



MOTOR VEHICLE SALES FINANCE ADMINSTRATIVE ACTION REPORT

September 1, 2016 – August 31, 2017

Overview

The OCCC has approximately 8,539 motor vehicle sales finance licensees. During FY 2017, the OCCC issued 133 final orders for violations in this industry. The most common violation is charging unauthorized documentary fees. Of the 133 orders issued in FY 2017, 96 orders are for charging unauthorized documentary fees, 25 orders are for engaging in unlicensed activity, two orders are for charging excessive itemized charges, and 10 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 2017, the OCCC initiated 96 enforcement actions against motor vehicle sales finance licensees for charging unauthorized documentary fees. Of the 96 enforcement actions, the OCCC issued 88 Agreed Orders assessing an administrative penalty. The OCCC issued seven Agreed Orders assessing an administrative penalty and requiring the seller to refund any documentary fees above \$150. Lastly, the OCCC issued one injunctive order requiring the seller to refund any documentary fee amount 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 2017, the OCCC initiated enforcement actions against 25 entities that held motor vehicle retail installment contracts without a license. Of the 25 enforcement actions, the OCCC issued 15 injunctive orders, eight administrative penalty orders, and two license revocation orders.

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 2017, the OCCC initiated enforcement actions against two dealers that charged excessive itemized charges in motor vehicle retail installment transactions. In both cases, the OCCC issued an injunctive order 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 2017, the OCCC issued the following 10 orders involving uncommon or multiple violations:

- The OCCC initiated an enforcement action against a dealer for charging premiums for an unauthorized substitute insurance policy.⁷ The OCCC issued an Agreed Order requiring the dealer to comply with the substitute insurance coverage requirements and to refund the unauthorized substitute insurance premiums to affected retail buyers.
- The OCCC initiated an enforcement action against a dealer for charging: (1) a credit card surcharge,⁸ (2) excessive public official fees,⁹ (3) an amount for a debt cancellation agreement above five percent of the amount financed,¹⁰ (4) a finance charge greater than the amount disclosed in the contract,¹¹ and (5) unauthorized inspection fees.¹² The OCCC issued an Agreed Order requiring the dealer to cease its unlawful practices and to refund the unlawful charges.
- The OCCC initiated an enforcement action against a dealer for: (1) charging excessive finance charges,¹³ (2) charging unauthorized repossession fees,¹⁴ (3) causing an unauthorized waiver of buyer's rights,¹⁵ (4) failing to send repossession letters,¹⁶ (5) failing to disburse surplus balances,¹⁷ and (6) exceeding the amount of finance charge on contracts where that contained a blank contract rate.¹⁸ The OCCC issued an Agreed Order requiring the dealer to cease its unlawful practices, disburse any surplus balance, and to refund the unlawful charges.
- The OCCC initiated an enforcement action against a dealer for: (1) conditioning motor vehicle retail installment contracts on subsequent assignment,¹⁹ and (2) failing to timely register vehicles in the name of the

⁷ Section 348.207 of the Texas Finance Code.

⁸ Section 339.001 of the Texas Finance Code (repealed Sept. 1, 2017).

⁹ Section 348.005(1) of the Texas Finance Code.

¹⁰ Section 348.601 of the Texas Finance Code.

¹¹ Section 348.104 of the Texas Finance Code.

¹² Section 348.005(3) of the Texas Finance Code; Title 7, Section 84.708 of the Texas Administrative Code.

¹³ Section 348.103 of the Texas Finance Code.

¹⁴ Section 348.108 of the Texas Finance Code.

¹⁵ Section 348.412 of the Texas Finance Code.

¹⁶ Section 9.614 of the Texas Business and Commerce Code.

¹⁷ Section 9.608 of the Texas Business and Commerce Code.

¹⁸ Title 7, Section 84.102(4) of the Texas Administrative Code.

¹⁹ Section 348.1015 of the Texas Finance Code.

buyer.²⁰ The OCCC issued an injunctive order requiring the dealer to cease its unlawful practices, refund all payments from conditional contracts, and register the motor vehicles it sold.

- The OCCC initiated an enforcement action against a dealer for: (1) conditioning motor vehicle retail installment contracts on subsequent assignment,²¹ and (2) failing to maintain assignment records.²² The OCCC issued an injunctive order requiring the dealer to making transaction records and to cease conditioning contracts on subsequent assignment.
- The OCCC initiated an enforcement action against a person for: (1) engaging in multiple types of unlicensed activity,²³ and (2) refusing to allow the OCCC to perform an investigation.²⁴ The OCCC issued an injunctive order requiring the dealer to: (1) refund all unauthorized interest, time price differential, and fees from its unlicensed transactions, (2) cease all unlicensed activity, and (3) allow the OCCC to conduct an investigation.
- The OCCC initiated an enforcement action against a dealer for: (1) engaging in unlicensed activity as a motor vehicle sales finance dealer,²⁵ (2) failing disclose the entire itemization of the amount financed section in retail installment contracts,²⁶ and (3) failing to make certain disclosures that are required under Regulation Z.²⁷ The OCCC issued an injunctive order requiring the dealer to cease its unlicensed activity and to comply with state and federal disclosure requirements.
- The OCCC initiated an enforcement action against a dealer for: (1) charging excessive public official fees,²⁸ and (2) failing to retain proof of motor vehicle inspections.²⁹ The OCCC issued an injunctive order requiring the dealer to cease its unlawful practices and to refund the excessive public official fees.

²⁰ Section 501.0234 of the Texas Transportation Code.

²¹ Section 348.1015 of the Texas Finance Code.

²² Title 7, Section 84.707(b), (d) of the Texas Administrative Code.

²³ Sections 342.051, 348.501, 393.603 of the Texas Finance Code.

²⁴ Section 348.515 of the Texas Finance Code.

²⁵ Section 348.501 of the Texas Finance Code.

²⁶ Sections 348.009, 348.101(b)(4), 348.112(b)(4) of the Texas Finance Code.

²⁷ Title 12 Sections 226.18(h) and 1026.18(h) of the Code of Federal Regulations.

²⁸ Section 348.005 of the Texas Finance Code.

²⁹ Title 7, Section 84.708 of the Texas Administrative Code.

- The OCCC initiated an enforcement action against a dealer for: (1) charging excessive public official fees,³⁰ (2) charging unauthorized documentary fees,³¹ and (3) failing to retain proof of inspections.³² The OCCC issued an injunctive order requiring the dealer to refund the unlawful charges.
- The OCCC initiated an enforcement action against a dealer for: (1) failing to properly disclose annual percentage rate (APR),³³ (2) charging excessive inspection fees,³⁴ (3) charging excessive default charges,³⁵ (4) failing to provide notice of financial privacy policies,³⁶ (5) improper procedures for disposing of repossessed collateral,³⁷ (6) charging excessive finance charges,³⁸ and (7) failing to use a retail installment contract in a retail installment transaction.³⁹ The OCCC issued an injunctive order requiring the dealer to cease its unlawful practices, provide the required notices and disclosures, use a retail installment contract, and refund unlawful charges.

³⁰ Section 348.005 of the Texas Finance Code.

³¹ Section 348.006 of the Texas Finance Code.

³² Title 7, Section 84.708 of the Texas Administrative Code.

³³ Section 348.009 of the Texas Finance Code (applying the disclosure requirements of the federal Truth in Lending Act and Regulation Z).

³⁴ Section 348.005 of the Texas Finance Code.

³⁵ Section 348.107 of the Texas Finance Code.

³⁶ Title 15, Section 6803 of the United States Code; implemented by FTC Privacy Rule and Regulation P.

³⁷ Section 348.008 of the Texas Finance Code; Sections 9.610-.622 of the Texas Business and Commerce Code.

³⁸ Sections 348.104 and 348.105 of the Texas Finance Code.

³⁹ Section 348.101(a) of the Texas Finance Code.