

CHAPTER 8.

LESSORS AND LEASE FACILITATORS

8.1 Definitions. Lessors and Lease Facilitators have been regulated since 1995. Rules specifically for the leasing of motor vehicles were promulgated in November, 1995. These rules are found in the Texas Administrative Code, at 43 TAC §§215.171-215.181. The following definitions come from these regulations.

a. Motor Vehicle Lease. A lease means the transfer of the right to possession of a use of a motor vehicle for a term in excess of 180 days, in return for consideration. This does not include rental companies that rent vehicles for less than 180 days.

b. Lessor. A lessor is a person who owns a vehicle pursuant to the terms of a lease and transfers to another person the right to possession and use of a motor vehicle titled in the name of the lessor.

c. Lease Facilitator. A lease facilitator is a person, other than a franchised dealer, vehicle lessor or a bona fide employee of a dealer or a vehicle lessor, who solicits a person to enter into a lease for a motor vehicle. The vehicle is not, and will not be, titled or registered in the name of the lease facilitator.

8.2 License Required. Any person who engages in the business of leasing motor vehicles as a lessor or lease facilitator must be licensed by the department unless otherwise exempt by law. A lessor license includes the right to facilitate leases for the lessor's own business. A separate lease facilitator license is not needed for a lessor unless the lessor intends to facilitate leases for other lessors. Also, the law does not require a separate license for each individual employee of a lessor or lease facilitator.

8.3 License Exemptions. The following persons are not required to obtain a lessor or lease facilitator license:

- State or federally chartered financial institutions;
- Regulated subsidiary of a state or federally chartered financial institution;
- Trust or other entity that owns an interest in a lease that was initiated, managed, serviced, and administered by a licensed lessor;
- Franchised dealer who is leasing those vehicles he is licensed to sell.

8.4 "Lease" or "Leasing" in Name of Company. The terms "lease" or "leasing" or any variation of those words cannot be used in a person's business name, unless that person 1) qualifies as a leasing company and is licensed as a lessor or lease facilitator, or 2) is otherwise exempt from the licensing requirement as set out in section 8.3 above. If a person has these terms in their business name because they are engaged in the business of leasing something other than motor vehicles (e.g. equipment, furniture, etc.), then they must obtain an assumed name without these terms in order to receive a dealer license.

8.5 Application for a Lessor or Lease Facilitator License. The application for a lessor or lease facilitator's license must be on the form prescribed by the TxDMV. A complete license application packet may be obtained by calling, or emailing the Motor Vehicle Division, or going to the TxDMV website (www.txdmv.gov) and requesting the proper application. Before submitting an application: 1) make certain you have completed all sections, and 2) ensure all required documents are attached. Incomplete applications and those missing required attachments will delay the issuance of your license. Required items to attach to the application include:

- **Ownership Information.** Make certain all requested information on the form is complete such as date of birth, social security number, driver's license number and ownership percentage.
- **Assumed Name Certificate.** If you are operating under an assumed name, in other words, a different name than the entity that holds the license, (e.g. John Doe d/b/a Doc's Leasing Company, or Doe, Inc., d/b/a Doe's Leasing Company) you must submit a copy of the Assumed Name Certificate. Sole proprietorships and general partnerships would get this certificate from your county clerk. If you have a corporation, limited liability company, limited partnership or limited liability partnership, you need to secure the Assumed Name Certificate from the Texas Secretary of State, if the business will be physically located in Texas. Otherwise, the certificate will be issued by the appropriate authority for the state the business will be located in.
- **Certificate of Incorporation, Organization or Partnerships.** If the entity applying for a license is a corporation, limited partnership, limited liability partnership or limited liability company, you must submit a copy of your approved certificate of formation or certificate of authority issued by the Texas Secretary of State. If the business will not be located in Texas, the certificate will be issued by the appropriate authority for the state the business will be located in.
- **Lease Agreement.** Submit a sample motor vehicle lease contract that will be used. This will be the contract between the lessor and a lessee (customer).
- **Fees.** Licenses are issued for a two year term. Submit the proper fee for the type of license being applied for. The fee for a lessor license is \$350. The fee for a lease facilitator license is \$750.
- **Additional documents for a lessor, if applicable.** If a lessor applicant will have a lease facilitator, the lessor will also need to submit the following information:
 - A list of the names of each lease facilitator the lessor will conduct business with. The list must include the lease facilitator's business name, DBA, and physical address.
 - A copy of the lessor's agreement with each lease facilitator, disclosing its terms, that is signed by both the lessor and the lease facilitator.

- A disclosure of fees statement, paid to the lease facilitator by a lessor. This is a separate document the lessee (customer) signs acknowledging the lease facilitator may receive a fee for establishing the lease on behalf of the lessor.
- A list of other satellite offices that conducts business in Texas, regardless if that location is located in Texas or not. The list must include the physical address, phone number and a contact person's name for location.
- **Additional documents for a lease facilitator.** A lease facilitator will also need to submit the following information:
 - A list of the names of each lessor the lease facilitator will conduct business with. The list must include the lessor's business name, DBA, and physical address.
 - A copy of the lease facilitator's agreement with each lessor, disclosing its terms, that is signed by both the lease facilitator and lessor.
 - A disclosure of fees statement, paid to the lease facilitator by a lessor. This is a separate document the lessee (customer) signs acknowledging the lease facilitator may receive a fee for establishing the lease on behalf of the lessor.

8.6 Premises Requirements. A lease facilitator or a lessor located in Texas or a supplemental location outside of Texas must have a permanent and established place of business from which business is conducted and records are kept. Requirements for the physical location include:

a. A structure of sufficient size to accommodate the business, equipped with a desk, chairs and a working telephone and number listed in the name under which the lessor or lease facilitator does business. The building must have connecting walls on all sides;

b. The office may NOT be located within a residence, apartment house, hotel, motel or rooming house;

d. The business hours for each day of the week must be posted at the main entrance of the office.

e. A business sign must be permanently posted at each licensed location showing the name under which a lessor or lease facilitator conducts business. The lettering on an outside sign must be at least six inches tall.

f. Any lease facilitator must have an established and permanent place of business which is physically located in Texas.

g. A lessor or lease facilitator may not have an office at the same location as a financial institution or a dealership unless that lessor or lease facilitator is a bona fide employee of or wholly owned by the financial institution or dealership.

h. A lessor or lease facilitator must own the property where business will be conducted or have a written lease agreement for at least the term of the license on that property. The lease

agreement must be in the lessor's or lease facilitator's business name and must be maintained for the duration of the license. The lease agreement must be on a properly executed form containing at a minimum:

- (A) the names of the lessor and lessee;
- (B) the period of time for which the lease is valid; and
- (C) the legal description of the property or street address that is being leased.

i. Multiple lessors or lease facilitators may be located at the same physical location if each lessor or lease facilitator at a business location has: 1) a separate desk; 2) a separate telephone and number listed in their name; 3) a separate right of occupancy; and 4) a sign showing the name under which the lessor or lease facilitator conducts business that is readable by the general public.

8.7 Premise Requirements for Out of State Lessors. If a lessor is located outside of this state and the lessor does not deal directly with the public to execute leases, then the physical location is acceptable if each lessor at a business location has a separate desk; a separate telephone and number listed in their name; and a sign showing the name under which the lessor conducts business that is readable by the general public. A deed or a lease for the business location is required. As lease must: 1) be continuous for the same period of time as the license; 2) contain the names of the landlord and tenant; 3) contain a legal description of the property or street address; and 4) list the period of time for which the lease is valid.

8.8 Business Hours. A lease facilitator or any lessor within Texas must be open to the public during working hours which must be posted at the main entrance of the office. No specific hours are required, but a bona fide employee must be available at that location during the posted business hours to assist customers or representatives of TxDMV who may wish to inspect records.

8.9 More Than One Location. Lessors are required to obtain a license for their primary location. Lessors must also provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the State of Texas.

If a lessor's primary location moves from outside a city limits to inside city limits or from one city to another city, then a new license must be obtained.

A lease facilitator who operates in this state must have a separate license for each business location.

8.10 Records Required to be Kept by Lessors and Lessees. Lessors and lease facilitators are required to keep accurate records on every motor vehicle leased. Licensees are required to cooperate and assist a TxDMV representative in providing all information requested from the required records. Failure or refusal to cooperate by withholding records or failing to maintain records is subject to a civil penalty or suspension or revocation of the license.

8.11 Inspection of Records. Records are required to be readily available and subject to inspection during regular business hours at the licensed location upon request by a TxDMV representative. All records need to be kept for each transaction until one year after the expiration of the lease. Records reflecting lease transactions within the preceding 24 months must be kept at the licensed location. Records for prior time periods may be kept off-site at a location within the same county or within 25 miles from the licensed location.

Rather than inspecting records at the licensed location, TxDMV representatives may request copies of records from a licensee by certified mail, fax or by electronic mail. A licensee must provide those records within 15 days of the received request.

8.12 Content of Records To Be Kept. A lessor or lease facilitator is required to keep the following items in each lease file:

- Names, addresses and telephone numbers of the lessor and lessee in each transaction;
- Names, addresses and telephone numbers of the lease facilitator and/or any employee of the facilitator who handled the transaction;
- Name, address, telephone number and GDN or dealer license number of the dealer selling the vehicle;
- A complete description of the vehicle including VIN, make, model, color, etc.;
- The amount of fee paid by and received by the lease facilitator;
- Copies of all contracts, agreements, or disclosures between the lease facilitator and the consumer;
- Copy of the buyer's order and sales contract wherein the lessor bought the vehicle from the dealer;
- Copy of the front and back of the Manufacturer's Statement/Certificate of Origin or the title of the vehicle involved in the transaction.

8.13 Advertising Records to be Kept. Lessors and lease facilitators must maintain copies of all advertisements, brochures, scripts or electronically reproduced copies, in whatever medium appropriate, for 18 months. These records are also subject to inspection by the TxDMV personnel as required.

8.14 Subject to Advertising Rules. Lessors and lease facilitators are required and expected to adhere to the same advertising rules that motor vehicle dealers adhere to. This includes the TxDMV Rules and the Federal Trade Commission advertising rules along with any other federal rules involving leases.

8.15 Title Assignments. All certificates of title, manufacturer's certificates of origin or other evidence of ownership for vehicles which have been acquired by a lessor for lease must be properly titled to the lessor by the selling dealer. Only vehicles being sold to a lessor located out of the state would not be titled by the dealer, but the dealer should have the Comptroller's form, Texas Motor Vehicle Sales Tax Exemption Certificate--For Vehicles Taken Out of State, signed and placed in the sales file.

8.16 No Fees From Dealers. Lessors may not directly or indirectly accept a fee from a dealer. This prohibition includes referral fees paid for referring leases or prospective lessees to a dealer but does not include any adjustment in the purchase price for a leased vehicle.

8.17 No Fees to Unlicensed Persons. Lessors may not pay a fee to another person for finding potential lease customers unless that person is a licensed lease facilitator who also has a valid letter of appointment from the lessor that is on file with the department. This prohibition on fees does not include any fee paid to a franchised dealer who sells the vehicle or transfers the lease contract to the lessor of the vehicle.

8.18 Referral Fees Prohibited. Lessors and lease facilitators may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.

8.19 Letters of Appointment. Lessors may use non-employees as lease facilitators to represent them as facilitators between the consumer lessees and the lessor. These non-employees must have an appointment in writing which discloses the terms on which the lease facilitator will facilitate leases for the lessor. These letters of appointment must be filed with the department. The appointment may be in a letter form. Copies of all letters of appointment issued by the lessor to the lease facilitator should be kept by both the lessor and lease facilitator. The department should be sent copies of additional letters of appointment that are issued between the license renewal periods.

8.20 Disclosures in Lease Contracts with Consumer Lessees. If a lease facilitator is responsible for soliciting or producing the consumer for the lessor, then the lessor must disclose in the consumer's lease contract, that a fee was paid or will be paid to the lease facilitator for his or her services. While the amount of the fee is not required to be disclosed, the fact that a fee was paid is required. This disclosure is required to be in a prominent position either on the face of the lease contract or memorandum, or on a separate document that is signed by the lessee at the same time as the signing of the lease contract.

8.21 Lease Cannot Prohibit Foreign Entries. A lease agreement cannot prohibit the lessee from taking the leased vehicle into a specific foreign country unless the lease agreement prohibits the lessee from taking the leased vehicle into all foreign countries.

8.22 Prohibitions on Lease Facilitators. Lease facilitators may be subjected to a civil penalty, or have their license revoked or suspended if they:

- Sell or offer to sell a new or used motor vehicle;

- Accept a fee from a dealer;
- Sign a motor vehicle manufacturer's statement of origin to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new motor vehicle;
- Procure or solicit prospective lessees for or on behalf of any person other than a licensed lessor;
- Act in the capacity of or engage in the business of a lease facilitator without a valid license issued by the Motor Vehicle Division and a valid appointment from a lessor to act on behalf of the lessor in soliciting prospective lease clients or customers.

8.23 Prohibitions on Both Lease Facilitators and Lessors. Lessors and lease facilitators will be subjected to sanctions if they:

- Fail to maintain an established place of business conforming to the requirements of the Department;
- Fail to permit examination of their leasing or advertising records by a representative of department;
- Fail to notify the department of a change of address, name or ownership within ten days after such change;
- Fail to remain regularly and actively engaged in the business of leasing or facilitating the leasing of vehicles;
- Use or allow the use of a leasing or lease facilitator license for the purpose of avoiding any provisions of the law;
- Violate any law relating to the sale, distribution or insuring of motor vehicles;
- Fail to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within 10 days of any changes to this list and upon renewal of the license;
- Make a material misrepresentation in any application or other information filed with TxDMV;
- Violate any state or federal law relating to the leasing of new motor vehicles.

8.24 Lease Facilitator's Fees. A lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor from either the lessor or the lessee, but not from a dealer.

8.25 Appointments of Lease Facilitators. A lease facilitator may accept appointments from more than one lessor. See §8.19.

8.26 Required Lemon Law Notice to Lessees. Lessors and lease facilitators are required to provide notice of the complaint procedures under the Texas Lemon Law to each lessee of a new motor vehicle with whom they transact a lease. See page 11-2 for the form.

8.27 Lessors and GDNs. Lessors do not need a GDN license to sell vehicles which they own, either to the lessee or a duly licensed dealer, either directly or through a licensed wholesale auction. Lessors are not allowed to buy vehicles from an auction with their lessor license. Should a lessor desire to sell their lease vehicles to the general public, they are required to have a GDN and meet all the requirements of premises and records retention that pertain to GDNs.