

UTPA vs. AS-IS

Understanding the “As-Is” disclosures in UTPA context

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What is UTPA?

- Unlawful Trade Practices Act (ORS 646.605-646.656)
- Oregon's Uniform Deceptive Acts and Practices (UDAP) Statute
 - All 50 states have their own UDAP statute
 - UDAP = consumer counterpart to a contract claim

Scope of UTPA

- 607: AG's powers
- 608: "Laundry list"
- 608(a)(1)(aa) – (xxx): gives private right of action to other statutes.
- OAR 137-020-xxxx
- Some federal statutes:
 - TILA (15 USC § 1601)
 - FTC Used Car Rule (16 CFR § 455)

As-Is Disclaimer

The buyer hereby accepts the following described vehicle in its present "as is" condition and waives all warranties including express warranty, the implied warranty of merchantability, and the implied warranty of fitness. The entire risk as to the quality and performance of the vehicle is with the buyer and if the vehicle proves defective after purchase, the buyer and not the seller assumes the entire cost of all necessary servicing or repair.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VEHICLE IDENTIFICATION NUMBER (VIN) _____

WARRANTIES FOR THIS VEHICLE:

☐

AS IS - NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.

☐

DEALER WARRANTY

☐

FULL WARRANTY.

☐

LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED:

DURATION:

NON-DEALER WARRANTIES FOR THIS VEHICLE:

- ☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.
- ☐ MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.
- ☐ OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

- ☐ SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT.

OBTAIN A VEHICLE HISTORY REPORT AND CHECK FOR OPEN SAFETY RECALLS. For information on how to obtain a vehicle history report, visit ftc.gov/usedcars. To check for open safety recalls, visit safercar.gov. You will need the vehicle identification number (VIN) shown above to make the best use of the resources on these sites.

SEE OTHER SIDE for important additional information, including a list of major defects that may occur in used motor vehicles.

Si el concesionario gestiona la venta en español, pídale una copia de la Guía del Comprador en español.

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Here is a list of some major defects that may occur in used vehicles.

Frame & Body

Frame-cracks, corrective welds, or rusted through
Dog tracks—bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System

Visible leakage

Inoperable Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight line (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfr. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Air Bags

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage
Catalytic Converter

DEALER NAME

ADDRESS

TELEPHONE

EMAIL

FOR COMPLAINTS AFTER SALE, CONTACT:

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (16 C.F.R. 455).

Hypothetical #1

- Consumer visits a dealership looking for a used car
- Salesman shows the consumer a car that fits consumer's needs
- Salesman tells consumer the car is in perfect working condition.
- Consumer buys and signs the "As-Is" form
- The next day while driving the engine suffers catastrophic failure
- Does consumer have a remedy?

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Hypothetical #2

- Consumer visits a dealership looking for a used car
- Salesman shows the consumer a 2016 vehicle that fits consumer's needs
- Consumer buys and signs the "As-Is" form
- A few days later, the consumer discovers a modification to the underside of the car, which voids the manufacturer's warranty
- Does consumer have a remedy?

Unlawful Trade Practices Act

ORS 646.605 *et. seq.* – UTPA

- a. Sellers must accurately represent goods and services

OAR 137-020-0020 – Motor Vehicle Price and Sales Disclosure

- a. Violation of these rules are a violation of the UTPA
- b. Even if the dealer states on the FTC Buyers Guide (“As Is”) that the dealer is not providing a warranty, the dealer must still disclose material defects about which the dealer knew or should have known

OAR 137-020-0020(3)(o) Official Commentary

...even if the dealer states on the FTC Buyers Guide (“As Is”) that the dealer is not providing a warranty, the dealer must still disclose material defects about which the dealer knew or should have known... The dealer is in a superior position to inspect and determine the condition of a vehicle prior to marketing the vehicle... Examples of negligent disregard of some things that should put a dealer on notice and trigger its duty to disclose might include, but is not limited to, a large pool of oil or antifreeze under the vehicle, dark colored smoke coming from an exhaust pipe, water stains on carpet or doors, a different color paint than the body under the hood or in the trunk or tires that are worn very unevenly...

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1 New Comment

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PLEASEEEEEEE READ CAREFULLY SO THERE'S NO
MISUNDERSTANDING

2002 OLDSMOBILE ALERO LOCATED AT JOURNEE
AUTOS

Nothing special or pretty about this car.

200k miles

Rust on the side. I even zoomed in on the rust so you can see it. This car runs and drives. The air blows cold and it has a cd player. Thats it. Nothing more nothing less. Dont bring your ass down here saying it looks different in the pics or you didnt know it had that much rust.Im telling you right now. This bitch rusty. This shit is \$900 dollars. You're getting 900 dollars worth of car. Dont ask me about the check engine light or this light or that light. Its 900 dollars. Its gone be some lights on in this mothafucka. As is. Dont bring this shit back for nothing. It has 200k plus miles. You damn right u gone find something wrong with it but as for now it cranks. Steers an drives.Blow's cold ass air. An wont leave your pockets bare.This will get you from A to B. Just dont try to make it to C. This car will last you at least ALL SPRING '17

Proper Disclosure

This vehicle was ranked number 1 of over 40 2006 Mazda RX-8's at \$5,999, but we discovered that the car has what [a mechanic] claims is a leaky injector causing it to blow white plumes of unburned fuel every morning when you first start it. It goes away after about 30 seconds, but the car runs fine. Because it has this issue, we are selling it far under its value to make up for this. [Consumer] is extremely clear that this is why we have cut the price nearly in half at \$3,000. \$3K discount would afford him a replacement motor, let alone an injector. Car is sold as is with no work promised.

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