



**Commonwealth of
Massachusetts
Division of Banks**



From: Terence A. McGinnis, Commissioner, Division of Banks
Erin Deveney, Registrar of Motor Vehicles, MassDOT, RMV Division

To: Massachusetts Local Licensing Authorities

Date: October 25, 2016

Re: Unlicensed Motor Vehicle Sales Finance Companies

Since 2010, the Division of Banks (the Division) and the Massachusetts Department of Transportation, Registry of Motor Vehicles Division (RMV) have been working collaboratively to identify auto dealerships that offer financing to their customers through retail installment contracts, which are typically referred to as “Buy Here, Pay Here” transactions, without a license from the Division. The Division and RMV want to raise awareness among local licensing authorities of the licensing requirements for auto dealers engaged in this activity, and the important consumer protections that come with proper licensing of “Buy Here, Pay Here” dealers.

Auto dealerships that hold retail installment contracts must be licensed as motor vehicle sales finance companies by the Division pursuant to M.G.L. Chapter 255B. These licensing requirements apply anytime the purchase of a vehicle is financed in two or more installments, regardless of whether interest is charged on the loan. Licensing of motor vehicle sales finance companies provides important consumer protections. For example, licensed motor vehicle sales finance companies must adhere to maximum interest rate limits and inform customers of loan terms in an appropriate manner. The licensing process also includes a background check and subjects the licensee to examination by the Division, creating further protections for consumers.

- In order to attain a security interest in the vehicle, “Buy Here, Pay Here” dealers must acquire a “lien code” from the RMV. The lien code enables the auto dealer to add a lien on the title of the vehicle, ensuring it cannot be sold or refinanced until the loan is fully repaid. As part of this collaborative initiative, the RMV has prevented unlicensed dealers from being added as a lienholder on motor vehicle titles and has notified the Division of auto dealerships that have requested lien codes, without first obtaining a motor vehicle sales finance company license. As a result, the Division has issued over 260 Cease Letters to unlicensed auto dealerships, to date.
- If the dealer already has a lien code and engages in “Buy Here Pay Here” sales without being licensed by the Division of Banks, the RMV can block the existing lien code and refuse further activity.

However, some dealerships continue to offer “Buy Here, Pay Here” financing without the necessary license, and some of these unlicensed lenders may be operating in your city or town. You can verify that dealers who engage in “Buy Here, Pay Here” financing in your town are licensed by the Division by reviewing a list of licensed motor vehicle sales finance companies on the Division’s website: www.mass.gov/dob. For your further information, attached is a memorandum that was made available to Massachusetts motor vehicle dealers; the Division of Banks’ information sheet regarding motor vehicle sales finance company license requirements; and the Division’s Industry Letter regarding the applicability of the motor vehicle sales finance law to motor vehicle “leasing” companies.

Contact Information

Division of Banks, Non-Depository Institution Supervision Unit, Motor Vehicle Financing, 1000 Washington Street, 10th Floor, Boston, MA 02118-2218, 617-956-1500 extension 585. Information relative to the license application requirements is available on the Division’s website at www.mass.gov/dob and on the NMLS (Nationwide Multi-State Licensing System) website, www.nmls.org.

MassDOT – RMV Division: Title Division, 857-368-7481.



**Commonwealth of
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From: Terence A. McGinnis, Commissioner, Division of Banks
Erin Deveney, Registrar of Motor Vehicles, MassDOT, RMV Division

To: Massachusetts Motor Vehicle Dealers

Date: October 25, 2016

Re: Unlicensed Motor Vehicle Sales Finance Companies

In 2010, the Massachusetts Department of Transportation, Registry of Motor Vehicles Division (RMV) and the Massachusetts Division of Banks implemented collaborative procedures to ensure that motor vehicle dealers that engage in motor vehicle sales financing are properly licensed as sales finance companies, as required pursuant to M.G.L. Chapter 255B. Since that time, the RMV has worked with the Division of Banks to identify motor vehicle dealers who may be engaging in unlicensed sales finance activity. As a result, the Division of Banks has issued cease-activity directives to over 260 motor vehicle dealers for suspected unlicensed sales finance activities. Furthermore, if a dealer with a lien code engages in “buy here pay here” sales without being licensed by the Division of Banks, the RMV can block the existing lien code and refuse further activity.

License Requirement

Massachusetts law requires a motor vehicle dealer who sells motor vehicles under or subject to a retail installment contract and holds the retail installment contract to obtain a license as a “sales finance company” from the Massachusetts Division of Banks. These licensing requirements apply anytime the purchase of a vehicle is financed in two or more installments, regardless of whether interest is charged. See the attached information sheet for further information regarding license requirements.

Unlicensed Motor Vehicle Financing

The RMV will not knowingly permit a motor vehicle dealer who is in the business of selling motor vehicles under a retail installment contract and who holds the contracts to obtain a lien code unless the dealer is in possession of the required license. The Division of Banks is authorized to investigate persons believed to have violated any of the provisions of the motor vehicle sales finance law, including those who are engaging in motor vehicle sales finance activities without a license. During an investigation of suspected unlicensed activity, the Division of Banks has the power to require the production of all relevant books, records, accounts and documents. The Division of Banks may request the assistance of the Massachusetts State Police and local police in order to enforce the law.

In addition, the Attorney General is empowered to take action against those who engage in unlicensed motor vehicle sales finance activity and she may seek an injunction, civil penalties, reasonable attorneys’ fees and costs of investigation and litigation. Further, M.G.L. chapter 140 requires any person engaged in the business of buying and selling used motor vehicles to obtain a license from the appropriate licensing authorities in the city or town in which the business is located. If the Division of Banks has reason to believe that motor vehicle dealers are continuing to engage in unlicensed sales financing activity, the Division of Banks may refer the information to the Attorney General and/or to the applicable licensing authority for appropriate action regarding the renewal and/or continuing maintenance of the dealership license. Therefore, a motor vehicle dealer that engages in unlicensed sales finance activity may be jeopardizing its license to operate a used motor vehicle dealership and the dealer plates issued to it by the Registrar of Motor Vehicles.

Contact Information

Division of Banks, Non-Depository Institution Supervision Unit, Motor Vehicle Financing, 1000 Washington Street, 10th Floor, Boston, MA 02118-2218, 617-956-1500 ext. 585. Information relative to the license application requirements is available on the Division of Banks’ website at www.mass.gov/dob and on the NMLS (Nationwide Multi-State Licensing System) website, www.nmls.org.

MassDOT – RMV Division: Title Division, 857-368-7481.

Information on Licensing Requirements for Motor Vehicle Financing by Motor Vehicle Dealers

LICENSE REQUIREMENT

- Any motor vehicle dealer who sells motor vehicles under or subject to a retail installment contract and holds the retail installment contract must obtain a license, pursuant to MGL c. 255B, as a "Motor Vehicle Sales Finance Company" from the Massachusetts Division of Banks (Division).
- The licensing requirement applies even if a dealer claims to finance the sale without charging any interest, finance charges, or fees to a buyer.
- The licensing requirement applies to retail installment sales contracts which are signed by buyers in Massachusetts.
- The MassDOT, Registry of Motor Vehicles will not allow a motor vehicle dealer engaged in the business of a sales finance company to obtain a lien code unless the dealer holds a valid license with the Division. If the dealer already has a lien code and engages in "buy here pay here" sales without being licensed by the Division of Banks, the RMV can block the existing lien code and refuse further activity.
- Motor vehicle dealers that enter into so-called "motor vehicle lease agreements" with consumers may be required to obtain a license as a sales finance company licensee. See the Division's [Industry Letter](#) on the Applicability Of Licensing Requirements To Motor Vehicle "Leasing" Companies, which is available on the Division's website www.mass.gov/dob, for more information.

WHAT TO DO

- If you are a motor vehicle dealer engaged in motor vehicle financing as described, without a license from the Division of Banks, you must immediately cease the activity and contact the Division to discuss your options. You will be asked to provide the Division with information relating to executed contracts and sign an affidavit stating you have ceased entering into any additional contracts.
- You must either demonstrate to the Division's satisfaction that you are not subject to the licensing provisions of the law, or you must file an application and obtain a license to operate as a motor vehicle sales finance company.

Anyone seeking information or having additional questions regarding motor vehicle sales finance companies may contact the Division at (617) 956-1500 ext. 585, or email Nicholas.Nepveu@state.ma.us or Nicole.Bullock@state.ma.us

LICENSE APPLICATION PROCEDURES AND REQUIREMENTS

- To obtain a Motor Vehicle Sales Finance Company license an applicant must submit an application through the Nationwide Multi-State Licensing System & Registry (NMLS). To access NMLS go to www.nationwidelicencingsystem.org. In order to gain access to NMLS for the first time you must complete a **Company Account Request Form** and identify a *Primary Account Administrator* and a *Secondary Account Administrator*. Once you complete and submit this form, the *Primary Account*

Administrator will receive NMLS login information within 3 business days. The *Primary Account Administrator* for your company will have full rights to (1) access the system, (2) submit information to this Agency and other participating state regulators, and (3) set up other company users in the system. Instructions and tutorials on how to access and use NMLS are also available on the NMLS Resource Center, available at <http://www.nationwidelicensingsystem.org>. You are highly encouraged to review these helpful documents.

The total License costs is \$1,300 which includes a one-time Investigation Fee. A \$15 fee for a credit report will be added if one has not been authorized through NMLS in the past 30 days for each required control person. **All fees collected through NMLS are non refundable.**

- Among other requirements, the Division reviews an applicant's business plan and financial statements; and the backgrounds and other personal information of its officers, members, directors and owners. The Division strongly recommends you thoroughly review and ensure you have all items available listed on the Application checklist prior to submitting an application.
- Applicants must exhibit a net worth of not less than \$20,000, in accordance with the definition outlined in regulation 209 CMR 20.02.

LICENSE MAINTENANCE REQUIREMENTS

- Once an applicant is approved, the cost of the license is \$1,000 annually. Licenses expire annually and each year licensees must submit renewal applications through NMLS and be approved by the Division to conduct business for the next year.
- Licensed motor vehicle sales finance companies must annually submit financial statements which have been either audited or reviewed by an independent Certified Public Accountant and prepared in accordance with generally accepted accounting principles.
- The Division's examiners conduct periodic examinations of licensees' books and records to assess the licensee's ability to operate in a financially safe and sound manner and its compliance with applicable laws and regulations. The examination fee is \$60.00 per examiner per hour.
- Licensees must annually, on or before March 31st, file a report with the Division containing information regarding its business and operations during the preceding calendar year.

REFERENCES: MASSACHUSETTS STATUTES AND REGULATIONS

- Massachusetts General Laws chapter 255B and the Division's regulation 209 CMR 20.00 *et seq.* concerning Retail Installment Sales of Motor Vehicles.
- Massachusetts General Laws chapter 140D: Consumer Credit Cost Disclosure and the Division's implementing regulation 209 CMR 32.00 *et seq.* concerning Truth-in-Lending and credit advertising.



The Official Website of the Office of Consumer Affairs & Business Regulation (OCABR)

Consumer Affairs and Business Regulation

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Licensing Requirements for Motor Vehicle "Leasing" Companies

By the [Division of Banks](#)

December 29, 2011

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 Fowle at 617-958-1500 ext. 549.

Sincerely,

David J. Cotney
Commissioner of Banks