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HOLLY C. BAKKE
Commissioner

BULLETIN NO. 04-23

TO: ALL MOTOR VEHICLE INSTALLMENT SELLERS AND BANKING INSTITUTIONS AUTHORIZED TO DO BUSINESS IN THIS STATE

FROM: HOLLY C. BAKKE, COMMISSIONER

RE: DOCUMENTARY FEES ON FINANCED MOTOR VEHICLE SALES TRANSACTIONS

The purpose of this bulletin is to provide guidance regarding the applicability of the Retail Installment Sales Act, N.J.S.A. 17:16C-1 et seq. (the "Act"), to documentary fees charged on financed motor vehicle purchase transactions.

The Retail Sales Installment Act provides that:

No retail seller, sales finance company, or holder shall charge, contract for, collect or receive from any retail buyer, directly or indirectly, any further or other amount for costs, charges, insurance premiums, examination, appraisal service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other things of value in connection with retail installment contracts or retail charge accounts other than charges permitted by this act, except court costs, attorney fees and the expenses of retaking and storing repossessed goods which are authorized by law. N.J.S.A. 17:16C-50 (Emphasis added)

Documentary fees charged by automobile dealers from which the retail installment financier receives no benefit, either directly or indirectly, and that are not connected with the retail installment financing contract are not prohibited by N.J.S.A. 17:16C-50. For instance, an automobile dealership that does not approve loans, nor hold any loans in its portfolio and which has no common ownership with the financing company is not prohibited by the Act from charging documentary fees. Documentary fees connected to the retail installment contract, however, are prohibited and therefore, subject to the penalties provided by the Act.

This applies to fees collected by an unrelated entity and passed through to the financing entity. In addition, licensed financing companies that provide loan approvals and servicing for purchased retail installment contracts will be scrutinized for compliance with N.J.S.A. 17:16C-50, regardless of whether they are affiliated with the automobile dealership.

The Department will continue to enforce the prohibitions set forth in N.J.S.A. 17:16C-50 upon any documentary fees in connection with motor vehicle financing through retail installment contracts. To that end, the Department will scrutinize the relationship between the retail seller and the financier to determine if there is a legal basis for the documentary fees charged.

Dealers seeking to establish that documentary fees are not connected with retail installment sales agreements may wish to use preprinted forms with the same documentary fee for both cash and credit transactions clearly shown.

Any questions regarding this Bulletin should be directed to Bill Blunt or Nicholas Debnarik of the Office of Consumer Finance at 609-292-7272 extension 50208 or extension 50214.

11/10/04
Date

/s/ Holly C. Bakke
Holly C. Bakke
Commissioner

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