

Licensing Requirements for Motor Vehicle "Leasing" Companies

By the Division of Banks

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APPLICABILITY OF LICENSING REQUIREMENTS TO MOTOR VEHICLE "LEASING" COMPANIES

TO: All Interested Parties

The Division of Banks (the "Division") has issued this industry letter to clarify under what circumstances a so-called motor vehicle lease agreement would be, in fact, a retail installment contract subject to licensing as a motor vehicle sales finance company under General Laws chapter 255B.

Chapter 255B, section 1 defines a "retail installment contract" as, "an agreement, signed by the buyer in this state, pursuant to which the title to, the property in or a lien upon a motor vehicle, which is the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. **The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.**" (Emphasis supplied.)

Based on the above, if the so-called motor vehicle lease agreement: 1. requires payments substantially equivalent to or in excess of the value of the motor vehicle and; 2. provides that the "lessee" "is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance of the terms upon full compliance with the terms of the contract," such contract is, in fact, a retail installment contract. Therefore, a retail seller ("lessor") of motor vehicles that is in the business of holding such "lease agreements" must be licensed as a motor vehicle sales finance company under General Laws chapter 255B.

As additional guidance in interpreting General Laws chapter 255B relative to determining when a motor vehicle lease agreement constitutes a "retail installment contract", the court in *Marine Midland Bank, N.A. v. Moran*, 1994 Mass App. Div. 167, 170 stated, "Where the option is to purchase at the market value of the vehicle at the time of contract expiration, and a more-than-nominal option price establishes that the lessor retained a significant reversionary interest in the leased goods, the contract will be deemed a true lease rather than a sales agreement."

The following is an example of a so-called "motor vehicle lease agreement" that the Division determined was, in fact, a retail installment contract:

A "vehicle lease agreement" for a 2003 Cadillac DeVille sedan indicates that the consumer is obligated to make 106.75 weekly payments of \$100. The agreement further provides that at the end of the term of the lease the consumer has the option to purchase the vehicle at the Estimated End of Term Fair Market Value shown in Item 1B of the agreement plus a lease end documentation fee of \$100 and any related official fees and taxes. Item 1B is blank, indicating that at the end of the term the consumer does not have to pay anything except the aforementioned taxes and fees to obtain ownership of the motor vehicle. The transaction is, in fact, a retail installment contract, notwithstanding its characterization throughout the document as a lease. This conclusion is based on the fact that the "lease payments" were substantially equivalent to, or in excess of, the value of the motor vehicle and the consumer can elect to become owner of the motor vehicle at the end of the contract for nothing except applicable taxes and fees.

Therefore, the above lessor would be required to obtain a motor vehicle sales finance company license.

Be advised that motor vehicle dealers cannot simply change the terminology of the agreements to evade licensing requirements. During investigations of suspected unlicensed activity, the Division will closely review a motor vehicle dealer's current contracts on a case by case basis to determine if licensure is required.

Should you have any questions with regard to this letter, please contact Deputy Commissioner Tiffany Fowlie at 617-956-1500 ext. 549.

Sincerely,

David J. Cotney
Commissioner of Banks