

# 8

## LEASING OR BUYING A VEHICLE

### § 8. 1. Introduction

This consumer rights chapter deals with both leasing and buying a vehicle. The first part, Leasing, provides information on how to navigate the complexities of a lease contract. Remember, in one important sense, leasing a vehicle is the same as buying a vehicle: all the charges can be bargained over. Therefore, make sure you understand each charge and then decide if you want to pay that much.

The second part of this chapter, Buying A New Car, sets forth the Unfair Trade Practices Rules promulgated by the Maine Attorney General which regulate the sale of new vehicles in Maine. It contains the following sections:

#### **LEASING**

- § 8. 2. Reasons For And Against Leasing
- § 8. 3. Lease Terms Defined
- § 8. 4. How to Lease A Vehicle
- § 8. 5. Problems To Watch Out For When Leasing A Vehicle
- § 8. 6. How One Consumer Leased A Vehicle

#### **BUYING**

- § 8. 7. New Car Sale Rule 105.1: Definitions
- § 8. 8. New Car Sale Rule 105.2: Misrepresentation Of Charges
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- § 8. 10. New Car Sale Rule 105.4: Optional Equipment Added Prior To Sale
- § 8. 11. New Car Sale Rule 105.5: Disclosure Of Manufacturer Warranties
- § 8. 12. New Car Sale Rule 105.6: Quality Of Rustproofing
- § 8. 13. New Car Sale Rule 105.7: Advertising
- § 8. 14. New Car Sale Rule 105.8: Orders

## § 8.2. Reasons For And Against Leasing

Leasing a new vehicle is becoming increasingly popular. Currently, approximately 25% of all automotive customers decide to lease rather than to purchase. Yet the lease contract can be very confusing. After reviewing several discussions of leasing<sup>1</sup>, we offer below some good advice on how to lease a vehicle. To begin with, what are some reasons for and against leasing?

### A. Reasons For Leasing

- (1) One of the main reasons people are drawn to leasing a vehicle is the relatively low monthly payment. When you compare leasing with the cost of financing a vehicle, a lease will generally have a lower monthly payment. In addition, your “up front” costs might be more manageable. Also, the vehicle will usually remain under both the manufacturer’s warranty and the Maine Implied Warranty. However, be warned: despite lower monthly payments the long term cost of leasing can be greater than either financing a vehicle or paying cash for it.<sup>2</sup>
- (2) With a lease you do not have to worry about trading-in your vehicle or selling it when you are ready for a new vehicle. You can either lease another new vehicle, exercise your purchase option and buy the vehicle, or, after completing your lease obligations, simply return the vehicle and be done with it. If a consumer is well schooled in the complexities of a lease contract, leasing can prove very convenient by allowing the driver newer, more reliable vehicles that require fewer trips to the service department for repairs and maintenance. Unfortunately, leasing is a very complicated transaction and there are many reasons for consumers to be cautious before entering into a lease contract.

### B. Reasons For Not Leasing

- (1) Leasing a vehicle is a very complex financial transaction. There are numerous factors, which a consumer should negotiate before agreeing to a lease. Factors such as the gross capitalized cost, capitalized cost reduction, net trade-in equity, residual value, acquisition fee, monthly lease rate, lease term, mileage allowance, excess wear and use charge, and after-market items must be considered when calculating lease payments.
- (2) Consumer laws have not yet caught up with leasing transactions. Dealers who lease vehicle are not required to disclose many key items. For example, would you borrow money without knowing the interest rate? In a vehicle lease transaction it happens every day and there are no laws in the country which require such a disclosure. *See below* § 8.3(P), “monthly lease rate”.
- (3) Because a lease transaction is so complex, an unscrupulous dealer can easily deceive a consumer. *See below*, §8.5, Problems to Watch Out For When Leasing a New Car. Indeed, the F.T.C. recommends that you bring a lease contract home with you and study it carefully before agreeing to its terms.

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<sup>1</sup> Among the publications reviewed were The Direct Selling Education Foundation’s, “Auto Leasing: Is It Good For Consumers?”, *PM Buyer’s Guide* ’97, “How To Speak Lease,” *AAA World’s*, “How To Lease Like A Pro,” *Consumer Reports*, “Leasing A Car: Popular But Not Always Practical,” and *Consumer’s Digest*’s, “Should You Lease Or Buy?” and Donna McCrohan’s, *Get What You Pay For Or Don’t Pay At All* (1994).

<sup>2</sup> One study compared the cost of leasing a vehicle or purchasing it by loan or by cash payment. The study used a vehicle with a negotiated transaction price of \$18,000.00, with a residual value of \$8,000.00 after four years, leased or financed for 48 months at 8.4% interest, with a 20% down payment, subject to 5.75% sales tax. When all the costs were totaled, the four-year cost of the lease was \$15,549.00, the four-year cost of the loan was \$14,106.00 and the four-year cost of the cash purchase was \$13,374.00. *See* Michelle Krebs, “Should You Lease or Buy?” *Consumer’s Digest* 72 (January/February 1997).

- (4) Finally, lack of ownership is an important reason not to lease. In the long run it is cheaper to purchase car than to lease it (*see* footnote No.2). The lower monthly payments that come with a lease can be a mirage. If you are going to keep the car for 3 or 4 years, leasing may not make sense for you.

### § 8.3. Lease Terms Defined

Here are short definitions of some of the key terms involved in leasing a vehicle. Remember, do not be reluctant to negotiate over the price of *any* fees and charges.

- A. *Acquisition Fee.* Most leasing companies charge the dealer an Acquisition Fee to acquire the lease. These fees can range from \$200.00 to \$700.00. If the dealer does not collect this fee from you on delivery (similar to “points” on a mortgage loan), it is added into your gross capitalized cost.
- B. *Capitalized Cost.* The gross Capitalized Cost is equivalent to a vehicle’s negotiated purchase price. This is the total dollar amount your lease is based on. It includes the cost of the vehicle, sales tax, acquisition fees, and any extended warranties and insurance you decide to include in your lease. This is the amount the finance company or bank actually pays for the lease. Look carefully at a vehicle’s capitalized cost. If it is higher than the price you would have paid had you purchased the vehicle, insist on the lower price. This will reduce your monthly payments.
- C. *Capitalized Cost Reduction.* The Capitalized Cost Reduction is the equivalent of a down-payment. This figure is made up of any net trade-in allowance, rebate, non-cash credit, or cash you paid that reduces the gross capitalized cost. You subtract this amount from the Gross Capitalized Cost to arrive at the Adjusted Capitalized Cost, which is the amount used in calculating your base monthly payment. Remember, all of the payments made at lease signing do not necessarily reduce the Capitalized Cost.
- D. *Closed-End Lease.* A Closed-End Lease is the most common type of consumer lease. Unlike an Open-End Lease, your Residual Value (*see below* ¶ Q) is fixed as part of the contract. At the end of a Closed-End Lease you may either return the vehicle or exercise your purchase option. If your lease is an open-end lease, then at the end of the lease you pay the difference between the Residual Value (*see below* ¶ O) stated in the lease and the vehicle’s actual appraised value when you return it (or the sale price, if the vehicle is sold).
- E. *Disposition Fee.* A Disposition Fee is often charged by a lessor to defray the cost of preparing and selling the vehicle at the end of the lease if the lessee does not purchase the vehicle.
- F. *Depreciation and any Amortized Amounts.* This is a charge to cover a leased vehicle’s projected decline in value through normal use and other items paid over the lease term. It is calculated as the difference between the Adjusted Capitalized Cost of the vehicle and its Residual Value.
- G. *Early Termination Liability.* If you break (default) your lease early, you must pay a cancellation penalty. It is almost always very expensive to terminate a lease early. This is because the market value of the vehicle depreciates faster than the lease payoff. Also, leasing companies usually require you to pay some percentage (30% to 100%) of the remaining lease charge when terminating early. If you have a “fair market value purchase option” your Early Termination Liability will be very high.
- H. *Excess Wear and Use Charge.* As a rule of thumb, if you have more than \$100.00 worth of damage to your vehicle—mechanical, exterior, interior, glass, tires—you will be charged for

repair. This is called an Excess Wear and Use Charge. It is usually cheaper for you to have the damage repaired yourself than to pay the leasing company. Toward the end of the lease, if you are not buying the vehicle, the leasing company will send an appraiser to assess the damage, or require you to bring the vehicle to your dealer for appraisal. If you do not agree with the appraisal, do not sign it. Instead, get your own independent appraisal. Sometimes even very clean vehicles have been charged for Excess Wear and Use.

- I. *GAP Coverage.* GAP Coverage is insurance that protects a lessee in the event the vehicle is either “totaled” or stolen. If the vehicle is totaled or stolen the lessee can be responsible for the difference (the “GAP”) between the lease’s early termination payoff amount and the insured value of the vehicle, unless you have GAP Coverage. Most leasing companies now include GAP Coverage in their leases. In Maine, dealers and lessors cannot sell you GAP insurance. This is because Maine has a specific consumer lease law that makes GAP Coverage unnecessary. This law allows a lessee whose vehicle is totaled or stolen to:
- (1) Turn over any insurance proceeds to the lessor and be responsible only for the insurance deductible,<sup>3</sup> or
  - (2) Take the insurance proceeds and purchase a replacement vehicle equal to the one lost or destroyed, and continue on with the lease.<sup>4</sup>

Because of this law, Maine dealers and lessors are prohibited from charging a lessee for GAP insurance.

- J. *Lease Term.* The Lease Term is the number of months in your lease
- K. *Lessee.* You are the Lessee, the person leasing the vehicle.
- L. *Lessor.* Lessors are companies like GMAC, FMCC, and others. They actually hold the paper on the lease. The dealership is not the Lessor. It is the Lessor’s representative (sometimes called an “Originator” or “sales outlet”).
- M. *Manufacturer’s Suggested Retail Price (MSRP).* Also known as “list price” or “sticker price,” the MSRP is the price on the window sticker, which is required to be posted on every new vehicle. The dealer, as an independent business, sets its own price. Consumers often negotiate a price lower than the MSRP. When advertising a lease deal, dealers are required to disclose in the advertisement certain information (e.g., the fact that the transaction is a lease, the total payment due upon delivery, etc.) See [www.ftc.gov/bcp/online/pubs/buspubs/creditad/cover.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/creditad/cover.htm)
- N. *Mileage Allowance.* Most leases allow you to drive 15,000 miles per year. This is the Mileage Allowance. Lower-mileage and higher-mileage leases are available depending on your needs. If you drive over the allowable miles you will be charged a fee per mile, usually between 12 and 15 cents.
- O. *Monthly Depreciation.* Your Monthly Depreciation is your Gross Capitalized Cost (less any Capitalized Cost Reduction) minus the Residual Value, divided by the number of months of the lease.
- P. *Monthly Lease Rate.* Also known as the “Rent Charge” or “Lease Charge” or “Money Factor,” the Monthly Lease Rate is the money cost of the money you are “borrowing.” It is similar to interest on a loan. The Monthly Lease Rate will be much lower than an equivalent interest rate stated as an Annual Percentage Rate (APR). If a Lease Rate is given as a percentage in an advertisement or on any lease form, must also state, “This percentage may

<sup>3</sup> 11 M.R.S.A. § 2-1221 (2) (b).

<sup>4</sup> 11 M.R.S.A. § 2-1221 (2) (a).

not measure the overall cost of financing this lease.”

- Q. *Residual Value.* The Residual Value is the estimated value of the vehicle at the end of the lease. This figure established at the beginning of the lease and is used in calculating your base monthly payment. Knowing this figure is crucial, since generally the higher the Residual Value, the lower monthly payments will be.
- R. *Sale Price.* The Sale Price is the negotiated price of the vehicle you are leasing. You and the dealer, before agreeing on a lease, should first negotiate the Sale Price of the vehicle you are leasing, just as if you were buying it. This negotiated Sale Price then becomes the price upon which your lease payment is based.

## § 8. 4. How To Lease A Vehicle

Based in part on recommendations from *AAA World* and *Consumer Reports*, here are some basic steps you should follow in leasing a vehicle:

- A. First, determine the gross cash value of your current vehicle. Your net trade-in allowance will be subtracted from the gross Capitalized Cost of the vehicle you are leasing.
- B. Determine the dealer cost for the vehicle you want. The best new-car price guides tell you not only the dealer costs, but also factory rebates and all known dealer incentives. The figure should be considerably below the MSRP.
- C. Next, negotiate a Sale Price for the vehicle you are leasing, just as if you were buying it. Be sure to deduct any applicable rebates. Then ask for monthly payments based on that price. Many vehicle leases are based on a gross Capitalized Cost that matches the MSRP or sticker price. For smart buyers the sticker price is usually the point from which they bargain down to a better price. The same should be true if you are leasing. However, in many leasing contracts consumers do not know enough to negotiate the gross Capitalized Cost and thus may end up paying more than is necessary. When you negotiate a lower gross Capitalized Cost the dealer or leasing company is agreeing to purchase the vehicle you will be leasing at a price below the MSRP.
- D. Ask how much the dealer’s Monthly Lease Rate is (i.e., the cost of the money you are “borrowing”). Sometimes this is referred to as the “Rent Charge” or “Money Factor.” No matter what it is called, the lower the number, the better. Do not mistake this figure for an actual interest rate. It will be much lower than an equivalent interest rate stated as an Annual Percentage Rate (APR).
- E. Ask about the Residual Value of the vehicle, (the amount the leasing company estimates the vehicle will be worth when the lease is up). Generally, the higher the Residual Value the better, because your monthly payments will then be lower. Pick the combination with the lowest Monthly Lease Rate and highest Residual Value and then calculate some lease payments. Be aggressive and comparison-shopping. A low Residual Value is important only if you intend to buy the vehicle at the end of the lease. But if that is the case, you should consider purchasing rather than leasing.
- F. When you agree on the deal you want, get everything in writing on the purchase offer form. That is the form you sign to make your offer official and a manager signs to accept for the dealer. If the sales person writes out a shorthand summary of the deal, do not sign it. You want all the terms of the deal laid out in the purchase offer, as they were when you calculated the lease payment. Then, before you go in to sign the actual lease, check all the numbers.

## § 8. 5. Problems To Watch Out For When Leasing A Vehicle

Here are some of the problems you should be on the watch for when leasing a vehicle:

- A. Be careful if the Monthly Lease Rate works out to only 1% or 2%. It is possible for the dealer to add other charges to a low base rate, so that the actual rate may be equal to or higher than what is charged on a new vehicle loan. Keep in mind, all lease fees or charges are negotiable, including the Monthly Lease Rate.
- B. Make sure you know exactly what happens if you want out of the lease before it expires. At a minimum, you will probably have to make up any difference between the current value of the vehicle and the amount you have paid to that point in the lease.
- C. Be wary of lease advertisements. Sometimes these advertisements compare the cost of purchasing the vehicle for several thousand dollars with leasing for a couple hundred dollars a month. But that can be deceptive. If you purchase a vehicle, you own it and do not have to return it at the end of a lease period. Several manufacturers (e.g., General Motors, Toyota, and Honda) have settled F.T.C. charges that their leasing ads were deceptive for failing to adequately disclose additional fees, such as the first month's payment or security deposit. Also, remember that in Maine you must pay a 5 % sales tax based on your monthly lease payments multiplied by the number of payments.
- D. Sometimes after you have negotiated on the price for buying a vehicle (and arrived at a good deal), the dealer might suggest that you consider leasing the vehicle instead. If you do lease the vehicle, make sure the gross Capitalized Cost is based on the price you negotiated to buy the vehicle and not on the MSRP or an even higher figure. Attorney General Investigators in Florida have discovered instances where dealers have sold vehicles for anywhere from 110% too as high as 150% over the MSRP. In some cases, these deals have meant sales persons can earn commissions as much as three times higher if they steer a customer into a lease. Generally, a lease advertisement does not include the cost of sales tax in the monthly payment.
- E. Two other deceptive sale tactics came to light during the Florida Attorney General's investigation. One is the use of "The Flip." Under this practice, a consumer comes in prepared to buy a vehicle and invests hours negotiating a purchase price, even to the point of signing the sales contract. Then, at the last minute, the dealer comes up with a special financing offer, which can lower the customer's payments. What the dealer fails to explain is that the special offer is actually a lease. It is an offer many consumers are unable to refuse. The vehicle buyer has just been "flipped" into a lease. It is only after the individual gets home and carefully reviews all the documents does the customer discover what happened. The second practice uncovered involves what the customer has to offer to decrease the sticker price. Traditionally, this might include a trade-in, cash, and rebate offer or coupon. On purchase agreements, such credits are clearly visible. But the Florida Attorney General's investigation revealed that when it comes to lease agreements, a customer's trade-in or credits sometimes disappear down a black hole. All too often, the customer discovers that the trade-in or other credit is not fully applied or not applied at all. Instead, they have become what the industry calls an "extra pocket of profit" for the dealers.

- F. In Maine, dealers cannot sell you GAP coverage insurance. This is because Maine provides GAP coverage by statute.<sup>5</sup> See § 8.3 (I).
- G. *Consumer Reports* recommends that you make sure the manufacturer's warranty covers the entire term of the lease and the number of miles you are likely to drive.
- H. *AAA World* recommends that you watch out for "stuff in tiny print": such as high down-payment; a very low mileage allowance (lease mileage allowances range from 10,000 to 15,000 per year); a charge to include a purchase option (there should be no charge); a big disposition fee (\$350.00 or more) to cover the cost of selling the vehicle at the end of the lease; high fees for early termination or buy out (which are sometimes negotiable if you buy the vehicle during the lease term); the addition of credit life, accident, or health insurance without your asking for it; high security deposits (a reasonable security deposit equals your monthly payment plus \$75.00 or less; and small discrepancies between the price quoted, the payment you calculate, and the payment they calculate. Some lessors, for example, do not state an acquisition fee, but work it into their method of payment calculation; others use a computer to add a "programmed profit structure" as high as \$1,000.00.<sup>6</sup>
- I. Consider carefully the Mileage Allowance. If your lease allows only 10,000 to 15,000 miles a year, be careful. A majority of drivers exceed 15,000 miles a year. If you exceed the Mileage Allowance you may find yourself paying about 25 cents per mile in excess of what is allowed. You may be able to buy "extra miles" from the dealer for as little as 8 cents a mile if you pay for it in advance.
- J. If you have traded-in a vehicle, make sure you are getting full credit for its value. A less than honest dealer may inflate the Capitalized Cost of the lease you are negotiating in order to get back some of the money he gave you for your trade-in vehicle.
- K. Be wary of final "balloon" payments and "Disposition Fees" that some lessors charge when the lease ends. For example, sometimes there will be a Disposition Fee if you decide not to purchase the vehicle at the end of your lease. Find out what it is; negotiate over the amount; insist that it be put into the lease document before you sign.
- L. Signing the lease is the last step and you should do so only after you understand all the calculations. *The F.T.C. recommends that before signing it you should take the lease home and study it overnight.* Then ask the Lessor to answer any questions you might have. *Remember that there is no 3-day right to revoke a lease. Once you've signed it, the deal is finalized.*
- M. In our experience, Maine dealers are typically quite straightforward in their dealings with customers. However, leasing a vehicle is so complex that it can lend itself to confusing sale practices. The December, 1997 issue of *Consumer Reports* provided the following very useful "Five Minute Leasing Self-Defense Course".

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<sup>5</sup> 11 M.R.S.A. § 2-1221 (2).

<sup>6</sup> Michael Flinn, "How To Lease A Car Like A Pro," *AAA World* 7 (November/December 1994).

# CONSUMER REPORTS' FIVE-MINUTE LEASING SELF-DEFENSE COURSE

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|---|--|---|--|
| <p><b>Mileage razzle-dazzle.</b> Check the contract carefully for the mileage limitations you agreed to. Consumers have complained that the allowance was lowered in their contract, sometimes in a small box they initialed or the dealer initialed for them.</p> <p><b>Fan dance.</b> Never sign a lease without reading each page. Unscrupulous dealers will “fan” the paperwork, exposing only the signature portions so you won’t know what you’re signing.</p> <p><b>The stealth lease.</b> Some consumers have ended up leasing when they thought they were buying. Dealers create confusion by using such terms as “the plan” or “installment contract.” They may give you preliminary documents that indicate a purchase, then switch to the official ones that say “lease” when it’s time to sign. Make sure you know the details of the deal.</p> <p><b>Equipment mirage.</b> Dealers can increase the selling price of the vehicle, and the cost of your lease, by charging for optional equipment in the contract-equipment they don’t actually include. In the excitement of taking delivery, you may not notice whether options you were expecting are actually on the vehicle. Compare the description of the vehicle in the lease to the window sticker from the vehicle itself.</p> <p><b>Buying Option.</b> You may be asked to pay up front the full cost of some options to get a certain lease price. That’s a rip-off, pure and simple. Any optional equipment should be added to the selling price of the car and made part of the lease payments.</p> <p><b>Early termination.</b> Check the contract for the method used to determine how much you’d pay to terminate the lease early. Though early termination is always costly, the most common and favorable calculation is called the “actuarial” method.</p> | <p><b>Take pictures.</b> It’s a good idea to photograph the vehicle thoroughly before you return it at lease-end. You’ll have evidence to dispute any charges that arrive long after the dealer has disposed of the vehicle. Include a current newspaper front page in the pictures as a sort of date stamp.</p> <p><b>Restore the vehicle.</b> Consider having any cosmetic repairs done before you turn the vehicle in. Low-cost refurbishment methods include paint-less dent repair and windshield repair rather than replacement.</p> | <p><b>Go elsewhere.</b> If the dealer you leased the vehicle from says you must pay extra for damage that seems slight, go to another dealer and ask for an inspection.</p> <p>Contracts seldom require you to return the vehicle to a particular dealer, and there’s no good reason why you should allow your options to be limited by the lease you sign.</p> |  |
| <h3>Look beyond the monthly payment</h3>  |  |   |  |
| <p><b>As this sample comparison of competition leases available on a 1997 Toyota Camry shows, you have to look deep into the lease terms to find out which is the best deal over the long term. Although Lease 1 requires the highest monthly payment, it has the lowest three-year total cost.</b></p>   |  |   |  |
| <p><b>Gross capitalized cost.</b> Effectively, the vehicle’s purchase price. Negotiate this, and don’t overlook rebates or dealer incentives.</p>   | <p><b>Lease 1</b></p> <p><b>\$20,600</b></p>   | <p><b>Lease 2</b></p> <p><b>\$21,000</b></p>  | <p><b>Lease 3</b></p> <p><b>\$21,300</b></p> |
| <p><b>Capitalized-cost reduction.</b> This is your down payment. Try to put as little money into the front end of a lease as possible.</p>  | <p><b>\$1,000</b></p>  | <p><b>\$1,000</b></p>   | <p><b>\$1,000</b></p>                        |
| <p><b>Acquisition fee.</b> Sometimes negotiable, this is part of the up-front cost of leasing, which may also include a security deposit.</p>   | <p><b>\$495</b></p>  | <p><b>\$475</b></p>   | <p><b>\$545</b></p>                          |
| <p><b>Residual value.</b> Sometimes negotiable, this is part of the up-front cost of leasing. Which may also include a security deposit.</p>  | <p><b>\$13,142</b></p>   | <p><b>\$13,821</b></p>  | <p><b>\$14,954</b></p>                       |
| <p><b>Money factor.</b> Also known as the “monthly lease rate,” it is a finance cost akin to the interest paid on a bank loan. Multiply the money factor (the 5-digit decimal) by 2400 to convert it into the approximate annual percentage rate (in parentheses).</p>  | <p><b>.00310</b><br/><b>(7.4%)</b></p>   | <p><b>.00313</b><br/><b>(7.5%)</b></p>  | <p><b>.00357</b><br/><b>(8.6%)</b></p>       |
| <p><b>Monthly payment.</b> Don’t forget to include any sales tax you may be required to pay.</p>  | <p><b>\$281</b></p>  | <p><b>\$277</b></p>   | <p><b>\$274</b></p>                          |
| <p><b>Disposition fee.</b> This lease-end charge excludes excess wear-and-tear and mileage penalties.</p>   | <p><b>\$0</b></p>  | <p><b>\$250</b></p>   | <p><b>\$400</b></p>                          |
| <p><b>Total over lease terms.</b> Add the capitalized-cost reduction, acquisitions fees, all of the monthly payments and any disposition charges due when you return the car to find out what you will spend over the life of the lease.</p>  | <p><b>\$11,607</b></p>   | <p><b>\$11,715</b></p>  | <p><b>\$11,822</b></p>                       |



## § 8.6. How One Consumer Leased A Vehicle

The Federal Rule Regulation M (which implements the Consumer Leasing Act and is found at 12 CFR 213) now requires dealers to make certain disclosures to persons planning to lease a vehicle. Here is a fact pattern that describes how one consumer named Jane went about leasing a new vehicle. It is based on materials developed by the U.S. Federal Reserve Bank to help consumers through the complexities of a lease contract. Any term in **bold** print is defined in § 8.3 of this chapter. Following Jane's story is a copy of the lease contract she negotiated.

### How Jane Leased A New Car

After her 8-year-old car broke down for the fifth time in a month, Jane decided that she needed a new car. Price was going to be a major concern. Another major concern would be the amount of any down payment or up-front costs, since Jane had depleted her savings trying to make the last set of repairs to her old car.

A review of the local newspapers revealed that there were many “zero money down” deals available for a consumer with little up-front money. Many of these deals also had monthly payment amounts that were within Jane's budget. Jane settled on a 1998 Ginko EX that was advertised as \$189/month with \$0 down. While this deal sounded pretty good, Jane was suspicious because of what was missing from the advertisement. The ad did not disclose whether these terms were for the sale or a lease of the car. Jane knew that if the ad was for a lease, additional information and terms about the lease must be disclosed in the advertisement.

After realizing that the ad left a lot to be desired in the way of useful information, Jane chose instead to deal with Happy Jack's Ginko Emporium. Happy Jack's was advertising a 3-year lease of the same car for \$185/month, and in addition, Happy Jack's had made all the required disclosures under Federal Rule Regulation M, including the disclosure of the total amount due at lease signing (\$2,550). Since the \$185/month lease payment was based on **MSRP** (sticker price) of \$14,000, Jane reviewed her handy 1998 edition of Car Smart to find the Internet addresses of web sites with information about new car invoice prices. She then logged on to the Internet to get some information about the invoice price for the different models of the 1998 Ginko. From one of these sites, Jane learned that the invoice price of the 1998 Ginko EX was \$12,000. She was also able to determine the standard equipment for the EX and the cost of any optional equipment. A quick hop over to another site listed in Car Smart gave her information on the trade-in value of her old car: \$2,000.

Armed with this information, Jane went down to Happy Jack's to see if she liked the Ginko and to take the car for a test drive. Since this was the beginning of the Ginko model year, Happy Jack's had many Ginkos to choose from, and after test driving a number of different models, Jane finally settled on the forest green Ginko EZ. Since Jane knew she was going to lease the car, she approached Jack to begin the negotiation of the **Capitalized Cost** of the Ginko.

Jack started to “run the numbers” on the Ginko based on the \$14,000 MSRP listed in the ad. Jane stopped him at that point and told Jack that she would be willing to pay a Capitalized Cost of \$12,000 for the Ginko. Jack was taken aback since this was the first time anyone tried to negotiate the Capitalized Cost on a lease. In a panic, he blurted out, “But you're not buying the car, the leasing company is. Why do you care what the leasing company pays for the car?” While this initially made some sense, Jane realized that she was paying for the use of the car over the lease period. *Therefore, the lower the Capitalized Cost of the car, the lower her monthly payments.* Jack, sensing that he had a lease-savvy consumer on his hands, was not happy. After a few rounds of negotiations, Jane and Jack agreed on a capitalized cost of \$12,500 and a trade-in value of \$2,000 on her old car.

Jane loves her Ginko. During the three years of her lease, she never had a problem with the car. She took it in for every routine maintenance appointment and always made sure the car was washed

and waxed to maintain that “new car finish.” Sadly, after three years, the lease was coming to an end. Jane’s two children were getting a little big for the back seat of the Ginko. It was time to buy or lease a minivan!

A month before the end of the lease, Jane contacted Happy Jack to set up an appointment to have Jack look over the car for **Excess Wear and Use** and to get an estimate of the amount she would have to pay at lease end. Jack, hoping to keep Jane’s business, looked over the car and determined that there was \$2,000 in Excess Wear and Use to the car. If Jane would be willing to lease her next car from Jack, he told her he could probably knock it down to \$1,000. Jane was shocked since she had always taken very good care of the car. She quickly reviewed the lease agreement, which listed Jack’s criteria for determining Excess Wear and Use. After Jane reviewed with Jack the wear and use criteria, Jack reevaluated the extent of the wear and use and quoted Jane a fee of \$750 for damage. Knowing that she could have the work done for half the cost, Jane had a trusted body shop make the necessary repairs and she was able to return the car without any Excess Wear and Use. Since there were no outstanding amounts due at the end of the lease, Jane received a refund of her security deposit.

| <b>Federal Consumer Leasing Act Disclosures</b>   |   |  |   |                       |  |
|---|---|--|---|-----------------------|--|
| Date 10/22/2000   |   | Lessor (s) Ginko, Inc.   |   | Lessee (s) Jane Smart |  |
| <b>Amount Due At Lease Signing Or Delivery</b><br><br>(Itemized below)*<br><br>\$2,506.00   | <b>Monthly payments</b><br><br>Your first monthly payment of \$141.00 is due on 11/1/2000 followed by 35 payments of \$141.00 due on the 1 <sup>st</sup> of each month. The total of your monthly payment is \$5,076.00 | <b>Other Charges</b> (not part of your monthly payment)<br><br>Disposition fee (if you do not purchase the vehicle)<br><br><div style="text-align: right;">\$400.00<br/>-0-<br/><u>\$400.00</u></div> <b>Total</b> | <b>Total of Payments</b><br><br>(The amount you will have paid by the end of the lease)<br><br>\$7,591.00 |                       |  |
| <b>* Itemization of Amount Due At Lease Signing or Delivery</b>   |   |  |   |                       |  |
| <b>Amount Due at lease Signing or Delivery:</b>   |   | <b>How the Amount Due at Lease Signing or Delivery will be paid:</b>   |   |                       |  |
| Capitalized cost reduction  | \$2,000.00  | Net trade-in allowance   | \$2,000.00  |                       |  |
| First monthly payment   | 141.00  | Rebates and noncash credits  |   |                       |  |
| Refundable security deposit   | 250.00  | Amount to be paid in cash  | <u>506.00</u>   |                       |  |
| Title Fees  | 65.00   |  |   |                       |  |
| Registration fees   | <u>50.00</u>  |  |   |                       |  |
| Total   | \$2,506.00  | Total  | \$2,506.00  |                       |  |
| <b>Your monthly payment is determined as shown below:</b>   |   |  |   |                       |  |
| <b>Gross capitalized cost.</b> The agreed upon value of the vehicle ( <b>\$ 12,500.00</b> ) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance)   |   | =  | \$13,000.00   |                       |  |
| If you want an itemization of this amount please check this box <input type="checkbox"/>  |   |  |   |                       |  |
| <b>Capitalized cost reduction.</b> The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost.   |   | =  | 2,000.00  |                       |  |
| <b>Adjusted capitalized cost.</b> The amount used in calculating your base monthly payment  |   | =  | 11,000.00   |                       |  |
| <b>Residual value.</b> The value of the vehicle at the end of the lease used in calculating your base monthly payment.  |   | =  | 7,750.00  |                       |  |
| <b>Depreciation and any amortized amounts.</b> The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term.   |   | =  | 3,250.00  |                       |  |
| <b>Rent charge.</b> The amount charged in addition to the depreciation and any amortized amounts  |   | +  | 1,586.00  |                       |  |
| <b>Total of base monthly payments.</b> The depreciation and any amortized amounts plus the rent charge  |   | =  | 4,836.00  |                       |  |
| <b>Lease term.</b> The number of months in your lease   |   | +  | 36.00   |                       |  |
| <b>Base monthly payment</b>   |   | =  | 134.00  |                       |  |
| <b>Monthly sale/use tax</b>   |   | +  | 7.00  |                       |  |
|   |   | +  | -0-   |                       |  |
| <b>Total monthly payment</b>  |   | =  | \$141.00  |                       |  |
| <b>Early Termination.</b> You may have to pay a substantial charge if you end this lease early. <b>The charge can be up to several thousand dollars.</b> The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be. |   |  |   |                       |  |
| <b>Excess Wear and Use.</b> You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of 10,000 miles per year at the rate of .15 per mile].   |   |  |   |                       |  |
| <b>Purchase Option at End of Lease Term.</b> You have an option to purchase the vehicle at the end of the lease term for \$7,750.00 and a purchase option fee of \$250.00.  |   |  |   |                       |  |
| <b>Other Important Terms.</b> See your lease documents for additional information on early termination, purchase options, maintenance responsibilities, warranties, late and default charges, insurance and any security interest, if applicable.   |   |  |   |                       |  |

| <b>Description of Leased Property</b>  |                       |                     |                              |                                  |
|--|-----------------------|---------------------|------------------------------|----------------------------------|
| <b>Year<br/>2001</b>   | <b>Make<br/>Ginko</b> | <b>Model<br/>EX</b> | <b>Body Style<br/>4 Door</b> | <b>Vehicle ID#<br/>999999999</b> |
| <p><b>Official Fees and Taxes.</b> The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: \$1,000.00</p>  |                       |                     |                              |                                  |
| <p><b>Insurance.</b> The following types and amounts of insurance will be acquired in connection with this lease:</p> <p style="padding-left: 40px;"><b>Comprehensive fire and theft insurance with a maximum deductible amount of \$1,000 and collision with a maximum deductible of \$1,000 and liability insurance with maximum limits for bodily injury or death of \$100,000 for any one person and \$300,000 for any one accident, and \$25,000 for property damage.</b></p> <p style="padding-left: 40px;">—We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$_____</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> You (lessee) agree to provide insurance coverage in the amount and types indicated above.</p> |                       |                     |                              |                                  |
| <p><b>Standards for Wear and Use.</b> The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:</p> <p><b>Responsible for all repairs that are not the result of normal wear and tear. These include but are not limited to:</b></p> <p>(a) tires which are unsafe or have less than 1/8 of an inch of remaining tread in any place;</p> <p>(b) glass, paint, body parts, trim and grill work that are broken, mismatched, chipped, scratched, pitted, cracked or dented; and</p> <p>(c) interior rips, stains, burns or wear areas.</p>   |                       |                     |                              |                                  |
| <p><b>Maintenance.</b> You are responsible for the following maintenance and servicing of the leased vehicle:<br/> <b>You must maintain and service the auto at your expense. This includes following the owner's manual and maintenance schedule and making all needed repairs.</b></p>   |                       |                     |                              |                                  |
| <p><b>Warranties.</b> The leased vehicle is subject to the following express warranties: <b>Standard new vehicle warranty provided by the manufacturer.</b></p>  |                       |                     |                              |                                  |
| <p><b>Early Termination and Default.</b> You may terminate this lease before the end of the lease term if you are not in default. The charge for such early termination is:<br/> <b>\$200 termination fee plus the difference between the unpaid net capitalized cost and the vehicle's fair market wholesale value.</b></p>   |                       |                     |                              |                                  |
| <p><b>Security Interest.</b> We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: <b>None.</b></p>  |                       |                     |                              |                                  |
| <p><b>Late Payments.</b> The charge for late payments is <b>\$25.00.</b></p>   |                       |                     |                              |                                  |

## **§ 8.7. New Car Sale Rule 105.1: Definitions**

The New Car Rules (Chapter 105, Agency 262 39, Unit 4929) governing the sale of new cars were issued by the Attorney General on November 8, 1982. These Rules describe possible unfair trade practices in the sale of new cars.<sup>7</sup> The “comments” following the Rules were written by the Consumer Protection Division. Here are the definitions of the terms used in these Rules.

### ***A. Dealer***

“Dealer” means a natural person, corporation, partnership, and any other legal entity and the officers, employees, and agents thereof that are engaged in the business of selling, buying, offering to negotiate and negotiating the sale of a new motor vehicle, except auctioneers licensed by the Secretary of State.

### ***B. Motor Vehicle***

“Motor vehicle” means any self-propelled vehicle designed primarily to transport not more than 14 individuals on public ways, except motorcycles, snowmobiles and any vehicle exclusively on a rail or rails.

### ***C. Extra Charge***

“Extra charge” means any consumer charge listed or requested by the dealer for the purpose of a new motor vehicle which is not included in the manufacturer’s suggested retail price for that vehicle. Some examples are the following charges that are typically not listed on a “Monroney” label (the manufacturer’s suggested retail price sticker): handling charges, floor planning costs, charges for documents or preparing documents and preparation services.

### ***D. Preparation Service***

“Preparation service” means any adjustment, inspection, testing, repair, replacement of parts, cleaning, polishing or other labor done with the purpose of preparing a vehicle for sale that is performed by the dealer without prior written authorization of the purchaser.

### ***E. Optional Equipment***

“Optional equipment” means equipment, protective coatings, special features, appliances, parts of accessories added to a motor vehicle by the dealer, or that are added by specific request of the dealer, which the customer purchases and which are not included in the manufacturer’s suggested retail price.

### ***F. Disclosure or To Disclose***

“Disclosure” or “To disclose” means informing the customer in writing prior to his signing any sales documents. It is sufficient disclosure to clearly post the information on the vehicle for sale.

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<sup>7</sup> The Maine Unfair Trade Practices Act authorizes the Attorney General to promulgate rules to assist in the enforcement of this Act. *See* 5 M.R.S.A. § 207(2) (“The Attorney General shall make rules and regulations interpreting this section.”) Further, motor vehicle dealers are prohibited from engaging in any action, which is arbitrary, in bad faith or unconscionable and which causes damage... to the public.” *See* 10 M.R.S.A. § 1174 (1).

## G. Sales Document

“Sales document” means the first document which a seller or any retailer uses to evidence an order for deposit towards, or contract for the purchase by a customer of a motor vehicle, optional equipment, or service repair contract.

### **§ 8. 8. New Car Sale Rule 105.2: Misrepresentation Of Charges**

It is *prima facie* evidence (evidence adequate to establish a fact or raise a presumption of fact unless refuted) of an unfair trade practice for a dealer to misrepresent, directly or indirectly, the service, product or extra charge for which payment is requested or listed.

#### **Comment**

A dealer misrepresentation, which could violate this rule, occurs when a dealer asks or lists an extra charge for preparation services that the franchiser already reimburses him for. A dealer who wishes to simply ask for more than the Monroney sticker price, but is not charging for a specific service or product, can label this higher price with a phrase such as “Dealer’s Asking Price.” Rule 105.2 would be violated if, when questioned on what the “Dealer’s Asking Price” meant, the dealer told a customer it was for preparation services. The dealer must disclose the truth (i.e., the charges represent additional dealer profit).

In 1995, 10 M.R.S.A. § 1174 (4) (D) was enacted to ensure that there was no confusion on car deposits. Henceforth, for new and used cars the dealer must disclose conspicuously in writing the dealer’s policy on returning a consumer’s deposit on a car. If the consumer makes a deposit, the consumer must sign the form on which the disclosure appears.

### **§ 8. 9. New Car Sale Rule 105.3: Disclosure Of Extra Charges**

It is *prima facie* evidence of an unfair trade practice for a dealer to fail to disclose the reason for and amount of each service, product or extra charge.

For the dealer to accurately disclose an extra charge, it must post on the vehicle or give in writing to the prospective customer,<sup>8</sup> before any sales document is signed, a clear description of each separate service, product or extra charge. If an extra charge is for services, then each specific service and its price must be disclosed.

#### **Comment**

This rule expresses the basic disclosure principle that prospective purchasers should be told the total amount and reason for each charge on a new car.

If a dealer charges extra for vehicle preparation services, he must list each separate service for which he is charging (e.g., waxing the vehicle, filling up the gas tank) and its price. If a dealer wishes simply to ask for more than the Monroney sticker price, but is not charging for a specific product or service, then this rule would be satisfied by labeling this higher price with a phrase such as “Dealer’s Asking Price.”

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<sup>8</sup> Legislation enacted after this Rule was promulgated goes considerably further. Now new car dealers must post in the vehicle all extra charges for dealer preparation or optional equipment. Failure to adhere to this law can be a Class E crime, *See* 29 - A M.R.S.A. § 953 (5). Further, dealers must now post on the vehicle any document preparation fee. If it is not posted, it cannot be charged. *See* 29-A M.R.S.A. § 953-A.

## **§ 8. 10. New Car Sale Rule 105.4: Equipment Added Prior To Sale**

Whenever optional equipment has been added to a new vehicle prior to a purchaser signing a sales document for that vehicle, it is *prima facie* evidence of an unfair trade practice for a dealer to fail to post on the vehicle:

- A. The name of each item added;
- B. The price of each item; and
- C. The following notice:

Under Maine law, you may not be required to purchase options, accessories, or special features as a condition of sale of any motor vehicle.

### **Comment**

This rule describes a dealer's "minimal" obligation under 10 M.R.S.A. § 1174 (4)(A). This rule does not foreclose the possibility of a dealer illegally "tying" dealer-added options to the sale of a vehicle. A tying arrangement is one in which a seller conditions the sale of one product on the purchase of another product. For example, if a seller of new vehicles requires a purchaser to buy a roof rack in order to be able to buy the vehicle that purchaser wants, the sale of the vehicle has been conditioned on or "tied" to the sale of the roof rack. Ties are illegal when the seller has significant economic power in the market for the major product (the vehicle) and when the market for the lesser or "tied" product (the roof rack) is also substantially affected. Therefore, in this example, if the dealer had a significant share of the market for that particular vehicle in his area of the state, and the tying arrangement had a significant impact on the sale of roof racks by other regular sellers of roof racks in the area, it would constitute an illegal tie under the antitrust laws.

## **§ 8. 11. New Car Sale Rule 105.5: Disclosure Of Manufacturer Warranties**

When selling optional equipment or repair service contracts, it is *prima facie* evidence of an unfair trade practice for any dealer or retailer to fail to make the following disclosures prior to the customer signing a sales document:

- A. Disclosures of any manufacturer express warranties that provide the same or similar protection as the optional equipment or service contract being sold by the dealer or retailer; and
- B. Disclosure that Maine law provides purchasers of new cars with an implied warranty in addition to the manufacturer's express warranty. The implied warranty rights and the remedies thereunder cannot be modified or excluded.

### **Comment**

Under this rule, dealers or retailers of optional equipment or service contracts must disclose any related implied or express warranties that would already be held by the owner of a vehicle. For example, before selling a customer rust-proofing protection with a 5-year rust-proofing warranty, a dealer or retailer must inform the customer if his vehicle already carries a 3-year manufacturer's rust protection warranty. Similarly, before selling a customer a multi-year repair service contract, a dealer or retailer must disclose to a customer the existence of the implied warranty of merchantability that is established in Maine law.

An acceptable dealer disclosure of Maine's implied warranty law would read as follows: "Maine law gives you a warranty against defects in this vehicle. This Maine warranty is in addition to the manufacturer's express warranty and cannot be limited by the dealer or manufacturer."

## **§ 8. 12. New Car Sale Rule 105.6: Quality Of Rustproofing**

It is *prima facie* evidence of an unfair trade practice for a dealer who rust-proof vehicles to fail to apply rust-proofing or other protective coatings to the entire surface of each area recommended as needing protection by the protective coating manufacturer.

## **§ 8. 13. New Car Sale Rule 105.7: Advertising**

It is *prima facie* evidence of an unfair trade practice for a dealer to advertise a motor vehicle for sale and to then refuse to sell it or refuse to sell it at the advertised price.<sup>9</sup>

It is *prima facie* evidence of an unfair trade practice for a dealer to state in an advertisement a particular vehicle's price or a specific cash discount, unless the advertisement also states the year, make, model, sub-model, and series of the advertised vehicle.<sup>10</sup>

### **Comment**

It can be an unfair trade practice for a dealer to advertise a motor vehicle at one price and then refuse to sell that vehicle unless the purchaser pays extra charges for optional equipment. Under this rule, a dealer cannot be held responsible for advertised offers by franchisees or manufacturers that it did not agree to participate in.

## **§ 8.14. New Car Sale Rule 105.8: Orders**

It is *prima facie* evidence of an unfair trade practice if a dealer refuses to take orders, or unreasonably discourages orders, for motor vehicles advertised by it as generally available or refuses to take orders except at a price that is greater than the advertised price.

It is *prima facie* evidence of an unfair trade practice for a dealer to advertise a vehicle as available when it does not currently have such a vehicle in stock.

### **Comment**

A dealer can avoid violating this rule by stating in its advertisements the exact number of vehicles in stock at the dealership. It would be improper to advertise vehicles as "available" when the vehicles advertised are not in stock at the dealership but merely on order or expected as part of a delivery in the future. Under this rule, a dealer cannot be held responsible for advertised offers by franchisees or manufacturers that it did not agree to participate in.

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<sup>9</sup> When advertising credit terms, the car dealer is required to provide in the advertisement specific information (e.g., the down payment, the annual percentage rate (A.P.R.), etc). See [www.ftc.gov/bcp/online/pubs/buspubs/creditad/cover.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/creditad/cover.htm).

<sup>10</sup> See 10 M.R.S.A. § 1174 (4) (c): dealers cannot "resort to or use any false or misleading advertisement in connection with business as a motor vehicle dealer."