

Truck and Transportation Financing

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Methods of Financing

- Motor Vehicle Lease
- Installment Sale Contract
- Direct Loan



Motor Vehicle Leasing

Why Lease?

- Avoid application of usury
- Avoid application of Commercial Motor Vehicle Installment Sales Act
- Maintain ownership of collateral



Motor Vehicle Leasing



Considerations

- Is it a true lease?
- TRAC Lease.
- Licensing requirements.

Motor Vehicle Leasing



States may require that a lessor be licensed to:

- Lease motor vehicles
- Sell used motor vehicles

Motor Vehicle Leasing

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



Motor Vehicle Leasing

- Eight states require a license to lease motor vehicles
- Roughly half of the states do not require a used motor vehicle dealer license if lessee is exercising a purchase option

Motor Vehicle Leasing

14 states require a lessor 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 sealer 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 requirements



Motor Vehicle Leasing

Licensing Exemptions

- The vast majority of states include an exemption from licensing for sale of repossessed motor vehicle collateral

Motor Vehicle Leasing

Additional Considerations- Traffic Violations

- In many states the lessor, as owner, is responsible for all fines and fees for traffic violations by the lessee.
- In New York, N.Y. Public Authorities Law Section 2985, subsection 10 provides that a lessor may transfer liability to a lessee for a toll violation if the lessor sends “the public authority serving the notice and to the court or other entity having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible” within 30 days of receipt of the violation notice.

Motor Vehicle Leasing

Additional Considerations- Traffic Violations

- Liability for a New York City parking ticket cannot be transferred to a lessee unless the specific vehicle is registered with the Parking Violations Bureau and the lessor follows the rules set forth in Ch. 39, Title 19 of the Rules of the City of New York
- Pennsylvania toll violation liability transfer scheme- 74 Pa.Cons.Stat Section 8117(b)(3)
- California, Colorado, Illinois require that a lessor provide the driver's license number of the lessee to shift the liability for toll violations

Motor Vehicle Leasing

Additional Considerations- Environmental Regulations

- Regulations, such as California Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulation (“Cal GHG Reg”), may impact lessors to the extent the regulation applies to owners of vehicles.
- Under Cal GHG Reg, the lessor **MUST** provide the lessee with specific statements prescribed by CAL GHG Reg for the lessor not to be deemed the owner for purposes of the regulation.

Motor Vehicle Leasing

Additional Considerations- Financial Responsibility Laws

- The Graves Amendment provides that a non-negligent lessor/owner of a motor vehicle is not liable for damages resulting from the operation or use of the vehicle during the lease term.
- This exemption is only available so long as the lessor has not been negligent or acted criminally.
- The Graves Amendment will not protect a lessor under a full service lease who has failed to properly maintain a vehicle from liability for an accident caused by mechanical failure.

Motor Vehicle Leasing

Additional Considerations- Financial Responsibility Laws

- Courts in Massachusetts, Connecticut, New York, Florida and the District of Columbia have ruled that the Graves Amendment preempts state vicarious liability laws.
- A number of states, including California, Connecticut, Florida, Idaho and Rhode Island currently have minimum insurance requirements or financial responsibility laws applicable to motor vehicle lessors.

Installment Sales Contracts

- Is there an applicable state Motor Vehicle Instalment Sales Act?
- Does the Act apply to commercial transactions?
- Is there a license required?
- State specific requirements.

Installment Sales Contracts

Is there an applicable state Motor Vehicle Installment Sales Act? Pennsylvania

"Installment sale contract."(1) A contract for the retail sale of a motor vehicle, or a contract that has a similar purpose or effect, whether or not the installment seller has retained a security interest in the motor vehicle or has taken collateral security for a buyer's obligation, if:(i) all or part of the purchase price is payable in two or more scheduled payments subsequent to the making of the contract; or(ii) a buyer undertakes to make two or more scheduled payments or deposits that may be used to pay all or part of the purchase price.(2) The term includes any form of contract, however nominated, for the bailment or leasing of a motor vehicle, which contains both of the following, or any other arrangement having a similar purpose or effect:(i) The buyer contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle.(ii) Ownership of the motor vehicle may be transferred to the buyer.(3) The term includes and applies to an extension, deferment, renewal or other revision of the installment sale contract.(4) The term excludes the following:(i) A sale or contract for sale upon an open book account, if both of the following conditions are met:(A) The installment seller has not retained or taken a security interest in the motor vehicle sold or a collateral security for the buyer's obligation.(B) The buyer:(I) is not required to pay a sum other than the purchase price of the motor vehicle sold in connection with the sale or extension of credit; and(II) is obligated to pay for the motor vehicle in full within 90 days from the time the sale or contract for sale was made.(ii) A right to acquire possession of goods under a lease, unless the lease:(A) constitutes a security interest as defined in 13 Pa.C.S. § 1201 (relating to general definitions); and(B) is subject to 13 Pa.C.S. Div. 9 (relating to secured transactions).12 Pa. Stat. and Cons. Stat. Ann. § 6202



*contract for the retail sale of a motor vehicle
whether the installment seller has retained a
security interest in the motor vehicle or has
taken collateral security for a buyer's obligation.*

Installment Sales Contracts

Is there an applicable state Motor Vehicle Installment Sales Act?
Texas

“Retail installment contract” means one or more instruments entered into in this state that evidence a retail installment transaction. The term includes a chattel mortgage, a conditional sale contract, a security agreement, and a document that evidences a bailment or lease described by Section 348.002. The term does not include a buyer's order. Tex. Fin. Code Ann. § 348.001

Installment Sales Contracts

Commercial Motor Vehicles

- Some states have specific Commercial Motor Vehicle Installment Sales Act
- Other states have specific provisions governing commercial motor vehicles

Installment Sales Contracts

Who Needs a License?

- Motor Vehicle Sales Finance Company
- Installment Seller



Installment Sales Contracts

State Specific Requirements

- Delivery Requirement:
 - Alabama, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Missouri, Montana, New Mexico, New York, Pennsylvania, Texas, Vermont
- Single Document Requirement:
 - Connecticut, Pennsylvania

Installment Sales Contracts

State Specific Requirements

- Required Warning Statements:
 - Alabama, Connecticut, Florida, Illinois, Massachusetts, Michigan, Missouri, Montana, New Mexico, New York, Pennsylvania, Texas, Vermont
- Example:
 - New Mexico- “NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.”N.M. Stat. Ann. § 56-1-2

Direct Financing

Considerations

- Usury
- Licensing Requirements



Direct Financing

- Are commercial transactions exempt from state usury?
- Example – In New Jersey, “No corporation, limited liability company or limited liability partnership shall plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corporation, limited liability company or limited liability partnership. N.J.S.A. § 31:1-6

Direct Financing

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

Direct Financing

- California Financial Code Section 22100
 - “No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.”
 - “Financial 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.

Thank you!

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Robert L. Hornby, Esq. is Co-Chairs of Chiesa Shahinian & Giantomasi PC's Equipment Leasing and Financing Group. Chiesa Shahinian & Giantomasi is a full-service law firm with extensive equipment leasing and financing experience, ranging from the transactional stage through the workout, litigation, repossession, bankruptcy, and foreclosure stages. Chiesa Shahinian & Giantomasi represents national, international, and captive equipment leasing companies, commercial banks, and alternative lending financial institutions in state, federal, and bankruptcy courts. With a history spanning over 40 years in New Jersey and New York, Chiesa Shahinian & Giantomasi continues to advance our clients' legal and business successes through in-depth insight and creative solutions.

An experienced litigator, Mr. Hornby represents national and regional banks and finance companies in all aspects of equipment leasing, asset based lending and civil litigation in New York and New Jersey state and federal courts. Mr. Hornby regularly counsels clients on a wide range of matters unique to the equipment finance and leasing industry, from drafting master documentation to the enforcement of lessors' and secured creditors' rights.

Mr. Hornby received his law degree *cum laude* from Seton Hall University School of Law, and his undergraduate degree *cum laude* from the University of Arizona. He served as a Judicial Law Clerk for the Honorable David S. Baime, PJAD (ret.) in the New Jersey Appellate Division.

