

57-16A-3.1. Used motor vehicles.

A. Unless a seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle, the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. Except as otherwise provided in the Motor Vehicle Quality Assurance Act [57-16A-1 NMSA 1978], a used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability prescribed in Section 55-2-314 NMSA 1978 or limit the remedies for a breach of the warranty before midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached and all subsequent days in which the used motor vehicle fails to conform with the implied warranty of merchantability are excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of the warranty in violation of this subsection renders a purchase agreement voidable at the option of the purchaser.

C. An implied warranty of merchantability is met if a used motor vehicle functions substantially free of a defect that significantly limits the use of the used motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time, a day on which the implied warranty of merchantability is breached is excluded and all subsequent days in which the used motor vehicle fails to conform with the warranty are also excluded. In calculating distance, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. An implied warranty of merchantability does not extend to damage that occurs after the sale of the used motor vehicle that results from:

(1) off-road use;

(2) racing;

(3) towing;

(4) abuse;

(5) misuse;

(6) neglect;

(7) failure to perform regular maintenance; and

(8) failure to maintain adequate oil, coolant and other required fluids or lubricants.

E. If the implied warranty of merchantability described in this section is breached, the consumer shall give reasonable notice to the seller within thirty days of the date of the breach. Before the consumer exercises another remedy pursuant to Chapter 55, Article 2 NMSA 1978, the seller shall have a reasonable opportunity to repair the used motor vehicle. The consumer shall pay one-half of the cost of the first two repairs necessary to bring the used motor vehicle into compliance with the warranty. The payments by the consumer are limited to a maximum payment of twenty-five dollars (\$25.00) for each repair.

F. The maximum liability of a seller pursuant to this section is limited to the purchase price paid for the used motor vehicle, to be refunded to the consumer or lender, as applicable, in exchange for return of the vehicle, unless the seller knew or should have known of the defect given the circumstances in which the vehicle was acquired or sold and the seller did not disclose that defect.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in boldface, ten-point or larger type set off from the body of the agreement:

"New Mexico law requires that this vehicle will be fit for the ordinary purposes for which the vehicle is used for fifteen days or five hundred miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the consumer) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated."

H. The inclusion in the agreement of the statement prescribed in Subsection G of this section does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

(1) the used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the business of the used motor vehicle dealer, the used motor vehicle has a particular defect;

(2) the consumer agrees to buy the used motor vehicle after disclosure of the defect; and

(3) before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type and that is written in the language in which the presentation was made:

"Attention consumer: sign here only if the dealer has told you that this vehicle has the following problem(s) and you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____."

J. A used motor vehicle dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection I of this section.

K. A consumer or seller that is aggrieved by a transaction pursuant to this section and that seeks a legal remedy shall pursue an appropriate remedy prescribed in Chapter 55, Article 2 NMSA 1978 and shall comply with the requirements prescribed in that article.