and ask for the "Public Affairs Department." In the rest of the United States, call 1-800-638-2772. Or you can write to:

U.S. Consumer Product Safety Commission  
Washington, DC 20207  
<http://www.cpsc.gov/>,

National Transportation Safety Board

490 L'Enfant East, SW

Washington, DC 20594

(202) 382-6600

<http://www.nts.gov/>, <http://www.nts.gov/Surface/Highway/highway.htm>

For additional assistance with automobile-related problems or questions, you also can contact your state attorney general's offices or your state Department of Consumer Affairs. Some states have separate bureaus that handle only motor vehicle problems. Your state or local Department of Motor Vehicles also may be helpful. Check your local telephone directory.

### **Insurance**

For information designed to help consumers understand state laws and insurance, contact:

Insurance Information Institute

110 William Street

New York, NY 10038

(212) 669-9200

<http://www.iii.org/>

The Insurance Information Institute not only has many useful pamphlets, and also has state and regional counterparts.

[Click here to go to Chapter 11](#)