

## Motor Vehicle Leasing Best Practices/Guidelines

The following information was developed after extensive consultation and review by stakeholders, and is provided to inform registrants about best practices and should not be construed as a legal opinion. Registrants (dealers and salespeople herein after referred to as 'you' and 'your') are encouraged to review the relevant sections of the *Motor Vehicle Dealers Act* (MVDA) and Regulation 333/08 (Regulations) and to consult with your lawyer if you have any questions.

### Purpose and Overview

Registered dealers who finance leases can expose themselves to significant risk. It is fundamental to the concept of leasing that the owner of the vehicle ("the lessor") does not have the same oversight regarding the vehicle, the customer or the agreement with the customer as they would have in a traditional vehicle transaction. Leasing deals are often set up by intermediaries such as leasing brokers or retail dealers. In many cases, the lessor does not have possession or control over vehicles being offered for lease and does not meet the prospective customer(s). All of these circumstances can lead to misunderstandings or misrepresentations concerning

- the existence of a bona fide lessee
- the credit worthiness of the lessee
- the value of the vehicle being leased
- the obligations of the parties to the lease agreement

The purpose of this document is to provide information to lessors in order to assist with their obligations and help navigate some of the above issues.

### The Lease Agreement

A lease agreement is a future performance contract between the lessor and a person ("the lessee") who is not a registered motor vehicle dealer. Section 41 of the Regulations set out what a dealer is required to include in a lease contract with a customer who is not another registered motor vehicle dealer. The following list includes information required by the Regulations and information recommended by OMVIC. For further information about consumer lease agreements, review Sections 72-76 of the Regulation to the *Consumer Protection Act* (CPA) which is available [here](#).

**Lessee Information:** the name, address and contact information of the lessee. If the lessee is a business, it is recommended the lessor verify that the individual executing the lease agreement has authority to act on behalf of the business. It is a good idea to request the Master Business Licence or Articles of Incorporation to confirm.

**Dealer and Salesperson Information:** the registered name (and legal name if different), registration number, address and contact information of the leasing company. If a contract is made through another dealership, the registered name (and legal name if different) of that dealer is required. The agreement must also include the registered name and registration number of the salesperson(s) involved in the transaction.

**Vehicle Information:** an accurate description of the vehicle including the year, make, model, VIN, colour, body type, and stock number (if any).

**Disclosure:** dealers have an obligation under the CPA to disclose all material facts about the vehicles they sell or lease. Dealers must also provide the lessee with information pursuant to Section 42 of the Regulations when transacting with a non-dealer. In order to meet these obligations, lessors acquiring a vehicle from a third party dealership should not rely solely on disclosures made by the selling dealer but should perform their own due diligence to ensure proper disclosures are made to the lessee. Lessors should take steps to confirm the quality and condition of the vehicle. Dealers should:

- obtain specific written disclosures from the selling dealer confirming whether statements required under Section 42 of the Regulations apply to the vehicle
- perform a vehicle history search
- have the vehicle inspected by a qualified mechanic
- provide all relevant information in writing before the lease agreement is signed by the customer

**Cost of Credit Terms:** if the lessee is a consumer, “an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes”, s/he must receive a disclosure statement. It is recommended all cost of credit disclosure be provided on the front of the lease agreement to bring the information to the attention of the lessee. You must provide the lessee with a copy of the agreement immediately after it has been signed. See Appendix A for a list of items the CPA requires to be included in the lease agreement.

**Implicit Finance Charges:** any amount charged to a particular customer which would not have been charged if they’d purchased the vehicle for cash, is part of the Implicit Finance Charges (cost of borrowing) and must be reflected in the Annual Percentage Rate (‘APR’).

For example, the lessor charges a \$500.00 fee **that is not charged to cash customers**, the fee is permitted however must be added to the Implicit Finance Charge and be included in the APR. Administration, handling, acquisition or documentation fees are all part of the implicit finance charges if the consumer **must** pay them in order to enter into the lease agreement.

Lease Customer		Lease Customer - \$500.00 Fee	
Vehicle Price	\$10,000.00	Vehicle Price	\$10,000.00
Term	36 Months	Term	36 Months
Monthly Payment	\$248.10	Monthly Payment	\$261.99
Residual	\$2,000	Residual	\$2,000
Annual Percentage Rate	5%	Annual Percentage Rate	7.62%
Implicit Finance Charges	\$931.60	Implicit Finance Charges	\$1,431.64

**Consequences of Non-Disclosure:** a consumer lessee is not required to pay the lessor, the implicit finance charge (cost of borrowing) for the lease, if the lessee does not receive proper disclosure of cost of credit, or, any amount in excess of the amount specified as the implicit finance charge.

**Residual Obligation vs Residual Option:** the lease agreement must state in a clear, comprehensive and prominent manner whether the residual amount at lease maturity is an obligation that the lessee is liable to pay or the lessee has the option to purchase the vehicle.

**Third Party or Broker Agreements:** if the lease is made through another motor vehicle dealership registered as a general dealer or a broker, the lease agreement must include that dealers or brokers name and registration number. Brokers who arrange leases must be properly registered with OMVIC. You should request the broker include their registration number with the referral. Conducting business with an unregistered broker is not only a breach of the MVDA but may also place you at high risk for becoming a victim of fraud. Lessees should take delivery of the motor vehicle from the leasing dealer. In addition to verifying the identity of the lessee and the ability to perform a visual inspection, this step may help avoid disputes about vehicle condition or the distance travelled by the leased vehicle.

**Safety Standards Certificate:** if the motor vehicle being leased is a used vehicle, the dealer must provide the lessee with a copy of a current safety standards certificate along with the lease agreement.

**Warranties and Service Plans:** an indication of whether the leased vehicle comes with a warranty or service plan. If the lease was made through another motor vehicle dealership, ensure all inducements such as warranties or service plans have been paid for as represented; the leasing company is responsible for all goods and services included in the transaction. It is the responsibility of the leasing company to ensure the warranty complies with Section 47 of the Regulations. Visit OMVIC's [website](#) for a list of providers who have supplied OMVIC with proof of insurance or the required letter of credit.

**Trade-In Vehicle:** if the lessee is trading in a motor vehicle, the lease agreement must contain vehicle trade-in information as set out in Section 43 (4) of the Regulations.

**Distance Travelled:** the lease agreement must disclose an accurate distance travelled. If the distance travelled is unknown, a disclosure of the actual distance travelled as of a specified date, if available, or a written disclosure the actual distance travelled is substantially higher than what is shown on the odometer.

**Required Statements:** similar to a retail bill of sale, your lease contract must contain the statements referred to in Section 41 (2-6), of the Regulations (re: OMVIC, CAMVAP and Safety Standards Certificate statements).

### Managing Your Lease Portfolio

**Portfolio Management:** it is recommended the owner or a salaried staff member be responsible for the management of the lease portfolio. Problems (e.g. failure to properly screen/supervise lease staff/brokers, initiating side deals with lessees, fraudulent paperwork) are more likely to occur when there is insufficient control over staff. A regular review of financial reports, establishing internal controls and separation of duties

are strongly encouraged (see Financial Management Best Practices). Ensure that staff responsible for all vehicle transactions verify identification and witness customer signatures wherever practical or possible.

**Third Party Transactions:** for each lease facilitated through an independent registered broker, verify there is an actual vehicle and confirm the identity of the lessee before carrying out the transaction. A representative of the lessor should witness the lessee's signature on the agreement and obtain copies of identification. If this is not possible, you may want to have the lessee's signature notarized.

**Lease Payments:** lessors should monitor the source of lease payments. If lease payments begin to come from a party other than the lessee, this may indicate the vehicle has been transferred. It is recommended to set up pre-authorized payments with your financial institution or require personal cheques with the name and address of the lessee. Be cautious about methods of payments where you cannot locate or trace the source of funds such as bank drafts or prepaid leases. Prepaid leases are also risky because the prepayment could allow a fraudster an opportunity to transfer the vehicle before you notice a problem with their payment.

**Vehicle Registration:** typically the vehicle's registration remains in the lessor's name with the plate portion of the ownership in the lessee's name. It is recommended the lessor register a Personal Property and Securities Act (PPSA) lien to protect against the vehicle being transferred and/or sold without their consent. The lease agreement should include information that the motor vehicle has a lien registered against it. Ensure the plate portion of the permit is registered in the name of all lessees who are part of the lease agreement. For more information about how to register a lien or verify a lien discharge call 1-800-267-8847 or visit:

<http://www.ontario.ca/home-and-community/register-or-search-online-access-now>

**Lessee Information:** get to know your customer by asking questions during the credit application process and after approval. Make sure answers are consistent. Always request original documents. Beware of copies and inconsistencies with name(s) and address(es) of the lessee. Before releasing funds for a lease transaction, you should conduct a prefunding interview with the lessee to confirm the terms of the lease and the information provided on the credit application including but not limited to:

- information confirming the identity of individual(s) who are a party to the lease;
- emergency/alternate contacts
- information about the vehicle being leased
- terms of the lease such as monthly payment, APR, and residual
- employment information: full-time/part-time/self-employed
- employment wages: hourly/salary/commissions
- proof of income: pay stub, bank statements and review sources of income
- copy of Notice of Assessment

**Start Disruption Device/Tracking Device (GPS):** if the motor vehicle is equipped with a device that prevents it from starting or is capable of providing its location, the lease agreement should contain statements with respect to:

- authorizing the lessor to install and/or attach a GPS device
- who is authorized to repair and/or remove the device

- permitting the lessor to locate the vehicle and under what circumstances (e.g. missed payment or payment returned NSF etc.)
- payment of any fees to re-activate

Subject to any grace periods required by applicable law, it is recommended lessors exercise extreme caution and do their due diligence prior to disabling any vehicle to avoid harm to the lessee and/or third parties or unexpected/unanticipated liability.

Lessors are reminded there are significant privacy implications in attaching a GPS device, both in relation to the lessee and successive purchasers of the vehicle. Lessors are encouraged to seek legal advice to ensure they comply with all applicable laws and obligations.

**Credit History Report:** obtaining a credit history report is one of the most important tools to assess a customer's credit worthiness. Lessors should run their own credit history check on each person associated with the lease transaction. Never accept a copy from the customer. Written authorization is required before you perform a search on an individual or company.

**End of Lease:** instruct lessees where to take the vehicle at the end of the lease term. A vehicle condition examination of the vehicle should occur immediately and in the presence of the lessee. Each party should be given a copy of a vehicle condition report.

**Lien Release Letters:** lessors are strongly encouraged to confirm lien release letters with the secured party. Do not rely on a letter presented by a customer or another dealership.

**Missed Payment or Non-Sufficient Funds:** a statement of any additional fees associated with missed payments, dishonoured cheques or default including how and when the fees will be charged.

**Insurance:** if a minimum level of insurance is required to be maintained on the vehicle, the lease agreement should include this information. Most lessors require a minimum of \$1 million in liability coverage. Beware of: binder insurance, large deductibles and driver exclusions. You should record and verify the following information for each vehicle:

- the name of the insurance company, policy number, expiry date, name of agent, and agent's phone number
- the policy lists the lessor as lienholder and co-insured
- all parties listed on the insurance policy are named in the lease

**RIN Summary:** dealers are encouraged to obtain a RIN Summary from MTO to ensure all of the vehicles you have out on lease are still registered in the leasing company's name. Note: for larger fleets, the turnaround time for this report may be 4-6 weeks.

**Internal Audit:** check your lease portfolio regularly and ensure all documentation is consistent with company policy. It is recommended to have the auditor from the dealerships lending institution verify your policies and procedures.

The information in this document has been prepared to help dealers understand issues that may arise in leasing transactions. It is not intended to provide legal advice or interpret the law in any way. Lessors are encouraged to consult a lawyer for legal advice.

**Appendix A:**

Ensure disclosures in the lease agreement are compliant with Section 74 of the CPA Regulations, these include but are not limited to:

- Lease value of the leased goods – an amount that fairly represents the price at which the lessor would sell the vehicle to cash customers in the ordinary course of business;
- A list of all optional goods and services and the associated cost(s);
- The capitalized amount – the sum of all the advances to be made to the lessee;
- The length of the lease term – the period during which the lessee is entitled to keep possession of the motor vehicle;
- The amount and timing of each payment to be made by the lessee;
- The amount of kilometres the lessee is allowed to travel during the term;
- Charges for exceeding the kilometre allowance or the manner of determining the amount;
- The annual percentage rate - expressed as an annualized percentage which represents the sum of the annual interest rate and cost of borrowing;
- Implicit finance charges - expressed in dollars which represents all cost of borrowing amounts that a cash customer would not pay such as interest, finance charges/fee's, etc;
- Estimated residual value of the leased vehicle;
- Residual option (closed) – in the case of an option lease, when and how the option may be exercised, any additional amounts the lessee is required to make to exercise the option at the end of the lease term, OR
- Residual obligation (open) – in the case of a residual obligation lease, the amount that the lessee is required to pay if the realizable value of the vehicle equals the estimated residual value and the difference, if any, between the estimated residual value and the realizable value of the vehicle;
- Total lease cost – the amount of the full obligation excluding any security deposit and taxes;
- The circumstances, if any, in which the lessor may terminate the lease before the end of the lease term;
- The circumstances, if any, in which the lessee may terminate the lease before the end of the lease term; and
- The circumstances, if any, in which the lessee is required to make a payment in connection with the lease and the manner of determining the payment, for example charges for unreasonable or excessive wear or use and costs for non-sufficient funds cheques;

**\*\*\*You must provide the lessee with a copy of the agreement immediately after it is signed\*\*\***