Legality of Undisclosed Documentary Fees for End of Lease Purchases

NJ CAR has recently learned that some lease funding sources have questioned the legality of dealerships charging Documentary Fees when a lessee exercises an option to purchase their lease vehicle. A Documentary Fee cannot be charged when a lessee exercises a lease purchase option, unless the Documentary Fee is disclosed in the original lease agreement, **OR** the sum of the Documentary Fee and the price charged to the lessee is equal to or less than the lease purchase option price in the original lease agreement.

Charging a Documentary Fee when a lessee exercises a purchase option that has not been fully disclosed to the customer in the original lease agreement likely violates federal Regulation M the federal Truth-in Leasing-Act which is enforced by the Consumer Financial Protection Bureau (CFPB) and the federal Consumer Leasing Act enforced by the Federal Trade Commission (FTC). Such failure to disclose the imposition of a Documentary Fee when a lease purchase option is exercised is also a violation of New Jersey's Consumer Protection Leasing Act (CPLA), which supplements New Jersey's Consumer Fraud Act (CFA). These laws were enacted to ensure that the lessee's purchase option under the lease agreement is for a set price plus official fees and taxes. A Documentary Fee or similar fee is not considered to be an official fee. Charging such an undisclosed Documentary Fee could expose a dealership to claims that the dealership violated the lease disclosures required under federal and New Jersey law and, therefore, breached the lease agreement making it unenforceable.

Most consumer vehicle leases offer the lessee the option to purchase the leased vehicle for a stated, fixed price, if the lessee chooses to exercise the purchase option at the scheduled end of the lease term or based on a formula, if the lessee chooses to purchase the vehicle before the scheduled end of the lease. Under either scenario, the lessee has a contractual right to purchase the vehicle for the applicable option price which is also legally binding on the holder of the lease.

If a lessee elects to purchase the vehicle, many lease funding sources will enlist a dealership to handle the "sale". Some funding sources reassign the lease and sell the vehicle to the dealership. In these cases, the dealership, as the lease holder, is contractually obligated to sell the vehicle to the lessee at the lease purchase option price. Other lease funding sources will simply sell the vehicle back to the dealer. In these cases, the dealer takes ownership of the vehicle subject to the lessee's right to purchase it for the lease purchase option price.

Charging a Documentary Fee in addition to the lease purchase option price risks a claim that the initial disclosure of the lease option price was not accurate and thus violated Federal and State law. It also risks a claim that the lease holder breached the original lease agreement by charging more than the agreed upon lease purchase option price.

NJ CAR recommends that dealerships check with their funding sources and review lease agreements to ensure compliance with Federal and State laws by setting a Documentary Fee as part of the purchase option price at lease end, if the dealership intends to charge one.