TAKE CONTROL BEFORE YOU ROLL

The Facts about Redhibition

Louisiana's **redhibition law** is one of the best "lemon" laws in the country. It is available to buyers who find themselves stuck with any kind of lemon-new or used.

What is an Action in Redhibition?

This is a civil lawsuit against the seller and/or manufacturer of a product in which the buyer demands a full refund or a reduction in the purchase price because the product has a hidden defect that prevents it from performing the task for which it was purchased. Most consumer products carry an implied warranty of merchantability. If a product is so substantially defective that you would not have bought it in the first place, had you known of its defects, you may have grounds for filing such a suit.

What conditions must be met before I can file a redhibition suit?

- The action is available only after the buyer has given the seller a reasonable opportunity to repair the defective product.
- The defect in the product must be hidden, that is, not apparent at the time of the sale. The defect must have existed at the time of the sale. The law presumes that if a defect is noticed within three days of purchase, it existed at the time of sale.
- If a defect becomes obvious more than three days after purchase, the responsibility for proving that it existed at the time of the sale rests with the buyer.
- The suit must be instituted within one year from the date of sale of the defective products, except where a pet store is involved, in which case the action must be taken within 60 days of purchase.
- If the seller has attempted to repair the defective product and failed, the action must be instituted within one year of the date of the last attempt to correct the defect.

- If the seller knew of the defect at the time of sale but sold the product anyway, the action is available for one year from the date the buyer discovered the defect.

What should I do if I think I have grounds for an action in redhibition?

- Consult an attorney.
- Continue to make payments on the product until the case is resolved, unless your attorney advises you to do otherwise.
- Keep detailed records of problems and receipts of attempts to repair products you suspect may be defective. Include the names of persons you talk with whom you may want to call to testify as expert witnesses on your behalf.
- Some suits may be pursued in Small Claims Court if the sum is less than $3000.
- If it is necessary for you to retain an attorney, you may be able to recover his/her fees as part of your suit.

What are my rights under redhibition?

- If you can prove that the seller knew of the existence of the defect in the product but sold it anyway, you may be entitled not only to return of the purchase price, but to replacement of any expenses caused by the sale, reasonable attorney fees and damage resulting from use of the defective product.
- Even if the seller did not know of the defect at the time of sale, you may sue for return of the purchase price and certain other expenses incurred as a result of the sale.
- You may seek the same awards from the manufacturer as from the seller because, legally he is presumed to know of the existence of defects in his products.

When all is said and done, whether the seller knew of the defect or not, the judge has the option of awarding you an amount less than the purchase price but appropriate to the seriousness of the defect. He/she may also deduct for any satisfactory service you derived from the product.

Today, many sellers require buyers to sign a waiver of warranty at the time of purchase. Such a waiver may or may not affect your right to file an action in redhibition. If you signed a waiver of warranty and you think you've got a "lemon" seek legal counsel. You may also have rights under the Federal Magnuson-Moss Warranty Act.