

New York State Office of the Attorney General

Wheelchair Lemon Law

A Guide for Consumers



Letitia James
NYS Attorney General

New York's Wheelchair Lemon Law: *A Guide for Consumers*

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Office of the NYS Attorney General

www.ag.ny.gov

800-771-7755

Wheelchair Lemon Law

What is the purpose of the New York Wheelchair Lemon Law?

The Wheelchair Lemon Law (General Business Law §670) provides a legal remedy for consumers who are buyers or lessees of new wheelchairs that turn out to be lemons. If the wheelchair does not conform to the terms of the written warranty and the manufacturer or its authorized dealer is unable to repair the wheelchair after a reasonable number of attempts during the first year, the consumer can choose a full refund or a comparable new replacement wheelchair. A copy of the law may be found in the back of this booklet.

Are all wheelchairs covered?

Yes. The law covers all wheelchairs, including “demos”, purchased, leased or transferred in New York to a consumer.

Who is protected?

The law is designed to protect “consumers”. A consumer is defined as (a) the purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale; (b) a person to whom the wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of the applicable express warranty; (c) a person who may enforce the warranty; (d) a person who leases a wheelchair from a wheelchair lessor under a written lease; or (e) state government agencies, subscribers to article 43 of the insurance law (Non-Profit Medical Indemnity), corporations, subscribers of organizations organized under article 44 of the public health law (HMOs) and programs governed by title 11 of article 5 of the social services law (“Medical Assistance for Needy Persons”).

Are leased wheelchairs covered?

Yes.

Does the manufacturer have to give an express warranty?

Yes. The warranty covers both parts and labor. The duration of the warranty must be no less than one year from the date of first delivery to the consumer. In the absence of a written warranty, the manufacturer is deemed to have given such a one year warranty.

What is the manufacturer’s duty to repair under this law?

With respect to wheelchairs covered by the law, a duty is imposed upon the manufacturer to repair, free of charge and without any deductible, any nonconformity to the warranty. The

consumer must notify the manufacturer or its authorized dealer of such nonconformity and makes the wheelchair available for repair within the first year from the date of first delivery. Once the consumer gives timely notice of the nonconformity and makes the wheelchair available for repairs within the first year, the manufacturer may not charge for the repairs, regardless of when the repairs are performed. Any consumer who has been charged for such repairs or a deductible during such period should contact the Attorney General's office.

What is a "nonconformity"?

A "nonconformity" is a condition or defect covered by warranty that substantially impairs the use, value or safety of the wheelchair. It does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the wheelchair by a consumer.

What should consumers do if they become aware of a problem with their wheelchair during the first year?

The consumer should immediately report any nonconformity either directly to the manufacturer or to its authorized dealer and make the wheelchair available for repairs. Unless otherwise advised by their lawyer, consumers should continue to make their monthly payments if the wheelchair is financed or leased. Failure to do so may adversely affect a consumer's lemon law rights.

What are a consumer's rights if the manufacturer does not meet its duty to repair?

If the problem is not repaired after a reasonable number of attempts, and if the problem substantially impairs the value of the wheelchair to the consumer, the manufacturer, at the consumer's option, must either refund the full purchase or offer a comparable new replacement wheelchair.

Does the law specify the number of required repair attempts?

Yes. It is presumed that there have been a reasonable number of attempts to repair a problem if, within the express warranty period but no less than one year from the original delivery date, either: (1) the same problem has been subject to repair three or more times and the problem continues to exist after the third repair attempt, **or** (2) the wheelchair is out of service for at least 30 days.

What constitutes "substantial impairment"?

It will depend on the facts in each case. In general, the consumer's complaint must be about a serious problem. For example, a defect in the engine which makes the wheelchair inoperable is clearly substantial.

Are there any exceptions to the manufacturer's duty to refund or replace?

The manufacturer does not have a duty to make a refund or provide a replacement wheelchair if: (1) the problem does not substantially impair the use, value or safety of the wheelchair to the consumer, or (2) the problem is a result of abuse, neglect or unauthorized modification or alteration of the wheelchair by a consumer.

How can consumers prove they own a lemon?

The consumer must be able to document repeated repair attempts. Therefore, it is very important to keep careful records of all complaints and copies of all work orders, repair bills and correspondence.

What should be included in the consumer's refund?

The refund should include the full purchase price plus any expenses paid by the consumer in connection with the repair, including shipping charges and the cost of obtaining an alternative wheelchair or other device to ease mobility, less a reasonable amount for use.

What may the manufacturer deduct for use?

The manufacturer may deduct a reasonable amount for use which the law defines as an amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is equal to the number of days that the wheelchair was driven before the consumer first reported the problem to the dealer or manufacturer. For example, if a defective wheelchair which cost \$6000 was used for 100 days before the consumer reported the defect to the manufacturer or its authorized dealer, the deduction for use would be \$328.77 (6,000 multiplied by 100 divided by 1,825) or, in this example, about \$3.29/day.

Is it different if the purchase was financed?

When the wheelchair is financed, the consumer is also entitled to recover any finance charges paid in connection with the purchase of the wheelchair. However, the entire refund is not paid to the consumer. Rather, the refund must be divided between the consumer and the lender (the bank or finance company). Generally, the lender will calculate how much is still owed by the consumer and apply the refund to that amount. The balance of the refund will go to the consumer.

If the wheelchair was leased, how is the consumer's refund calculated?

When the wheelchair is leased, the refund due from the manufacturer is divided between the consumer/lessee and the leasing company (the company to which the consumer makes lease

payments) according to a formula provided by the law. The amount to be refunded to the consumer/lessee is the total of the lessee's payments plus any expenses paid by the consumer in connection with the repair including the cost of obtaining an alternative wheelchair or other device to ease mobility, less a reasonable amount for use.

For example, suppose that a consumer leases a new wheelchair, the purchase price of which is \$8000, under a three-year lease, makes a \$1000 down payment, and pays a monthly lease payment of \$150. After making four monthly payments and after 120 days, the lessee reports a problem to the manufacturer and is granted a refund under the lemon law. The refund due the consumer will be \$1,074 calculated as follows:

Deposit	\$ 1,000
Plus monthly payments	+ <u>600</u> (4 x 150)
	\$ 1600
Less allowance for use	- <u>526</u> (8000 x 120, divided by 1825)
Total Refund	\$ 1,074

What is the lessor's refund?

The leasing company's portion of the refund is the "current value of the written lease". That term is defined by the law as: the amount which the consumer/lessee would have had to pay under the lease for the period remaining after its early termination, plus any expense, including any prepayment penalty, which the lessor has incurred as a result of the early termination and the return of the wheelchair (the dealer's "early termination costs") **plus** the value of the wheelchair at the expiration date of the lease, if stated in the lease, **less** any expenses the lessor avoids as a result of the early termination (the lessor's "early termination savings"), including any interest charges, if financed, or the difference between the amount the lessee would have had to pay under the lease for the period remaining after its early termination and the present value of that amount.

For example, given the same facts as above and that the lease provided that the wheelchair would be worth \$2000 at the end of the lease and assuming the difference between receiving the balance of monthly payments as they become due and the present value of all those payments is \$500, the refund due the lessor is \$6,300 calculated as follows:

Remaining balance	\$ 4,800 (32 x 150)
Plus residual value	+ 2,000
Plus costs to lessor	+ 0
Less savings	- <u>500</u>
Refund to lessor	\$ 6,300

If the wheelchair is leased, does a determination that it is a lemon terminate the lease?

Yes. Once a determination has been made under the lemon law that a wheelchair is a lemon and a refund is issued, the lease is terminated. As a result, no early termination penalties under the lease may be collected.

How can a consumer's rights under the lemon law be enforced?

A consumer has the choice of either participating in the state-run arbitration program or suing the manufacturer directly in court.

If the consumer wins in court, what can he recover?

The law directs the court to award a successful consumer twice the amount of any monetary loss together with costs, disbursements and reasonable attorney's fees, and any equitable relief that the court determines is appropriate.

What is an arbitration proceeding?

An arbitration proceeding is much less complicated, time consuming and expensive than going to court. The arbitration hearing is informal and strict rules of evidence do not apply. Arbitrators, rather than judges, listen to each side, review the evidence and render a decision.

What arbitration program is available to consumers in New York?

Consumers may participate in the New York State Wheelchair Lemon Law Arbitration Program ("New York Program"), established by the Wheelchair Warranty law. The New York Program is administered by the NYS Dispute Resolution Association ("NYS DRA") under regulations issued by the Attorney General. (A copy of the regulations may be found in the back of this booklet.) Decisions under the New York Program are binding on both parties.

How does a consumer participate in the New York program?

A consumer must first complete a "Request for Arbitration" form, which may be obtained from any of the Attorney General's regional offices. (A list of the Attorney General's regional offices may be found at the end of this booklet). The completed form must be returned to the Attorney General's Wheelchair Arbitration Unit, New York State Office of the Attorney General, 28 Liberty Street, New York, NY 10005. A consumer may request reasonable accommodations, in accordance with the Americans With Disabilities Act, including access and auxiliary aids and services, by completing a "Request for Reasonable Accommodations" form provided by the New York Attorney General's Office.

How does the New York program operate?

The Attorney General's office will review the form to determine whether the consumer's claim is eligible under the wheelchair warranty law to be heard by an arbitrator. If accepted, the form will be forwarded to the NYSDRA, the Program Administrator, for processing. The Association will then ask the consumer to pay the required filing fee. Upon receiving the filing fee, the Association will appoint an arbitrator and schedule a hearing to be held within 35 days. If rejected, the form will be returned to the consumer together with an explanation for the rejection. A complete step-by-step description of the New York Program may be found beginning later in this booklet.

Who are the arbitrators?

The arbitrators are volunteers who have been trained in the wheelchair warranty law by the Attorney General's office and in arbitration procedures by the NYSDRA.

Is a consumer entitled to an oral hearing?

Yes. Consumers have an absolute right to an oral hearing. At an oral hearing, both the consumer and the manufacturer's representative will have the opportunity to present their case in person before an arbitrator.

May a consumer choose a hearing on documents only?

Yes. A consumer may elect to have a hearing on documents only by indicating this preference on the "Request for Arbitration" form. In a "documents only" hearing, both sides must present their positions in writing. If a consumer requests a "documents only" hearing, the manufacturer may object, in which case an oral hearing will be scheduled.

May a stenographic record or tape recording be made of the hearing?

Yes. Any party to the arbitration may arrange, on its own, for a stenographic record or a tape recording of the hearing at their own expense even if the other party objects. If a stenographer or tape recorder will be used, reasonable prior notice, through the Case Administrator, must be given to the other party.

Can a hearing be held by telephone?

Yes. Either party to the arbitration may request to present its case by telephone provided adequate prior notice is given to the administrator and to the other party. A successful consumer may recover, as part of the award, any telephone costs incurred in such a hearing.

Does the consumer need an attorney for the arbitration hearing?

No. The New York Program is designed to be accessible to consumers without the need for an attorney. However, both the consumer and the manufacturer may use an attorney or any other person to assist them if they so choose.

How should consumers prepare for the hearing?

Consumers should keep a copy of their "Request for Arbitration" form to use as a guide in preparing for the hearing. The form contains much of the information needed at the hearing. In addition, consumers are advised to:

- (a) **Gather Documents.** Bring to the hearing records of everything pertaining to the purchase and the problem, including a copy of the purchase contract (invoice), all correspondence, work orders, and warranty.
- (b) **Organize Records.** Keep records in chronological order. This will serve as a guide in presenting the history of the problem.
- (c) **Prepare an Outline.** This will help to present and remember relevant information.
- (d) **Prepare Questions to Ask the Manufacturer's Representative.** This will assure that no important question is omitted.
- (e) **Arrange for Witnesses.** The presence of witnesses, especially mechanics or technicians, or their sworn statements may be helpful to document the problem.

What if consumers do not have all the documents?

Upon payment of the filing fee and prior to the hearing, consumers may make a written request to the arbitrator, through the Case Administrator, to direct the manufacturer to provide any necessary documents or other information. Consumers may also request the arbitrator to subpoena documents or witnesses to appear at the hearing. A sample letter requesting documents may be found later in this booklet.

How should consumers present their case at the hearing?

At the hearing, consumers should present their case in a clear, organized and concise manner. Consumers are advised to:

- (a) State the specific nature of the problem.
- (b) State any conversations with the dealer's or manufacturer's representatives.
- (c) Describe and document each repair attempt.
- (d) Describe and document any new developments which may have occurred since the "Request for Arbitration" form was submitted.

- (e) Offer proof of each point, especially those the manufacturer may dispute.
- (f) Present any witness that may provide relevant information.
- (g) State the relief requested.
- (h) At the end of the presentation, briefly summarize the facts discussed.

What happens if either party fails to appear at the hearing?

Unless the hearing has been properly rescheduled, if one party, either the manufacturer or the consumer, fails to appear or be represented at an oral hearing, the arbitrator will nevertheless conduct the hearing and issue a decision based upon the evidence presented and any documents contained in the file. If neither party appears or is represented at a scheduled oral hearing, the case is closed and the parties are notified accordingly.

When can a consumer expect a decision?

A consumer may expect a decision, generally, within 10 days of the hearing. Sometimes, however, the arbitrator requests that additional documents or information be submitted, in which case the decision may be delayed.

Can a consumer recover the filing fee and telephone costs?

Yes. If the consumer is successful, the arbitrator's decision in favor of the consumer must include the return of the filing fee as well as any telephone costs incurred if the hearing was conducted by telephone.

When must a manufacturer comply with an arbitrator's decision?

Within forty days. In most cases, the manufacturer's representative will contact the consumer within this period to arrange for the return of the wheelchair in exchange for either a refund or a replacement wheelchair.

How is a return of the wheelchair implemented?

The recommended procedure is to have both the consumer and the manufacturer's representative agree on a mutually convenient time and place to exchange the wheelchair for a refund or replacement.

What happens if the manufacturer does not comply with the arbitrator's award?

If the manufacturer does not comply with the award, a consumer can enforce the arbitrator's decision through the courts by bringing an action to confirm the award. This action

must be commenced within one year of receipt of the decision. Consumers should consult a private attorney if they wish to pursue this remedy. If the consumer is successful, the Court will convert the arbitrator's award into a court judgment and may award reasonable attorney's fees.

Under what circumstances can an arbitrator's decision be modified?

The grounds for modification are very limited. Generally, awards may be modified only to correct a miscalculation or a technical mistake in the award. For example, a modification may be requested where the use deduction was miscalculated or the filing fee was omitted from the refund.

When must a request for modification be made?

Either party may seek a modification by the arbitrator of the award by written application to the Administrator within 20 days of receiving the award. The other party will be given the opportunity to object to the modification. The arbitrator must rule on all such requests within 30 days after the request is received. To modify an award after 20 days, an application to a court may be necessary.

Can an arbitrator's decision be challenged?

Either the consumer or the manufacturer may commence a lawsuit to challenge an arbitrator's award within 90 days of receipt of the award. However, the grounds for such challenges are limited by law. Generally, the courts will uphold an arbitrator's award if it is supported by evidence and is grounded in reason. Reasonable attorneys fees may be awarded by the court to a consumer who is successful in challenging or defending an arbitration award.

What role will the Attorney General's office or the administrator play if a manufacturer challenges an award in court?

Neither the Attorney General's Office nor the Administrator is authorized to represent an individual consumer in such a challenge; this is the responsibility of the consumer's own attorney. In some cases, where the manufacturer raises constitutional issues or questions of general application regarding the wheelchair warranty law, the Attorney General's Office may seek to intervene in the case to present its position to the court. The Administrator's role is finished when the arbitrator's award is sent to the parties.

Can consumers apply for another hearing under the New York program if they lost the first one?

A decision under the New York Program is binding on both parties. However, if new facts arise after a hearing was held, the consumer may reapply for a new hearing based on the new facts. For

example, if a consumer originally applied to the New York Program based on three unsuccessful repair attempts (Jan. 5, Jan. 25, Feb. 10) and lost the arbitration, he or she may reapply if there were three additional repair attempts not previously considered even if the repair attempts were for the same problem.

Does the wheelchair lemon law limit any of the other legal remedies already available to consumers?

No. The wheelchair lemon law adds to the consumer's arsenal of existing legal remedies. These legal remedies can be explained by the consumer's attorney.

Can a consumer's rights be waived under this law?

No. Any contract clause which seeks to waive any of the consumer's rights under the wheelchair lemon law is void.

How is a buyer protected when purchasing a wheelchair previously returned to the manufacturer under the wheelchair lemon law?

No wheelchair, returned to the manufacturer pursuant to this law, or in another State pursuant to a similar law of that State, may be sold or leased again in New York unless full disclosure of the reasons for the return is made to the prospective buyer or lessee.

Where can a consumer get help or further information regarding the wheelchair lemon law?

A consumer may contact any of the offices of the Attorney General listed at the end of this booklet or consult a lawyer.

Using the New York State Wheelchair Lemon Law Arbitration Program

The New York Program's operational procedures can be summarized in ten steps:

1. Consumer's Completion of Request-for-Arbitration Form
2. Attorney General's Review
3. Request for Filing Fee by NYSDRA
4. Filing Date; Appointment of Arbitrator; Schedule of Hearing
5. Notice of Claim Sent to Manufacturer; Manufacturer's Response; Consumer's Reply
6. Pre-Hearing Discovery
7. Hearing
8. Decision
9. Administrator's Review of Decision Form
10. Modification and Appeal

Step 1. Consumer's Completion of Request-For-Arbitration Form

A consumer can seek redress under the New York Program by obtaining a Request-for-Arbitration form from one of the 13 regional offices of the Attorney General. The consumer completes and returns this form, together with copies of all relevant supporting documents (including the bill of sale, repair work orders and any correspondence relating to the claim) to the Attorney General's Wheelchair Lemon Law Unit, 28 Liberty Street, New York, NY 10005.

Step 2. Attorney General's Review

The form and documents are reviewed promptly by the Attorney General's Wheelchair Lemon Law Unit. The review is for screening purposes only -- to determine whether the claim may be heard by an arbitrator. For example, to be eligible for acceptance into the New York Program, the wheelchair must have been purchased or leased in New York State and the defect or condition must continue to exist. Based on this review, the Request-for-Arbitration form is either accepted or rejected. If rejected, the form is returned to the consumer with a letter indicating the reason(s) for the rejection. In many instances, a consumer is able to correct the cause for rejection and successfully resubmit the form. If the form is accepted, the consumer is advised in writing that the matter is being forwarded to the Administrator for further processing.

Step 3. Request for Filing Fee by Administrator

Upon receipt of the form, the Association writes to the consumer to request the payment of the filing fee. If, after 30 days, the Association has not received the filing fee from the consumer, it sends a second notice. If the fee is still not received within another 30 days, the Request-for-Arbitration form is returned and the consumer is advised that the case has been closed.

Step 4. Filing Date; Appointment of Arbitrator; Schedule of Hearing

The date the Administrator receives the filing fee from the consumer is considered the case "filing date." This date marks the official beginning of the arbitration process. At this juncture, the Administrator appoints an arbitrator and schedules a hearing for a specific date no later than 35 days from the "filing date". Oral hearings are scheduled to accommodate the needs of the consumer, both geographically and as to time-of-day. The consumer elects the most convenient site for the hearing on the Request-for-Arbitration Form. Currently, there are over 50 locations throughout the state where a consumer may choose to have a hearing.

Step 5. Notice of Claim Sent to Manufacturer (and Third Party, if any); Manufacturer Responds; Consumer's Reply

Within five days of the filing date, the Administrator sends a copy of the consumer's Request-for-Arbitration form, together with all attachments, to the manufacturer's designated contact person. If the wheelchair was financed or leased, the finance company or bank to which the consumer makes his or her payments or the leasing company is also notified of the consumer's claim and of the scheduled hearing date and is requested to submit relevant financial information prior to the hearing date. The manufacturer is given 15 days from the filing date to respond to the consumer's claim. The Administrator mails any response received to the consumer, who may reply before day 25. The Administrator mails a copy of the consumer's reply, if any, to the manufacturer.

Step 6. Pre-Hearing Discovery

Prior to the hearing, either party may request the arbitrator to direct the production of specified documents (such as repair orders) or information, or request that a witness be subpoenaed. Under the regulations, an arbitrator may draw a negative inference concerning any issue for which documents or witnesses were requested but not provided.

Step 7. The Hearing

At the hearing, the consumer presents evidence and then the manufacturer presents its evidence. Each party, as well as the arbitrator, may question the other party or any witness. The arbitrator administers an oath or affirmation to each individual who testifies. Formal rules of evidence do not apply and each party is afforded a full and equal opportunity to present his or her case. Typically, a hearing lasts between one and two hours. The arbitrator has the discretion to examine the consumer's wheelchair, and both parties are afforded the opportunity to be present when the arbitrator makes his/her examination.

Step 8. The Decision

Regardless of the type of hearing -- oral or on documents only -- the arbitrator must render a decision within 5 days following the hearing date (unless additional time was allowed for the submission of requested documents) which is to be no more than 40 days from the filing date. Each decision must be signed and certified by the arbitrator, contain a summary of both the issues in dispute and the evidence presented by each side, include the arbitrator's findings and indicate whether or not the arbitrator, based on the stated findings, found that the consumer qualifies for relief under the wheelchair lemon law. If the arbitrator finds that the consumer is entitled to relief, the arbitrator must award either a refund or a comparable replacement vehicle, depending on what the consumer requested. The decision must contain a calculation of the award, where applicable, in accordance with the law, taking into consideration, for example, any allowable deductions for use. A refund of the prescribed filing fee must also be included as part of every award in favor of the consumer. The manufacturer must comply with the award within 40 days.

Step 9. Administrator's Review of Decision Form

Once rendered, the decision is sent to the Administrator which reviews it for technical completeness and accuracy and to eliminate arithmetic or typographical errors. The Administrator must obtain the approval of the arbitrator for any corrections. Once finalized, the Administrator mails copies of the decision to each of the parties and the Attorney General's Office within 45 days of the filing date. The date of mailing becomes the official date of issuance from which the 30-day period for compliance begins.

Step 10. Modification and Appeal

Where a party believes a mistake was made, he or she may seek a modification within 20 days of the receipt of the award. Such a request for modification must be acted upon by the arbitrator within 30 days. The grounds for modification are limited by law (CPLR §7511(c)). The decision is binding on both parties but may be subject to judicial review as permitted pursuant to CPLR Article 75. Either party may commence a court proceeding to vacate or modify an award within 90 days of its receipt (CPLR §7511(b)).

SAMPLE REQUEST FOR DOCUMENTS

[Your Name]
[Address]
[City, State, Zip]

NYS Dispute Resolution Association
[Fill in local Center's address] Attention:
Arbitrator [Name]

Re: Wheelchair Lemon Law
Arbitration # _____
Request for Documents

Dear Arbitrator:

Pursuant to section 301.9 of the New York Wheelchair Arbitration Regulations, I am requesting that you direct the manufacturer to obtain and forward to the Case Administrator legible copies of the following documents and information no later than three days before the scheduled hearing date:

1. Each and every repair order for work performed on my wheelchair.
2. Any service bulletin issued that may relate to the problem of: [describe your problem, for example, stalling, lack of power, etc.]
3. Any report or correspondence regarding my wheelchair's problems.
4. Any other documents or information that may relate directly to this arbitration.

Your prompt attention to this request is greatly appreciated.

Very truly yours,

THE WHEELCHAIR WARRANTY LAW

General Business Law

Section 670 (as amended as of 10/96)

WHEELCHAIR WARRANTIES

General Business Law, Article 32

Section 670. Repair, replacement and refund under new wheelchair warranties.

1. As used in this section:
 - a. “Collateral costs” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility.
 - b. “Consumer” means any of the following:
 - (1) The purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale.
 - (2) A person to whom the wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the wheelchair.
 - (3) A person who may enforce the warranty.
 - (4) A person who leases a wheelchair from a wheelchair lessor under a written lease.
 - (5) State governmental agencies, subscribers to article forty-three of the insurance law, corporations, subscribers of organizations organized under article forty-four of the public health law, and programs governed by title eleven of article five of the social services law.
 - c. “Demonstrator” means a wheelchair used primarily for the purpose of demonstration to the public.
 - d. “Early termination cost” means any expense or obligation that a wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a wheelchair to a manufacturer pursuant to subparagraph three of paragraph b of subdivision three of this section. “Early termination cost” includes a penalty for prepayment under a finance arrangement.

- e. “Early termination savings” means any expense or obligation that a wheelchair lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of a wheelchair to a manufacturer pursuant to subparagraph three of paragraph b of subdivision three of this section. “Early termination savings” includes an interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor does not finance the wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.
 - f. “Manufacturer” means a person who manufactures or assembles wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer’s wheelchair, but does not include a wheelchair dealer.
 - g. “Wheelchair” means any wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.
 - h. “Wheelchair dealer” means a person who is in the business of selling wheelchairs.
 - i. “Wheelchair lessor” means a person who leases a wheelchair to a consumer, or who holds the lessor’s rights, under a written lease.
 - j. “Nonconformity” means a condition or defect that substantially impairs the use, value or safety of a wheelchair, and that is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the wheelchair by a consumer.
 - k. “Reasonable attempt to repair” means that, within the term of an express warranty applicable to a new wheelchair, any nonconformity within the warranty is either subject to repair by the manufacturer, wheelchair lessor or any of the manufacturer’s authorized wheelchair dealers, for at least three times and a nonconformity continues, or that the wheelchair is out of service for an aggregate of at least thirty days because of warranty nonconformity, after having been returned to the manufacturer, wheelchair lessor or any of the manufacturer’s authorized wheelchair dealers for repair.
2. a. A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The duration of the express warranty shall not be less than one year after first delivery of the wheelchair to the consumer.

In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of a wheelchair that, for a period of one year from the date of first delivery to the consumer, the wheelchair will be free from any condition or defect which substantially impairs the value of the wheelchair to the consumer.

- b. The following notice shall be provided in conspicuous type and in substantially the following form by the manufacturer, wheelchair dealer or wheelchair lessor to each consumer at the time of purchase:

WHEELCHAIR LEMON LAW BILL OF RIGHTS

- (1) By law, the manufacturer shall be deemed to have provided to you, the purchaser of a wheelchair, a one year warranty which starts on the date of first delivery to you. This warranty provides that the wheelchair will be free from any condition or defect that substantially impairs its use, value or safety.
- (2) To ensure you receive the benefits of this warranty, you must report any problems and make the wheelchair available to the manufacturer, authorized wheelchair dealer or wheelchair lessor for repair before one year after first delivery.
- (3) Upon notification and the wheelchair's being made available to the manufacturer or its authorized dealer, the problem must be corrected free of charge.
- (4) During the warranty period, if any condition or defect cannot be repaired after three attempts or if your wheelchair is out of service for a total of thirty days for repairs to any condition or defect which substantially impairs the use, value or safety of the wheelchair, you are entitled to either a comparable new wheelchair or a refund or, if you are leasing a wheelchair, replacement of your wheelchair with a comparable new wheelchair or a refund of the full purchase price plus any finance charge and collateral costs, minus a reasonable allowance for use.
- (5) The warranty provided to you by the law does not cover conditions or defects that result from abuse, neglect or unauthorized modification or alteration of the wheelchair and relieves the manufacturer of liability for repairs in these instances.
- (6) A manufacturer may refuse to replace a wheelchair or refund your purchase price if a problem does not substantially impair the use, value or safety of your wheelchair.

- (7) You may submit any dispute with a manufacturer, dealer or lessor arising from a dispute over the repair of your wheelchair to an alternate arbitration mechanism established pursuant to rules promulgated by the New York state attorney general.
 - (8) No contract or agreement for the sale or lease of a wheelchair can void any of these rights.
 3.
 - a. If a new wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the wheelchair lessor or any of the manufacturer's authorized wheelchair dealers and makes the wheelchair available for repair before one year after first delivery of the wheelchair to a consumer, the nonconformity shall be repaired at no charge to the consumer.
 - b.
 - (1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement set forth under either subparagraph two or three of this paragraph, whichever is appropriate.
 - (2) At the direction of a consumer described under subparagraph one, two or three of paragraph b of subdivision one of this section, do one of the following:
 - (a) Accept return of the wheelchair and replace the wheelchair with a comparable new wheelchair and refund any collateral costs.
 - (b) Accept return of the wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's wheelchair, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the wheelchair was driven before the consumer first reported the nonconformity to the wheelchair dealer.
 - (3) (a) With respect to a consumer described under subparagraph four of paragraph b of subdivision one of this section, accept return of the wheelchair, refund to the wheelchair lessor and to any holder of a perfected security interest in the wheelchair, as their interest may appear, the current value of the written lease and refund to the

consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(b) The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the wheelchair at the lease expiration date if the lease sets forth that value, less the wheelchair lessor's early termination savings.

(c) A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer drove the wheelchair before first reporting the nonconformity to the manufacturer, wheelchair lessor or wheelchair dealer.

- c. To receive a comparable new wheelchair or a refund due under subparagraph one or two of paragraph b of this subdivision, a consumer described under subparagraph one, two or three of paragraph b of subdivision one of this section, shall offer to the manufacturer of the wheelchair having the nonconformity to transfer possession of that wheelchair to that manufacturer. No later than twenty days after that offer, the manufacturer shall provide the consumer with the comparable new wheelchair or refund. When the manufacturer provides the new wheelchair or refund, the consumer shall return the wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.
- d. (1) To receive a refund due under subparagraph three of paragraph b of this subdivision, a consumer described under subparagraph four of paragraph b of subdivision one of this section shall offer to return the wheelchair having the nonconformity to its manufacturer. No later than thirty days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the wheelchair having the nonconformity.
- (2) To receive a refund due under subparagraph three of paragraph b of this subdivision, a wheelchair lessor shall offer to transfer possession of the wheelchair having the nonconformity to its manufacturer. No later than thirty days after that offer, the manufacturer shall provide the refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer

any endorsements necessary to transfer legal possession to the manufacturer.

(3) No person may enforce the lease against the consumer after the consumer receives a refund due under subparagraph three of paragraph b of this subdivision.

- e. No wheelchair returned by a consumer or wheelchair lessor in this state pursuant to paragraph b of this subdivision, or by a consumer or wheelchair lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.
- 4. a. Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the New York state attorney general. Upon application of the consumer and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.
- b. Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the New York state attorney general. Such mechanism shall insure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules. Where applicable, any action required of a manufacturer, wheelchair dealer or wheelchair lessor to comply with a final decision of such arbitrator shall be completed within forty days of the date of such decision.
- 5. This section does not limit rights or remedies available to a consumer under any other law.
- 6. Any waiver by a consumer of rights under this section is void.
- 7. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

NEW YORK WHEELCHAIR ARBITRATION PROGRAM REGULATIONS

Title 13 NYCRR Chap. VIII, Part 301

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Section 301.1 Purpose

- (a) These regulations are promulgated pursuant to General Business Law (“GBL”) article 32, as added by Chapter 532 of the Laws of 1993, as amended by Chapter 178 of the Laws of 1996, and Chapter 219 of the Laws of 2006. They set forth the procedures for the operation of an alternative arbitration mechanism (the “Program”) as required by GBL §670(4).
- (b) These regulations are designed to promote the independent, speedy, efficient and fair disposition of disputes concerning defective wheelchairs.

Section 301.2 Definitions

- (a) Unless otherwise stated, terms used in these regulations are as defined in GBL §670.
- (b) The term “Administrator” shall mean a professional arbitration firm or individual appointed by the Attorney General to administer the Program.

Section 301.3 Appointment of Administrator

- (a) The Attorney General shall appoint an Administrator or Administrators to a definite term not to exceed two years. The term shall be renewable.
- (b) The following criteria shall be considered in the selection of an Administrator: capability, objectivity, non-affiliation with a wheelchair manufacturer or vendor, reliability, experience, financial stability, extent of geographic coverage, and fee structure.
- (c) The Attorney General shall give appropriate public notice at least 60 days prior to the expiration of an Administrator’s term inviting any interested qualified party to apply in writing for the position of Administrator within 30 days from the date of the public notice.
- (d) Upon a vacancy occurring prior to the expiration of an Administrator’s term, the time periods in subsection (c) shall not apply and the Attorney General shall take appropriate steps to assure the continued administration of the Program.

Section 301.4 Consumer’s Request for Arbitration

- (a) The Attorney General shall prescribe and make available “Request for Arbitration” forms for GBL §670 claims. To apply for arbitration under the Program, a consumer shall obtain, complete and submit the appropriate form to the Attorney General.
- (b) Those consumers wishing a hearing on documents only shall so indicate on the form.
- (c) For a GBL §670 claim, the consumer shall indicate on the form his/her choice of remedy (i.e., either refund or comparable new replacement wheelchair), in

the event the arbitrator rules in favor of the consumer. Such choice shall be followed by the arbitrator unless the consumer advises the Administrator in writing of a change in his/her choice of remedy prior to the arbitrator's rendering of a decision.

- (d) Upon receipt, the Attorney General shall assign a case number to the form.
- (e) The Attorney General shall review the submitted form for completeness and eligibility and shall either accept it or reject it.
- (f) If the form is rejected by the Attorney General, the Attorney General shall promptly return the form, notifying the consumer in writing of the reasons for the rejection and, where possible, inviting the consumer to correct the deficiencies.
- (g) If the form is accepted by the Attorney General, he shall refer it to the Administrator for processing. The Attorney General shall promptly notify the consumer in writing of the acceptance of the form and of its referral to the Administrator. Such notice shall also advise the consumer to pay the prescribed filing fee directly to the Administrator.
- (h) If, after 30 days from the date of the notice of acceptance, the Administrator fails to receive the prescribed filing fee from the consumer, the Administrator shall promptly advise the consumer in writing that unless such fee is received within 60 days from the date of the first notice, the form will be returned and the case marked closed. After such time, if the consumer wishes to pursue a claim under the Program, (s)he must submit a new form to the Attorney General.
- (i) Participation in any informal dispute resolution mechanism that is not binding on the consumer shall not affect the eligibility of a consumer to participate in the Program.

Section 301.5 Filing Date

On the day the Administrator receives the prescribed filing fee, the Administrator shall date stamp the "Request for Arbitration" form. Such date shall be considered the "filing date".

Section 301.6 Assignment of Arbitrator

- (a) After the filing date, the Administrator shall assign an arbitrator to hear and decide the case. Notice of assignment shall be mailed to the arbitrator and the parties along with a copy of these regulations and GBL §670.
- (b) The arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale or manufacture of wheelchairs.
- (c) Upon a finding by the Administrator, at any stage of the process, of grounds to disqualify the arbitrator, the Administrator shall dismiss the arbitrator and assign another arbitrator to the case.

- (d) If any arbitrator should resign, die, withdraw or be unable to perform the duties of his/her position, the Administrator shall assign another arbitrator to the case and the period to render a decision shall be extended accordingly.
- (e) Arbitrators shall undergo training established by the Administrator and the Attorney General. This training shall include procedural techniques, the duties and responsibilities of arbitrators under the Program, and the substantive provisions of GBL §670.

Section 301.7 Scheduling of Arbitration Hearings

- (a) Each manufacturer of wheelchairs sold in New York shall furnish to the Attorney General a copy of its warranty and notify him, in writing within 10 days after the effective date of these regulations, of the name, address and telephone number of the person designated to receive notices under this Program. Such information shall be presumed correct unless updated by the manufacturer.
- (b) The arbitration shall be conducted as an oral hearing unless the consumer has requested, on the "Request for Arbitration" form, a hearing on documents only and both parties agree to a documents only hearing; provided, however, that the parties may mutually agree in writing to change the mode of hearing. Upon such change, the parties shall notify the Administrator who shall comply with the request and, where necessary, such request shall waive the 40 day limit in which a decision must be rendered.
- (c) Within 5 days of the filing date, the Administrator shall send the manufacturer's designee a copy of the consumer's completed form along with a notice that it may respond in writing. Such response shall be sent in triplicate, within 15 days of the filing date, to the Administrator, who shall promptly forward one copy to the consumer.
- (d) The consumer may respond in writing to the manufacturer's submission within 25 days of the filing date. Such response shall be sent in triplicate to the Administrator, who shall promptly forward a copy to the manufacturer.
- (e) An oral hearing, where appropriate, shall be scheduled no later than 35 days from the filing date, unless a later date is agreed to by both parties. The Administrator shall notify both parties of the date, time and place of the hearing at least 8 days prior to its scheduled date.
- (f) Hearings shall be scheduled to accommodate, where possible, time-of-day needs of the consumer and the manufacturer, including evening and weekend hours.
- (g) Hearings shall also be scheduled to accommodate geographic needs of the consumer. Regular hearing sites shall be established at locations designated by the Administrator, including in the following areas: Albany, Binghamton, Buffalo, Nassau County, New York City, Plattsburgh, Poughkeepsie, Rochester, Suffolk County, Syracuse, Utica, Watertown, and Westchester. No hearing site established by the Administrator shall be discontinued without the approval of the Attorney General. In addition, where a regular site is more

than 100 miles from the consumer's residence, a hearing must be scheduled at the request of the consumer at a location designated by the Administrator within 100 miles of the consumer's residence.

- (h) A party may present its case by telephone, provided that adequate advance notice is given to the Administrator and to the other party. In such cases, the arbitrator and both parties shall be included.

Section 301.8 Adjournments

Either party may make a request to adjourn and reschedule the hearing. Except in unusual circumstances, such request shall be made to the Administrator, orally or in writing, at least two business days prior to the hearing date. Upon a finding of good cause, the arbitrator may reschedule the hearing. In unusual circumstances, the arbitrator may reschedule the hearing at any time prior to its commencement.

Section 301.9 Request for Additional Information or Documents

- (a) A party, by application in writing to the Administrator, may request the arbitrator to direct the other party to produce any documents or information. The arbitrator shall, upon receiving such request, or on his or her own initiative, direct the production of documents or information which she or he believes will reasonably assist a party in presenting his or her case or assist the arbitrator in deciding the case. The arbitrator's direction for the production of documents and information shall allow a reasonable time for the gathering and production of such documents and information.
- (b) All documents and information forwarded in compliance with the arbitrator's direction shall be legible and received no later than three business days prior to the date of the hearing. Each party shall bear its own photocopying costs.
- (c) Upon failure of a party to comply with the arbitrator's direction to produce documents and/or information, the arbitrator may draw a negative inference concerning any issue involving such documents or information.
- (d) The term "documents" in this section shall include, but not be limited to, relevant manufacturer's service bulletins, dealer work orders, diagnoses, bills, and all communications relating to the consumer's claim.
- (e) At the request of either party or on his or her own initiative, the arbitrator, when she or he believes it appropriate, may subpoena any witnesses to appear or documents to be presented at the hearing.

Section 301.10 Representation by Counsel or Third Party

Any party may be represented by counsel or assisted by any third party.

Section 301.11 Interpreters

Any party wishing a foreign language interpreter shall make the necessary arrangements and assume the costs for such service.

Section 301.12 Hearing Procedure

- (a) The conduct of the hearing shall afford each party a full and equal opportunity to present his/her case.
- (b) The arbitrator shall administer an oath or affirmation to each individual who testifies.
- (c) Formal rules of evidence shall not apply; the parties may introduce any relevant evidence.
- (d) The arbitrator shall receive in evidence a decision rendered in a previous arbitration which was not binding on the consumer and give it such weight as the arbitrator deems appropriate.
- (e) The arbitrator shall receive relevant evidence of witnesses by affidavit and such affidavits shall be given such weight as the arbitrator deems appropriate.
- (f) The arbitrator shall have discretion to examine the consumer's wheelchair. Both parties shall be afforded the opportunity to be present and accompany the arbitrator on any such examination.
- (g) The consumer shall first present evidence in support of his/her claim, and the manufacturer shall then present its evidence. Each party may question the witnesses called by the other. The arbitrator may question any party or witness at any time during the hearing.
- (h) The arbitrator shall maintain decorum at the hearing.
- (i) The arbitrator may request additional evidence after the closing the hearing. All such evidence shall be submitted to the Administrator for transmission to the arbitrator and the parties.

Section 301.13 Hearing on Documents Only

If the hearing is on documents only, all documents shall be submitted to the Administrator no later than 30 days from the filing date. The arbitrator shall render a timely decision based on all documents submitted.

Section 301.14 Defaults

- (a) Upon the failure of a party to appear at an oral hearing, the arbitrator shall nevertheless conduct the hearing and render a timely decision based on the evidence presented and documents contained in the file.
- (b) If neither party appears at a scheduled oral hearing, the arbitrator shall return the case to the Administrator who shall close it without a decision and so notify the parties.

- (c) In a documents-only hearing, where the manufacturer fails to respond to the claim, the arbitrator shall render a decision based upon the documents contained in the file.

Section 301.15 Withdrawal or Settlement Prior to Decision

- (a) A consumer may withdraw his/her request for arbitration at any time prior to decision. If the Administrator is notified by the consumer of his/her request to withdraw the claim within seven business days of the filing date, the Administrator shall refund the filing fee.
- (b) If the parties agree to a settlement more than seven business days after the filing date but prior to the issuance of a decision, they shall notify the Administrator in writing of the terms of the settlement. Upon the request of the parties, the arbitrator shall issue a decision reflecting the settlement.

Section 301.16 The Decision

- (a) The arbitrator shall render a decision within 40 days of the filing date which shall be in writing on a form prescribed by the Administrator and approved by the Attorney General. The decision shall be dated and signed by the arbitrator.
- (b) In his/her decision, the arbitrator shall determine whether the consumer qualifies for relief pursuant to GBL §670. If the arbitrator finds that the consumer qualifies, (s)he shall award the specific remedies prescribed by the applicable statute.
- (c) The decision shall specify the monetary award where applicable. A calculation of the amount, in accordance with GBL §670, shall be included in the decision. The decision shall also award the prescribed filing fee and any telephone costs incurred pursuant to §301.7(h) to a successful consumer.
- (d) The decision shall, where applicable, require that any action required by the manufacturer, be completed within 30¹ days from the date the Administrator notifies the manufacturer of the decision.
- (e) The Administrator shall review the decision for technical completeness and accuracy and advise the arbitrator of any suggested technical corrections, such as computational, typographical or other minor corrections. Such changes shall be made only with the consent of the arbitrator.
- (f) After review, the Administrator shall, within 45 days of the filing date, mail a copy of the final decision to both parties, the arbitrator, and the Attorney General. The date of mailing to the parties shall be date-stamped by the Administrator on the decision as the date of issuance.
- (g) Failure to mail the decision to the parties within the specified time period or failure to hold the hearing within the prescribed time shall not invalidate the decision.

¹GBL §670(4)(b) was amended in 1996 to allow the wheelchair manufacturer 40 days to comply with an award.

- (h) The arbitrator's decision is binding on both parties and is final, subject only to judicial review pursuant to CPLR, Article 75. The decision shall include a statement to this effect.

Section 301.17 Recordkeeping

- (a) The Administrator shall keep all records pertaining to each arbitration for a period of at least two years and shall make the records of a particular arbitration available for inspection upon written request by a party to that arbitration, and shall make records of all arbitrations available to the Attorney General upon written request.
- (b) The Administrator shall maintain such records and statistics for the Program.

Section 301.18 Accommodations for the Disabled

- (a) Any party may make a request for reasonable accommodations, including access and auxiliary aids and services, in accordance with the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and the regulations thereunder (28 CFR Part 35) as such Act and regulations may, from time to time, be amended.
- (b) The Attorney General shall prescribe and make available "Request for Reasonable Accommodations" forms for GBL §670 claims. To apply for reasonable accommodations under the Program, a consumer shall obtain, complete and submit the appropriate form at the same time and together with the "Request for Arbitration" form to the Attorney General.
- (c) The Attorney General shall implement procedures to assure that all reasonable requests are granted.

Section 301.19 Miscellaneous Provisions

- (a) All communications between the parties and the arbitrator, other than at oral hearings, shall be directed to the Administrator.

If any provision of these regulations or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of these regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

REGIONAL OFFICES OF THE ATTORNEY GENERAL

Albany

State Capitol
Albany, New York 12224
518-776-2000

Binghamton

59-61 Court Street, 7th Floor
Binghamton, New York 13901
607-251-2770

Brooklyn

55 Hanson Place, Ste. 1080
Brooklyn, NY 11217
718-560-2040

Buffalo

Main Place Tower
350 Main St
Buffalo, New York 14202
716-853-8404

Harlem

163 West 125th Street
New York, NY 10027
212-364-6010

Nassau

200 Old Country Road
Suite 240
Mineola, New York 11501
516-248-3300

New York City

28 Liberty Street
New York, New York 10005
212-416-8300

Plattsburgh

43 Durkee Street
Suite 700
Plattsburgh, NY 12901
518-5623282

Poughkeepsie

One Civic Center Plaza
Suite 401
Poughkeepsie, NY 12601
914-485-3900

Rochester

144 Exchange Boulevard
Rochester, NY 14615
716-546-7430

Suffolk

300 Motor Parkway
Hauppauge, NY 11788
516-231-2424

Syracuse

300 South State St
Syracuse, NY 13202
315-448-4800

Utica

207 Genesee St. Rm 508
Utica, NY 13501-2812
315-864-2000

Watertown

317 Washington Street
Watertown, NY 13601
315-523-6080

Westchester

44 South Broadway
White Plains, NY 10601
914-422-8755

Consumer Complaint Number:

1-800-771-7755

For the Hearing Impaired:

1-800-788-9898

