

## Motor Vehicle Advisory Bulletin: Depreciation Benefit Service Contracts

This bulletin answers frequently asked questions about depreciation benefit service contracts for motor vehicle retail installment contracts under Chapters 348 and 353 of the Texas Finance Code.

### 1. What is a depreciation benefit service contract?

A depreciation benefit service contract provides a benefit when a buyer's car is stolen or totaled, and the buyer comes to a participating dealer to buy a new vehicle.

Depreciation benefit service contracts are authorized under Chapter 1304 of the Texas Occupations Code, amended by SB 1199 (2017). Section 1304.003(a)(3) defines a depreciation benefit optional member program as "a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss."

### 2. What are the general requirements for a depreciation benefit service contract?

The general requirements for depreciation benefit service contracts are located in Texas Occupations Code, Chapter 1304 (amended by SB 1199 (2017)), as well as the OCCC's rules at Texas Administrative Code, Title 7, Sections 84.707, 84.708, and 84.808 (recently amended effective September 7, 2017).

Depreciation benefit service contracts are subject to the following requirements:

- **General requirements for service contracts:** Depreciation benefit service contracts are subject to the requirements that apply to all service contracts under Chapter 1304 of the Occupations Code, including the requirement that the provider be registered with the Texas Department of Licensing and Regulation, the requirement to maintain a reimbursement insurance policy and a funded reserve account, disclosure requirements, and refunding requirements.
- **Not a condition of credit:** The depreciation benefit service contract may not be required as a condition of approval for credit to purchase the vehicle.
- **No exclusive financing:** The depreciation benefit service contract may not be offered by a seller that requires the purchase of a vehicle to be financed exclusively with the seller.
- **Refunding requirements:** If the buyer terminates the depreciation benefit service contract not later than the 30th day after the service contract, then the buyer must

receive a full refund of the charge for the service contract. If the buyer terminates after the 30th day, then the buyer must receive a pro rata refund.

- **Reasonable fee:** The fee for a depreciation benefit service contract must be reasonable in relation to the benefit provided by the service contract.
- **Recordkeeping:** Under the OCCC's recordkeeping rules, sellers must maintain records of the service contract, any certificate of coverage, evidence of the amount of any credit applied, and any documentation obtained by the seller to process a benefit.

### **3. How should a seller disclose the charge for the depreciation benefit service contract on the retail installment contract?**

There are two retail installment transactions relevant to the depreciation benefit service contract: the first transaction in which the buyer purchases the contract, and the second transaction in which the buyer receives a benefit under the contract.

In the first transaction, the initial charge for the depreciation benefit service contract should be listed in the retail installment contract's itemization of amount financed, in the itemized charges not included in the cash price.

For example, if a seller is using the OCCC's model plain language retail installment contract located at Texas Administrative Code, Title 7, Section 84.809, then the seller may list the initial charge for the agreement on line 4.O., "Other charges," of the model itemization of amount financed, listed as a charge to "Seller" for "depreciation benefit service contract."

### **4. In a transaction where the buyer receives a benefit under a depreciation benefit service contract, how should a seller disclose the benefit on the retail installment contract?**

In the second transaction, the seller should disclose the depreciation benefit in the retail installment contract's itemization of amount financed, on the "other" line of the downpayment section, with a description such as "depreciation benefit." The benefit should count toward the downpayment, effectively lowering the total amount financed owed by the buyer in the second transaction.