



MOTOR VEHICLE SALES FINANCE ADMINISTRATIVE ACTION REPORT

September 1, 2017 – August 31, 2018

Overview

The OCCC has approximately 8,793 motor vehicle sales finance licensees. During FY 2018, the OCCC issued 37 final orders for violations in this industry. The most common violation is charging unauthorized documentary fees. Of the 37 orders issued in FY 2018, 20 orders are for charging unauthorized documentary fees, 9 orders are for engaging in unlicensed activity, two orders are for charging excessive itemized charges, and 6 orders are for other violations.

This report summarizes the statutes and rules that apply to the most common motor vehicle sales finance violations. The report also describes the typical enforcement action taken by the OCCC to address each type of violation.

Unauthorized Documentary Fees

Prior to September 1, 2017, a retail seller was required to provide notice to the OCCC prior to increasing the maximum amount of the documentary fee the seller intended to charge for any amount above \$50.¹ If the seller charged more than \$50 without providing notice, the OCCC allowed the seller to enter an Agreed Order to pay an administrative penalty and refund any fee amount above \$150. If the seller did not enter the Agreed Order, the OCCC issued an injunction requiring the seller to refund any documentary fee amount above \$50.

As of September 1, 2017, Texas law requires a retail seller to provide notice, along with a cost analysis, only if the seller intends to charge a documentary fee above \$150.² If the seller charges a documentary fee above \$150 without providing prior notice and a cost analysis justifying the amount, the OCCC will issue an injunctive order requiring the seller to refund the amount above \$150. If the seller continues to charge unauthorized documentary fees, the OCCC may assess administrative penalties and initiate a license revocation action.

¹ Section 348.006 of the Texas Finance Code; HB 3621 (81st Regular Session, 2009).

² Section 348.006 of the Texas Finance Code; HB 2949 (85th Regular Session, 2017).

In FY 2018, the OCCC initiated 20 enforcement actions against motor vehicle sales finance licensees for charging unauthorized documentary fees. Of the 20 enforcement actions, the OCCC issued two Agreed Orders assessing an administrative penalty. The OCCC issued 11 Orders assessing an administrative penalty, and three Orders and requiring the seller to refund any documentary fees above \$50.

Unlicensed Activity

Texas law requires a license from the OCCC to act as a holder of a motor vehicle retail installment contract.³ A holder is a person who operates as a retail seller or holds and collects on a contract in which the person agrees to accept the cash price of a motor vehicle in one or more deferred installments.⁴

In FY 2018, the OCCC initiated enforcement actions against nine entities that held motor vehicle retail installment contracts without a license. Of the nine enforcement actions, the OCCC issued one injunctive order, two administrative penalty orders, one administrative penalty order for noncompliance with an injunction, three orders with administrative penalties and restitution, and one order for multiple violations.

Excessive Itemized Charges

Texas law only allows four specific itemized charges to be included in a motor vehicle retail installment contract.⁵ Additionally, the amount of an itemized charge may not exceed the amount remitted on behalf of the buyer.⁶

In FY 2018, the OCCC initiated enforcement actions against five dealers that charged excessive itemized charges in motor vehicle retail installment transactions. In two cases, the OCCC issued injunctive orders, and three orders requiring the dealer to refund the excessive charges.

Other Violations

Some cases involve uncommon violations or multiple violations. In these cases, the ordered relief depends on the severity, frequency, and recurrence of the

³ Section 348.501 of the Texas Finance Code.

⁴ Section 348.001(3), (7), (8) of the Texas Finance Code.

⁵ Section 348.005 of the Texas Finance Code.

⁶ Section 348.005 of the Texas Finance Code.

violations. In FY 2018, the OCCC issued the following 10 orders involving uncommon or multiple violations:

- The OCCC initiated an enforcement against a dealer for: (1) charging unauthorized documentary fees⁷, (2) failing to provide notice and a cost analysis of a documentary fee⁸, and (3) failing to maintain records of fees charged⁹. The OCCC issued an Order requiring the dealer to cease its unlawful practice and to refund the unlawful charges.
- The OCCC initiated three enforcement against a dealers for: (1) charging unauthorized documentary fees¹⁰, (2) failing to provide notice and a cost analysis of a documentary fee¹¹. In each of these three cases, the OCCC issued an Order requiring the dealer to cease its unlawful practice and to refund the unlawful charges.
- The OCCC initiated an enforcement against a dealer for: (1) engaging in unlicensed activity,¹² (2) failing to safely and securely safeguard consumer information¹³ and (3) failing to keep adequate records of business activities¹⁴. The OCCC issued an Order requiring the dealer to cease its unlawful practice, comply with Texas law concerning security of consumer information, and to refund the unlawful charges.
- The OCCC initiated an enforcement against a dealer for unlawfully repossession of collateral.¹⁵ The OCCC issued an Order requiring the dealer to cease its unlawful practice and to refund the unlawful charges.
- The OCCC initiated an enforcement against a dealer for failing to release liens on automobiles that had been paid in full.¹⁶ The OCCC issued an Order requiring the dealer to cease its unlawful practice and to refund the unlawful charges.

⁷ Section 348.006 of the Texas Finance Code.

⁸ Section 348.006 of the Texas Finance Code.

⁹ Title 7, Section 84.707 of the Texas Administrative Code.

¹⁰ Section 348.006 of the Texas Finance Code.

¹¹ Section 348.006 of the Texas Finance Code.

¹² Section 348.501 of the Texas Finance Code.

¹³ Title 7, Section 84.707 of the Texas Administrative Code.

¹⁴ Title 7, Section 84.707 of the Texas Administrative Code.

¹⁵ Section 348.008 of the Texas Finance Code; Sections 9.610-.622 of the Texas Business and Commerce Code.

¹⁶ Section 348.408 of the Texas Finance Code.

- The OCCC initiated an enforcement against a dealer for (1) charging unauthorized deputy fees¹⁷ and unauthorized inspection fees,¹⁸ (2) for using improper motorcycle contracts, and (3) failure to provide lawful notice of repossession.¹⁹ The OCCC issued an Order requiring the dealer to cease its unlawful practice and to refund the unlawful charges.
- The OCCC initiated an enforcement against a dealer for: failing to transfer title to buyer of a motor vehicle,²⁰ and failing to allow the OCCC access to the company's records.²¹ The OCCC issued an Order requiring the dealer to cease its unlawful practice and to refund the unlawful charges.
- The OCCC initiated an enforcement against a dealer for: (1) charging excessive public official fees,²² (2) charging excessive inspection fees,²³ (3) failing to refund unearned finance fees, (4) installing GPS devices for pre-judgment repossession without agreement of consumer, (5) charging consumers for unauthorized GPS device and installation thereof,²⁴ and (6) failing to pay surplus of collateral to consumer after sale of collateral.

¹⁷ Section 348.005(1) of the Texas Finance Code.

¹⁸ Section 348.006 of the Texas Finance Code.

¹⁹ Section 348.008 of the Texas Finance Code; Sections 9.610-.622 of the Texas Business and Commerce Code.

²⁰ Title 7, Section 84.707 of the Texas Administrative Code.

²¹ Title 7, Section 84.707 of the Texas Administrative Code.

²² Section 348.005(1) of the Texas Finance Code.

²³ Section 348.006 of the Texas Finance Code.

²⁴ Section 348.005(1) of the Texas Finance Code.