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**HEARINGS BEFORE THE  
FLORIDA NEW MOTOR VEHICLE  
ARBITRATION BOARD**

**Copies may be obtained from:**



**Department of Legal Affairs  
Lemon Law Arbitration Program  
The Capitol, PL-01  
Tallahassee, FL 32399-1050**

## HEARINGS BEFORE THE FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

This publication is given to consumers and manufacturers to provide important information concerning arbitration hearings under Florida's "Lemon Law" (Chapter 681, Florida Statutes). Your complaint has now reached the stage where a hearing may take place before the Arbitration Board, and this publication is designed to help you prepare your case for that hearing. ***You should read all of this publication.*** Otherwise, you may not fully understand your rights—and responsibilities—under the Lemon Law.

### General Description of the Board

Members of the Arbitration Board are appointed by the Attorney General, and lawyers from the Attorney General's Office serve as legal advisors to the Board. The Attorney General's Office does ***not*** represent either party to an arbitration hearing. The Arbitration Board conducts hearings in various locations of the state, and is administered by the Attorney General's Offices in either Tallahassee, Tampa, or Fort Lauderdale. Hearings are held in locations that are as convenient as possible for the consumer. The Notice of Arbitration enclosed with this publication lists your case number and the name and telephone number of your Board Administrator, as well as the address of the regional office to which your case has been assigned.

Your hearing will be conducted by a panel of three arbitrators. One arbitrator will serve as chairperson and another may be a person with knowledge of motor vehicle mechanics. All hearings are open to the public. Hearings and procedures of the Arbitration Board will be conducted in accordance with this publication, as well as Chapter 681, Florida Statutes (the Lemon Law).

The Arbitration Board will conduct a fair and impartial hearing and will protect the rights of all parties. Intimidation, disruptive behavior, or interference from any person during a hearing will not be allowed. The hearing is generally conducted in two parts, the first to determine whether the vehicle is a "lemon" under the law. If the vehicle is found to be a lemon, the second part of the hearing will determine whether the consumer gets a refund or a replacement vehicle. You should come to the hearing prepared to testify about all pertinent aspects of your case, including the financial aspects of calculating or objecting to the

calculation of a refund or replacement award, should the consumer prevail. Guidelines for calculating the remedy that may be awarded under the “Lemon Law” are available on the web site of the Office of the Attorney General at <http://myfloridalegal.com/lemonlaw>. If you have questions or comments about the hearing process, you should contact the Board Administrator identified in the Notice of Arbitration, or else contact the Office of the Attorney General, Lemon Law Arbitration Program, PL-01, The Capitol, Tallahassee, Florida 32399-1050. ***Give your case number with all communications.***

### **Parties; Appearances; Interpreters**

(1) The parties in proceedings before the Board consist of consumers and manufacturers. Any party or other person who appears at a hearing may, at his or her own expense, be represented by an attorney.

(2) Arbitration hearings are conducted in English. If you or your witnesses do not speak or understand English, you must bring an interpreter, at your own expense. You should make sure the interpreter can speak both languages fluently (the interpreter must be able to translate accurately, word for word), since the hearing may contain very technical evidence that must be translated precisely. The interpreter cannot be the same person as someone who will be a witness at the hearing. It is strongly recommended that the interpreter not be a family member. If the Board determines that the translation is not accurate, the hearing may be rescheduled, resulting in further delay.

(3) If it appears that a decision in your case will affect the rights or interests of other individuals who are not parties to the case, the Arbitration Board may, on its own or at your request, require that the absent person be notified of the claim and be given an opportunity to participate. A request to include an additional party must be made in writing and sent to the Board Administrator, stating the reason(s) for including the absent person, and with copies mailed by the requestor to all parties, including the person sought to be included. All parties and the absent person may file a written response to the request, with such response to be sent to the Board Administrator and copied to all other parties within 10 days of the date of the request.

(4) If you are represented by an attorney, your attorney must file a written notice of appearance with the Board Administrator and serve all other parties or their attorneys with a copy as soon as possible. Failure to do so may result in your attorney not receiving notices and other documents. Upon being notified of the appearance of an attorney, notices and other documents provided by this Program shall be sent to the attorney instead of to the client, except as otherwise specified in these rules.

#### **Notification by Manufacturers**

(5) Each manufacturer of motor vehicles sold in Florida must provide in writing the name, address, telephone number and facsimile number of the person designated to receive notices on behalf of the manufacturer under this program. (*Note: Dealers cannot be designated.*) An E-mail address may be provided at the option of the manufacturer. This written notice must be sent to the Office of the Attorney General, Lemon Law Arbitration Program, PL-01, The Capitol, Tallahassee, Florida 32399-1050. This information will be presumed correct unless it is updated in writing by the manufacturer. Failure to update the information will result in notices under Chapter 681, Florida Statutes (the "Lemon Law"), being mailed to the manufacturer's last known address, and may result in a decision in favor of the consumer if the manufacturer fails to appear at an arbitration hearing.

## Arbitration Forms

(6) TO THE CONSUMER: Along with this publication, you should receive a "Notice of Arbitration," a "Consumer's Trade-in Allowance Form," and a "Consumer's Prehearing Information Sheet." These forms must be completed, if applicable, with the originals to be received by the Board Administrator and a copy to be received by each involved manufacturer or manufacturer's attorney (if known) no later than 5 days before the scheduled hearing. **NOTE: if you fail to provide the completed Prehearing Information Sheet, with any attachments, to the Board Administrator and opposing party or attorney within the time specified in this rule, your witnesses, if any, may not be allowed to testify and/or the Board may decline to consider any attachments, unless good cause is shown for your failure to comply with this rule.** You should already have a copy of your Request for Arbitration form and supporting documents. **Be sure to bring your copy of all forms and supporting documents with you to the hearing.**

(7) TO THE MANUFACTURER: Along with this publication, you should receive a copy of the consumer's Request for Arbitration and accompanying documents, a "Notice of Arbitration," a "Manufacturer's Answer" form and a "Manufacturer's Prehearing Information Sheet." **Note:** If the manufacturer or its attorney is utilizing the "forms on disk," then the Manufacturer's Answer and Manufacturer's Prehearing Information Sheet are not included with this publication.

(8) **The Manufacturer's Answer** form must be filed with the Board Administrator no later than **20 days** after receipt of the Notice of Arbitration. Failure to use the required Manufacturer's Answer form will result in the answer being considered untimely filed. If filed by mail, the United States Postal Service postmark will be the filing date; or if filed by facsimile, the date the facsimile is received in the office of the Board Administrator before 5:00 p.m., Eastern time, will be the filing date; or if a courier service is used, the shipping date of the courier service will be the filing date. Any amendments to the Manufacturer's Answer must be filed with the Board Administrator and served upon the consumer or their attorney and any other named manufacturers or their attorneys in the case by no later than **5 days** before the hearing. If the Manufacturer's Answer is not timely filed, the amended answer will not be considered timely filed. **Affirmative defenses not timely raised in the required form, or in a timely filed amendment to the original timely filed Answer cannot be raised at the hearing, unless permitted by the Board.**

(9) A Manufacturer should raise only those affirmative and other defenses applicable to arbitration before the board, which, upon good faith belief after review of the Consumer's claim, the Manufacturer intends to prove at the arbitration hearing. All documents supporting defenses raised shall be attached to the Manufacturer's Answer form or submitted with the Manufacturer's Prehearing Information Sheet.

(10) The original **Manufacturer's Prehearing Information Sheet**, with any attachments, must be *received* by the Board Administrator no later than **5 days** before the hearing, and a copy with all attachments must be *received* by the consumer or their attorney no later than **5 days** before the hearing. If the consumer has requested a copy of applicable trade-in information from the NADA Official Used Car Guide (Southeast Edition), the Manufacturer shall supply this information, either separately or attached to the Prehearing Information Sheet, to be received no later than 5 days before the hearing. **NOTE: If the manufacturer fails to provide the completed Prehearing Information Sheet, with any attachments, to the Board Administrator and opposing party or attorney within the time specified in this rule, witnesses, if any, may not be allowed to testify and/or the Board may decline to consider any attachments, unless good cause is shown for the failure to comply with this rule.**

(11) ***Be sure to read these forms.*** They contain important information and must be filled out, copied, and sent to the Board and the opposing party or their attorney within the time limits stated above and in the forms. Please read these forms ***before*** you fill them out. Failure to complete and send the forms could affect your rights at the hearing. If you did not receive a form, please notify your Board Administrator immediately. ***You should keep a copy of all forms and bring them to your hearing.***

(12) **ORGANIZING YOUR DOCUMENTS FOR THE HEARING:** Copies of all forms and other documents you send to the Board are arranged in a file and are copied for the Board. These documents will be copied several times, so it is important that they be as legible as possible when you send them. Documents such as repair orders, letters, written statements, etc., are arranged in chronological order, oldest to most recent. It is recommended that you arrange your documents in the same way ***before*** the hearing to avoid confusion.

### **Manufacturer's Request to Inspect the Motor Vehicle**

(13) A manufacturer may request an inspection of the consumer's motor vehicle to aid in preparation of its case or to promote settlement of the case. This request must be indicated in the Manufacturer's Answer and the manufacturer or its attorney (not the dealer) must contact the consumer or his/her attorney to schedule the inspection.

(14) The inspection must take place at a time and location agreed to by both parties. If, after a reasonable good faith attempt, a time and location cannot be agreed to, the manufacturer may request that the Arbitration Board set a time and location for inspection. This request may be made in writing or by telephone to the Board Administrator. The Board may conduct a hearing via telephone for purposes of establishing a time and location that is reasonably convenient for both parties. The Board may deny the request for a prehearing vehicle inspection if no good faith effort has been made by the manufacturer to schedule the inspection at a reasonable time and place, or if the inspection cannot be conducted within a sufficient time prior to the hearing to meet the time periods set forth in paragraph (16) below. The Board may reschedule a scheduled hearing if it is shown that the consumer has failed without good reason to cooperate with the manufacturer's request for a prehearing inspection.

(15) *The consumer must be present during the vehicle inspection, unless he or she expressly waives the right to be present in writing.* The prehearing inspection does not constitute another attempt to repair the vehicle, and *no repair procedures shall be conducted.* The manufacturer may perform limited diagnostic examinations and inspection procedures, such as test driving the vehicle or attaching a testing device to the vehicle. The consumer shall not be subjected to intimidation or harassment by the manufacturer representative or attorney or dealer representative during the inspection. The consumer shall not be required to sign any statement in connection with the inspection, except the written waiver referenced in this paragraph.

(16) All information gathered as a result of the prehearing inspection will be provided to the consumer *in writing* as soon as it is available, but no later than *7 business days* before the date of the hearing. If the manufacturer fails to provide the information to the consumer as required, evidence or testimony related to the vehicle inspection may not be considered by the board at the hearing. A document that states, "prearbitration inspection, no work performed," or words to that effect with no additional information, will not comply with this rule.

(17) If the inspection of the vehicle reveals any new information or defense related to the Lemon Law claim but not previously raised in the consumer's Request for Arbitration or the Manufacturer's Answer, either party may change their forms. All such changes must be received by the Board Administrator and by the opposing party no later than *5 days* before the hearing.

#### **Attendance of Witnesses; Witness fees**

(18) If you wish to have a person testify as a witness at the hearing, you must notify that person and arrange for him or her to come to the hearing. You should bring to the hearing only those people who have personal knowledge of your Lemon Law claim. A person who can give the Arbitration Board a first-hand account of what happened is better than one who can only tell the Board what he or she has heard from you and others. The Board may accept an affidavit (notarized statement) by a person who does not come to the hearing, but this, by itself, may not be enough to prove your case.



(19) **Subpoenas:** If a witness refuses to come to the hearing voluntarily, you can request that the Board issue a subpoena. The request for a subpoena must be *in writing* and should be given to the Board Administrator as early as possible before the hearing so the witness can be served with the subpoena in time to appear. A request for a subpoena must provide the following information:

- a. Your name, address, and case number;
- b. The full name and address of the witness to be served with the subpoena;
- c. The time, place, and date for the witness to appear, if known;
- d. A detailed description of any documents to be brought by the witness, if this applies.

(20) **You are responsible for having the subpoena served upon a witness.** A subpoena may be served by certified mail, to the addressee only, return receipt requested, or by personal delivery to the person named in the subpoena. Personal delivery can be carried out by any person authorized by law to serve process, or by any person who is not a party to the claim and who is 18 years of age or older.

(21) **Witness Fees:** If you serve a witness with a subpoena, you must attach to the subpoena a check payable to the witness for a witness fee and approximate round-trip mileage from the person's address to the location of the hearing. The amount of the witness fee is \$5.00, and mileage is \$.06 per mile. You do not have to pay a witness fee to anyone who appears at the hearing voluntarily. The witness fee does not apply to an expert witness that you hire or to state employees who are required to appear as a direct result of their employment.

### **Getting Documents for the Hearing**

(22) You may obtain copies of documents that are in the possession of the opposing party by making a written request for the documents to the opposing party before your hearing date. If the opposing party is represented by an attorney, your request should be sent to the attorney. **Remember** that all documents *must* be received by the Board and the opposing party no later than *5 days* before the hearing.

(23) The Arbitration Board may issue appropriate orders to carry out or limit discovery (the process of learning what information the other party has and getting the party to give it to you) and to prevent delay. The Arbitration Board does not have the power to impose sanctions, to find a party in contempt, or to award attorney's fees.

### **Motions and Prehearing Conferences**

(24) All motions must be in writing unless made during the hearing and must fully state the action requested and the reasons for the motion. Motions that request dismissal of the consumer's claim such as are utilized in civil court proceedings are not preferred as a matter of practice before the Board, and the Board does not have the authority to grant summary judgments. However, should a manufacturer intend to request dismissal of a consumer's claim, such a request must be in writing, stating the reason(s) for the request, and filed with the Board Administrator, with a copy to the opposing party or attorney, sufficiently in time prior to the hearing to permit the opposing party or attorney to provide a written response as set forth in this paragraph, or the request may not be considered by the Board at the hearing. Written motions can be in letter form. The original must be sent to the Board Administrator, and a copy must be sent to each party or their attorney in enough time before the hearing to allow for a written response, if filed, to be received by the Arbitration Board no later than *5 days* before the hearing. If you are served with a motion, you may send a written response to the Board Administrator and a copy to the party or attorney who sent the motion to you. Your response must be sent so as to be received by the person who sent the motion to you and the Arbitration Board no later than *5 days* before the hearing.

(25) The chairperson (or member designated by the chairperson) will hold a hearing, if necessary, and grant or deny the motion. Hearings on motions may be conducted by conference telephone. Motions or other written requests seeking dismissal of the consumer's claim will be considered by the Board at the arbitration hearing.

(26) The Arbitration Board may conduct a prehearing conference, if necessary, for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, examining exhibits and documents, exchanging names of witnesses, and resolving procedural matters. The conference may be conducted by the chairperson or a member designated by the chairperson, and may be held by conference telephone.

### **Scheduling of Hearings; Notice**

(27) Every effort will be made to schedule your hearing within 40 days of the approval date which is noted on your Notice of Arbitration, unless both parties agree to a later date and the Board approves. The time, place, and date of the hearing will be set by the Board Administrator. Generally, hearing dates, times and locations are not coordinated in advance with the parties or their attorneys. The Board Administrator will mail a Notice of Hearing to you or to your attorney of record at least 14 days before the date of the hearing. If the consumer is represented by an attorney who has notified the Board of their appearance in the case, the hearing notice will be sent to the attorney and the consumer.

- In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in the hearing should contact the Board Administrator no later than seven days prior to the hearing at the telephone number given in the Notice of Arbitration. If hearing impaired, contact the Board Administrator via Florida Relay Service at 711.

(28) **Waiver:** If notice is not given as required in this section, or if the notice is defective in any other way, but all the appropriate parties appear at the hearing despite the improper notice, the chairperson will ask whether the parties are willing to waive their rights to proper notice. If all parties who were not properly noticed give their informed and intelligent consent, the hearing may proceed. If any party refuses to give consent to such a waiver, the hearing will be rescheduled with all parties given proper notice of the rescheduled hearing.

## Rescheduling or Postponing the Hearing

(29) **Rescheduling:** The Arbitration Board may reschedule the hearing on its own motion or upon the request of either party. If you request to have a hearing rescheduled, you should make the request in writing to the Board Administrator no later than **3 business days** before the hearing, and send copies of your request to the other parties. You must give the reason(s) for the request and state whether you agree to waive the time periods set forth in section 681.1095(9), Florida Statutes, for holding the hearing and rendering a decision. (Unless you waive the statutory time periods, the Arbitration Board has 40 days from the date of approval to schedule the hearing and 60 days from the date of approval to issue a decision.) A request made later than 3 business days before the hearing must be made at the hearing, unless the chairperson or designated Board member determines that consideration of a request made less than 3 business days before the hearing is warranted in the interest of program efficiency.

(30) Timely, written requests for rescheduling will be considered by the chairperson or a Board member designated by the chairperson. The Board Administrator will initially notify the parties of the ruling by telephone, followed by a written order sent by mail. If a request to reschedule is made during the hearing, the Board will make its ruling on the record and then either proceed with the hearing or adjourn.

(31) If the Arbitration Board finds that you do not have good cause for rescheduling the hearing, your request will be denied. If a request to reschedule a hearing is based upon an alleged conflict with a pre-scheduled court appearance, deposition or other proceeding, the person requesting the continuance shall attach a copy of the notice, order or other document evidencing the conflict. If the request for rescheduling is based upon the unavailability of counsel, a party or a witness for other reasons, the reasons for the unavailability shall be specified in the written request. Failure to comply with these requirements may result in denial of the request. If your request is granted, the hearing will be rescheduled and all parties will be notified of the new hearing date.

(32) ***Postponement for Settlement Negotiations:*** The hearing will not be scheduled or will be postponed when the Board Administrator is notified by the consumer that the parties are attempting to negotiate a settlement, or when a manufacturer files a Manufacturer's Answer in which the "Intent to Offer Settlement" portion is completed, or files an Amended Answer stating an intent to offer settlement and asserting no defenses. The postponement will be for a maximum of 90 cumulative days from the date of the first postponement request. If the consumer fails to notify the Board Administrator before the end of the postponement period that the settlement has been completed and the claim can be withdrawn, or that a hearing should be scheduled, the case will be closed and an order dismissing the case will be entered. In any event, a file will not be held open for longer than 90 cumulative days from the date of the first request for postponement for settlement negotiations.

### **Withdrawal**

(33) A consumer may withdraw his or her request for arbitration at any time. A withdrawal should be in writing and sent to the Board Administrator. Withdrawal can be made by telephone, but must be confirmed in writing.

- If the consumer withdraws the request at least 3 business days prior to the hearing, it will be granted without prejudice (meaning the consumer is free to submit a new Request for Arbitration without any penalty). However, when the first case is withdrawn, the time period for filing a request for arbitration will resume running. A consumer who withdraws a claim but later decides he or she wants to arbitrate it must file a new Request for Arbitration with the Department of Agriculture and Consumer Services, Division of Consumer Services, in accordance with section 681.109, Florida Statutes. If the second request is withdrawn, the consumer will not be permitted to resubmit the claim for arbitration.
- If the consumer withdraws the claim less than 3 business days before the hearing, the consumer will not be permitted to resubmit the claim for arbitration, unless the Board is shown good cause by the consumer and decides otherwise.

(34) If the consumer withdraws the Request for Arbitration for any reason, except a settlement for the repurchase of the subject vehicle by the manufacturer, it will not be considered as having exhausted all possible administrative remedies, nor will it mean the consumer has satisfied all preconditions for filing a civil action as set forth in section 681.1095(4), Florida Statutes.

#### **Failure to Appear at the Hearing**

(35) If a manufacturer fails to appear at the hearing, the Board will hold the hearing and make a decision based on the evidence presented by the consumer, which shall be considered undisputed, and on any documents contained in the record.

(36) If the consumer fails to appear, the hearing will be canceled and the case will be dismissed with prejudice (meaning the consumer cannot refile the Request for Arbitration).

(37) The party failing to appear must contact the Board Administrator within *1 business day of the hearing* if that party wishes to request that the decision be set aside. The manufacturer or consumer must indicate whether they are agreeable to a waiver of the time periods set forth in section 681.1095(9), Florida Statutes, for holding the hearing and rendering a decision. The request must include evidence of an unforeseeable circumstance that resulted in the party's failure to appear. This request will be considered by the chairperson or a Board member designated by the chairperson, who will hear arguments from both parties. Arguments may be heard by conference telephone. If the decision is set aside, a hearing will be scheduled as soon as possible after the original hearing date. Notice of the rescheduled hearing will be made to the parties by any means deemed appropriate by the Board.

(38) If both parties fail to appear at the hearing, the case will be dismissed with prejudice, unless a request to set aside (as described above) is made by the consumer.

(39) If a party fails to appear because the notice of hearing was not received, the party failing to appear must contact the Board Administrator within *20 days* of the date the party receives the written decision of the Board. If the Board finds that a party's failure to appear was the result of non-receipt of the Notice of Hearing, the decision shall be set aside and the hearing shall be rescheduled.

### **Powers and Duties of the Arbitration Board**

(40) The Board will take all necessary actions to avoid delay in deciding your case. The board will have all powers necessary to meet these ends, including the power to consider any and all evidence offered by the parties that the Board finds necessary to understand and decide the case and the power to regulate the course of the hearing and the conduct of the parties, their representatives, and witnesses.

(41) Members of the Board will maintain their impartiality throughout the course of the proceedings. Except for communication during a hearing, before a decision is rendered there may be no direct communication about the case between a party or any other person who has a direct or indirect interest in the case (or their attorney or representative) and the members of the Board. Any other oral or written communications between the parties and the Board or individual Board members must be channeled through the Board Administrator.

(42) A Board member who has received a communication prohibited by the previous paragraph, or who has received a threat or offer of reward by any person regarding the conduct or outcome of a proceeding, shall put on the record all written communications received, all written responses to those communications, and a memorandum stating the substance of any oral communications received and oral responses made. In addition, the Board member shall notify the Board Administrator of any such communication. If the communication was received after the hearing but before the decision has been rendered, the parties will be notified about the situation and be advised that they may, within 10 days, file a request for additional hearing in order to rebut whatever was said in the communication. If the Board member or Program Director determine that such a step is necessary to eliminate the effect of the communication, the Board member will recuse himself or herself or will be disqualified by the Program Director and a substitute Board member will be assigned.

(43) Board members may not have any financial or personal interest in the outcome of the hearing, nor may they have any current connection to the sale or manufacture of motor vehicles.

### **Disqualification; Substitution**

(44) At any time prior to the issuance of a final decision by the Board, any party may move to disqualify any member of the Board assigned to hear the case based on alleged bias, prejudice, or interest. Such motions will be considered and ruled upon by the Program Director.

(45) Motions made prior to the hearing must be filed with the Board Administrator at least 3 business days prior to the date of the hearing, for transmittal to the Program Director. Motions made less than 3 business days prior to the hearing, or during the hearing itself, may be in writing or stated orally on the record. The Board will determine whether the motion is legally sufficient. If the Board determines that the motion is legally sufficient, it will adjourn the hearing pending further ruling by the Program Director on the merits of the motion.

(46) Upon a finding by the Program Director that grounds exist to disqualify a Board member, the Program Director will disqualify the Board member and the Board Administrator will assign another Board member to the case.

(47) If any Board member should resign, die, withdraw, or be otherwise unable to perform the duties connected with a case to which he or she has been assigned, the Board Administrator will assign another Board member to the case.

### **Conduct of the Hearing**

(48) The hearing will be conducted in a manner designed to encourage a full and complete disclosure of the facts and to afford each party a full and equal opportunity to present evidence.

(49) The assignment of hearing panels is not subject to the approval of either party. A majority vote of the panel will be required to reach a decision.



(50) The panel chairperson will conduct the hearing and take whatever action is necessary to maintain decorum and ensure that the hearing proceeds in a fair, orderly, and expeditious manner. All parties will comply with the chairperson's rulings, unless the chairperson is overruled by a majority of the panel.

(51) The chairperson will open the hearing by stating on the record the case number; the place, time and date of the hearing; the identities of the arbitrators and Board staff; and the names of the parties and their attorneys, if any. The chairperson will also ask the parties to identify their witnesses, if any, and will set forth the procedures to be followed during the hearing. The consumer presents his or her evidence and witnesses first, and then the manufacturer presents its evidence and witnesses. After the manufacturer completes its presentation, the consumer will be given a brief opportunity to offer evidence and/or testimony to refute the manufacturer's assertion(s). The Board may vary the presentation of evidence if it determines that a change would more fully develop the facts of the case.

(52) The chairperson, or any Board member when recognized by the chairperson, may ask questions of any party or witness at any time. The chairperson will restrict the questioning to ensure that it deals only with the purpose of the hearing.

(53) Each party will be allowed to present a brief closing argument. The Board may deliberate and make a decision on the record immediately following closing arguments, or may defer its deliberations to a later time. Parties will be provided with notice of the continued deliberation. No further argument will be made by the parties during the Board's deliberations.

(54) ***Preservation of testimony:*** The hearing will be mechanically recorded by the Board or by a court reporter working under the supervision of the Board. The recording of the hearing will be placed in the case file and will be preserved in accordance with the applicable records retention schedule established by the Department of State. If the recording is transcribed, it will be the official transcript of the proceedings.

## **Evidence**

(55) Formal rules of evidence such as those applicable to civil court proceedings will not apply. You may present any evidence that relates to the case and is commonly relied upon by reasonably prudent people in the conduct of their affairs. The Board may exclude irrelevant, immaterial, or unduly repetitious evidence.

(56) If the Board conducts an inspection or test drive of the consumer's vehicle, both parties must be given the opportunity to be present and accompany the Board.

(57) All repair orders submitted by the consumer and/or the manufacturer will be presumed to be accurate copies of the originals. All exhibits will be identified as consumer's exhibits or manufacturer's exhibits and will be marked in the order received and made a part of the record. Whenever practicable, evidence will be labeled and placed in the record; otherwise, it will be described in detail on the record by the chairperson or designated Board member.

(58) The Board may receive and consider affidavits from witnesses who are not present at the hearing and give them such weight as the Board deems appropriate after considering any objections to their submission.

## **Decision of the Board**

(59) After the hearing, the Board's decision will be written by the Board's legal advisor. It will then be dated and signed by the Board. The date of the Board's signature will be used to determine compliance with the 60-day requirement for rendering the decision. A panel member casting a minority vote shall be indicated as "dissenting" in the Board's signature.

(60) The decision will be sent to the consumer and the manufacturer by registered mail. A party's attorney will receive a copy by regular mail, unless the attorney requests that he or she, rather than the consumer or manufacturer, receive the decision by registered mail. The date of registered mail receipt by a party or attorney will be the date used to calculate appeal and compliance deadlines.

(61) The decision must be based solely upon matters contained in the official record.

(62) The decision will determine whether the consumer is entitled to relief under sections 681.104 and 681.1095, Florida Statutes, and will contain, at a minimum, the following:

- A statement of the Board's jurisdiction;
- Findings of fact necessary to resolve the issues (findings based on agreements between the parties, called stipulations, will be designated as such);
- A conclusion with supporting rationale of whether the standards for refund or replacement have been met;
- A statement of the remedy granted by the Board;
- Notice of the right to initiate judicial proceedings under section 681.1095(10), (12), Florida Statutes.

(63) If the consumer wins and a refund is awarded, the decision will include the calculations used to determine the monetary award and offset as established in sections 681.102(20) and 681.104, Florida Statutes.

(64) If the consumer wins and a replacement vehicle is awarded, the decision will include a calculation of the offset provided in sections 681.102(20) and 681.104, Florida Statutes, as well as any collateral or incidental charges awarded, and a calculation of a refund amount to be paid in the event a replacement vehicle is not available or not acceptable to the consumer.

(65) If the consumer wins, the decision will tell the consumer that clear title must be given to the manufacturer by the title holder and the consumer must deliver the motor vehicle to the manufacturer at a reasonable time and place, upon compliance with the decision by the manufacturer.

## **Technical Corrections; Rehearing**

(66) At any time before judicial proceedings can be initiated under section 681.1095(10), (12), Florida Statutes, the Board may make “technical corrections” to a decision. “Technical corrections” are computational corrections, correction of clerical mistakes or typographical errors, or other minor corrections arising from oversight or omission. Such corrections will be made by the entry of a corrected decision.

(67) A party may file a written request for technical correction of a decision, stating the requested correction(s) and reason(s). The request must be filed with the Board and served upon the opposing party or their attorney within 10 days of receipt of the written decision.

(68) Requests to correct a decision will not prevent the decision from taking effect or delay the time for compliance or filing an appeal. Motions for rehearing will not be considered.

## **Manufacturer’s Failure to Comply With the Decision**

(69) If the manufacturer fails to comply with a Board decision in the consumer’s favor and the Attorney General’s Office has not received notice that judicial proceedings have been initiated within 40 days after the manufacturer’s receipt of the decision, the Attorney General’s Office will notify the manufacturer by registered mail or facsimile that it intends to seek a fine as prescribed by section 681.1095(10), Florida Statutes. The notification will be sent to the Manufacturer’s official contact designated pursuant to paragraph (5). The manufacturer must respond within 10 days of receiving this notice from the Attorney General’s Office.

(70) Once it receives the manufacturer’s evidence, the Attorney General’s Office will review the evidence to determine whether it is sufficient, and will notify the manufacturer of its determination by registered mail.

- If the Attorney General’s Office determines that the manufacturer’s delay in compliance was acceptable to the consumer, and the manufacturer fails to comply with the agreement between the manufacturer and consumer, the Office will seek imposition of a fine for the period beginning with the deadline for compliance set forth in section 681.1095(10), Florida Statutes.

- If the Attorney General's Office determines that the manufacturer's noncompliance or delay in compliance was beyond the manufacturer's control and the manufacturer fails to comply with the decision once those circumstances no longer exist, the Office will seek imposition of a fine beginning when the manufacturer could have complied but failed to do so.

### **Additional Arbitrations**

(71) Generally, consumers are entitled to only one arbitration per vehicle before the Board. However, it is within the discretion of the Attorney General's Office or the Board whether to allow a consumer to arbitrate after the consumer has lost a previous arbitration involving the same vehicle. The consumer must show a significant change in circumstances that would now qualify the vehicle for refund or replacement.

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