

# State Licensing Requirements

Commercial Lender's Licenses – Sophia Kwon

Motor Vehicle Leasing – Judy VanOsdel

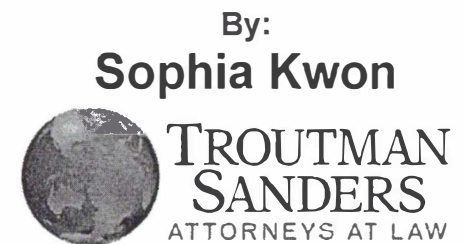
Installment Sales Contracts – Anthony Lamm

2014 ELFA Legal Forum

# State Licensing Requirements

## Commercial Lender's Licenses

2014 ELFA Legal Forum



By:  
**Sophia Kwon**



- Overview

- Registration for “Doing Business Within a State”
- Relationship between Licensing and Usury
- Issues Pertaining to California Finance Lender’s Licenses
- Different Approaches to Licensing: Obtaining a License vs. Not Obtaining a License

## • Introduction

- Equipment Leasing is a Multi-State Activity
- Registration for “doing business” within a state
- What qualifies as “doing business” within a state?
- State Licensing for General Commercial Lending/Leasing

- State Licensing can be an exemption from usury laws
  - Example: California
    - California Finance Lender (“CFL”) licensees constitute a class of “exempt persons” for purposes of California’s constitutional usury limitations.

- What is the purpose of the CFL License?
- California Financial Code (“Cal. Fin. Code”) § 22100:
  - “No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.”
- Who is a Finance Lender?
  - “Finance lender” includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property...” (Cal. Fin. Code § 22009)
- What is a “Commercial Loan”?
  - \$5,000 or more
  - Other than for personal, family or household purposes
  - Secured or unsecured

- Unlicensed Employees
- Affiliates and Subsidiaries
- Customers within California
- Quasi-Leases
  - Purchase Option
  - Purchase Option for no additional consideration or nominal consideration

- Cal. Fin. Code § 22004: Broker License
  - "Broker" includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender
  - Broker loans only to lenders that have the CFL License
- Waiver by Agreement Amongst the Parties
  - Choice of Law Clauses
  - *Brack v. Omni Loan Company Ltd.* case (164 Cal. App. 4th 1312)

- Requirements For CFL License include:
  - Minimum Net Worth of \$25,000
  - \$25,000 Surety Bond
  - \$300 Processing Fee and Additional Fees for Fingerprinting
  - Business Plan
  - No criminal history of principals
  - Pay annual assessment
  - Annual report

## • Notable Exemptions from CFL License Requirements include:

- Any person doing business relating to Banks, trust companies, savings & loan associations, credit unions, small business investment companies
  - CDBO Proposal
- A person that does not make more than five loans in a calendar year
- Licensed insurance premium finance companies
- Licensed real estate brokers
- Licensed residential mortgage lenders or servicers

## • Cost of Obtaining Licenses

### – Time Investment

- In-House Counsel
- Project Managers
- Accounting/Finance/Tax/Corporate Secretary
- Senior Management (e.g. background checks/fingerprinting)

### – Financial Costs

- Outside Counsel
- Filing/Registration Fees
- Surety Bond Fees (California)
- Audited Financial Statements

- Costs of Not Being Licensed
  - Civil and Criminal Penalties for Unlicensed Finance Activities
  - Reputational Risk
  - Breach of Representations & Warranties

- Cost Benefit Analysis of Not Obtaining Lender's License
  - Avoid real estate financing
  - Avoid having employees/offices in the state
  - Keep loans/leases above a certain minimum threshold amount or interest rates under certain maximum amounts
- Issues regarding Exemptions to Licensing
  - Reliance on telephone and email guidance
  - Whether to request a “no action” letter or legal opinion from state agency

# State Licensing Requirements

## For Motor Vehicle Lessors

Judy VanOsdel, TCF Equipment Finance, Inc.

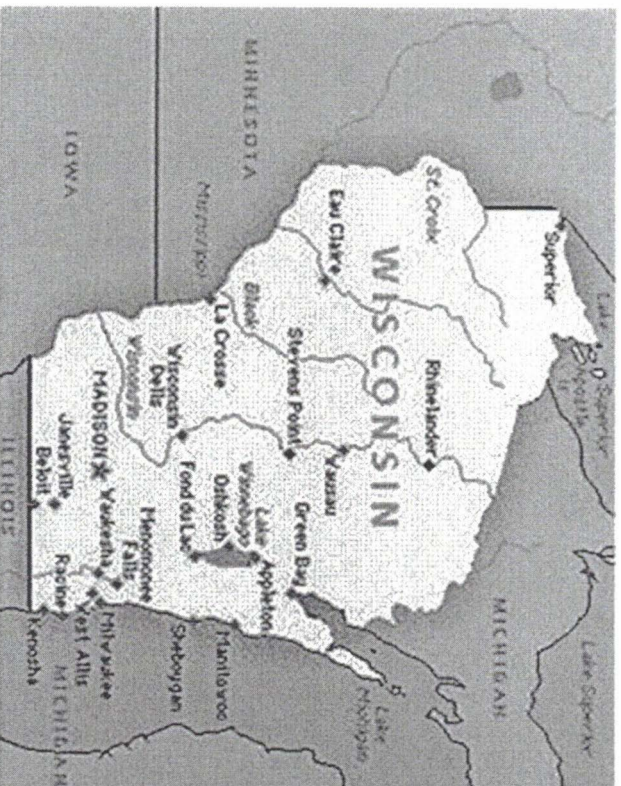
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States may require that a lessor be licensed to:

- Lease motor vehicles
- Sell used motor vehicles



Does the lessor need a  
lessor license, a used  
vehicle license or no  
license at all in a specific  
state?



- Eight states require a license to lease motor vehicles
- If lessor properly licensed in such state at inception of lease, lessor will not have to obtain an additional license
  - Caveat - Lessee did not move during term of the lease.
  - Exceptions in certain states (for example, a bank).

## Used Motor Vehicle Dealer License

Roughly half of the states do not require a used motor vehicle dealer license if lessee is exercising a purchase option.



State Licenses – Motor Vehicle Lessors

14 states require a lessor to obtain a used motor vehicle license to sell to lessees at lease termination.

- Some states require a physical place of business in the state
- Statute is intended for a motor vehicle dealer with a lot
- Applications are complex and require background checks and bonds
- Lack of physical place of business in a state does not exempt lessor from licensing requirement

