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**CONSUMER CREDIT DIVISION  
ADVISORY LETTER 2017 - 01  
August 1, 2017**

To: Registrants under the Rental Purchase Agreement Act  
From: Ryan E Black, Deputy Director, Consumer Credit Division  
Re: Lessee Payment Made At or Prior to Consummation of Rental Purchase Transaction

This publication applies to all entities engaging in transactions under Ind. Code §24-7, the Indiana Rental Purchase Agreement Act (the “Act”). During recent routine examinations of rental purchase registrants (also referred to as “lessors”), it has become apparent there is confusion within the industry concerning what constitutes an initial payment and how it must be treated under the Act. The Department has become aware that some lessors without a physical presence in Indiana may not be acquiring, in all instances, 100% ownership of, or ownership rights to, merchandise subject to the rental purchase agreement (“agreement”). Delivery fees must also be taken into consideration when delivery is provided by a third party.

We urge you to read this publication in its entirety and evaluate your business practices with the policies outlined herein. If you find that your business practices do not comply with these policies, we encourage you to proactively take steps necessary to ensure compliance with the Act and this publication. The requirements outlined below will be enforced during all examinations of rental purchase registrants. All violations noted will require appropriate resolution, which may include, but is not limited to, consumer restitution.

**Initial Payments**

During recent routine examinations, it became apparent that some lessors are permitting, encouraging, or requiring lessees to make “downpayments” to a third party towards the purchase of merchandise subject to agreements. Origination of these agreements typically occurs at a third party retail merchant. However, these downpayments are not being disclosed in the agreement as part of the total cost to acquire ownership, as required by the Act. It is the Department’s determination that this practice is contrary to the disclosure provisions and limitations on agreements, practices, and remedies contained in the Act, specifically those in Ind. Code §24-7-4-11.

All money paid by lessees, including money paid to a third party prior to consummation of the agreement, must be appropriately disclosed in the agreement as an initial rental payment and included in the total number, total amount, and timing of all rental payments necessary to acquire ownership of the property. Initial rental payments may be further sub-itemized in the agreement if necessary.

Any money evidenced as paid to a third party prior to consummation, but not treated as an initial rental payment disclosed in the total cost necessary to acquire ownership, will be deemed in violation of the Act. Violations will be cited, and refunds to the lessee, will be required as appropriate.

### **One Hundred Percent (100%) Ownership**

The Act defines “property” that is subject to an agreement. It is the Department’s longstanding position that a lessor must hold complete and total ownership of, or ownership rights to, such property in order to enter into a legally enforceable agreement with a lessee. The above mentioned practice of consumers making “downpayments” to a third party retail merchant results in the consumers obtaining an upfront percentage of ownership in the merchandise. A lessor may not buy the “remaining balance” from the retail merchant; such a purchase is not a complete acquisition of any and all property rights of the merchandise in question prior to entering into a subsequent agreement with a lessee for the same merchandise. Lessors without existing inventory must ensure they are truly obtaining complete and total ownership of, or ownership rights to, such property. The traditional concept of a “downpayment” is not applicable to transactions under the Act.

As a result, any money evidenced as paid to a third party prior to consummation, but not properly treated as an initial rental payment disclosed in the total cost necessary to acquire ownership, will be deemed in violation of the Act. Violations will be cited and refunds to the lessee will be required as appropriate.

### **Delivery Fees**

A third party, rather than the lessor, may undertake delivery of property subject to an agreement. This appears most common where a lessor does not have a physical presence in Indiana, or does not have its own inventory, and agreements are originated through third party retail merchants acting on behalf of the ultimate lessor.

Any delivery fee paid must be accounted for in the agreement in compliance with the Act. However, if the delivery of the property occurs as a result of a direct negotiation between the lessee and a third party retail merchant after consummation, such transaction should be treated separately from the agreement. In these instances, the delivery fee will be deemed to be outside of the rental purchase transaction and is not subject to the Act.

### **Recordkeeping**

As a reminder, lessors are required by the Act to provide evidence of the above as part of their books and records made available for examination. The Department will be looking for evidence that a lessor, for whom a retail merchant acts on its behalf, acquires sufficient ownership rights in the property prior to the consummation of any rental purchase agreement. This should include, but is not limited to, appropriate accounting that evidences the complete transfer of ownership rights from a retail merchant to a lessor. The Department will also expect to see evidence that any retail merchant acting on behalf of a lessor that accepts funds from a lessee will account for or transfer such funds to the ultimate lessor as an initial rental payment applied toward the agreement. The Department may also request to review the merchant agreement and transaction history between the lessor and a retail merchant.

**Summary**

A downpayment in the traditional sense is not permitted; all money paid by lessees, including money paid to a third party prior to consummation of the agreement, must be treated as an initial rental payment. An initial rental payment must be disclosed in the agreement and may be larger than regular rental payments. A lessor must own or have ownership rights to 100% of all property subject to an agreement prior to entering into such agreement. Any delivery fee paid must be accounted for in the agreement in compliance with the Act unless the delivery of the property occurs as a result of a direct negotiation between the lessee and a third party retail merchant after consummation and entirely separate from the agreement.

This publication is in effect unless later amended or withdrawn. This publication is intended to provide general guidance only, and is not a substitute for advice from legal counsel.

If you have questions regarding this publication, please contact the Department.

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