

Motor Vehicle Sales Finance Bulletin Property Insurance

December 20, 2012

This bulletin discusses what restrictions a Chapter 348 holder may impose regarding an insurance policy when the retail installment contract requires the retail buyer to obtain property insurance for a motor vehicle that is the subject of a retail installment transaction.

Under Texas Finance Code §348.201, a holder may require a retail buyer to procure insurance to protect the motor vehicle that is the subject of a retail installment transaction. The model contract promulgated by the Texas Finance Commission also includes a model clause for required physical damage insurance. 7 TAC §84.808(11).

Retail sellers have expressed concerns that in some circumstances, retail buyers are obtaining insurance that does not provide adequate coverage. Specific types of policies that are of concern include coverage known as “named-driver” coverage (a policy that provides coverage only for the drivers listed in the policy), “excluded driver” coverage (a policy that states that it does not provide coverage for a specific driver), month-to-month policies, and high-deductible policies.

Texas Insurance Code §549.052 provides that, in a financing transaction, a lender may not require as a condition of financing that the borrower obtain an insurance policy covering the property that is the subject of the transaction from “a particular agent, insurer, or other person[.]” The statute also prohibits the lender from requiring insurance from a “particular type or class of agent, insurer, or other person.”

In view of the above Insurance Code provision, the agency believes that in a motor vehicle retail installment transaction, a holder may not require the buyer to obtain a property insurance policy from a particular agent or insurer. Likewise, a holder should not prohibit the buyer from obtaining insurance from a particular agent or insurer unless, pursuant to Insurance Code §549.056(c), the prohibition is based on reasonable and nondiscriminatory grounds relating to the financial soundness of the insurer or the insurer’s ability to service the policy.

The purpose of §348.201 Tex. Fin. Code is to allow the holder to require insurance that provides adequate protection of the holder’s interest in the motor vehicle. Therefore, the OCCC will not object if a holder requires a buyer to obtain an insurance policy that contains certain terms that protect the holder’s interest. For example, a named-driver policy could be seen as inadequate protection of the holder’s interest when it cannot be reasonably expected that the named driver

will be the only person to drive the vehicle. And an excluded-driver policy may not adequately protect the holder when the holder has a reasonable expectation that the excluded driver will drive the vehicle. Likewise, a high-deductible policy does not adequately protect the holder when it cannot be reasonably expected that the consumer would be financially able to pay the deductible on a high-deductible policy. Accordingly, the OCCC would not challenge a holder's ability to prohibit a buyer from obtaining a named-driver policy, an excluded-driver policy or to require that the buyer purchase a policy that has a deductible below a set amount.

The OCCC would object, however, to a holder prohibiting a retail buyer from obtaining month-to-month insurance, because as long as the buyer maintains the otherwise-acceptable month-to-month policy, the holder's interest in the vehicle is protected. The agency would also object if, following the execution of a retail installment contract, the holder changed its demands regarding the terms of an insurance policy absent a material change in circumstances.