

## DELAWARE

### Title 6--Ch. 77--Lease-Purchase Agreement Act

*Delaware Code Annotated.*

*As added by laws 1991, Ch. 59, effective June 25, 1991.*

#### **Sec. 7601. Definitions.**

- (a) Unless the context or subject matter otherwise clearly requires, the following definitions shall govern construction of this Chapter:
  - (1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.
  - (2) "Cash price" means that price at which the lessor would have sold the property to the lessee for cash on the date of the lease-purchase agreement if the transaction were a sale instead of a lease-purchase agreement.
  - (3) "Lessee" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family or household purposes.
  - (4) "Consummation" means the time a lessee becomes contractually obligated on a lease-purchase agreement.
  - (5) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.
  - (6) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the lessee to continue leasing or using the property beyond the initial period, and that permits the lessee to become the owner of the property.

#### **Sec. 7602. Inapplicability of other laws - Exempted transactions.**

- (a) Lease-purchase agreements which comply with this Chapter are not governed

by the laws relating to:

- (1) A "retail installment contract" or "contract" as defined in 6 Del.C. § 4301(6).
  - (2) A "security interest" as defined in the Uniform Commercial Code Section 1-201(37).
- (b) This Chapter does not apply to the following:
- (1) Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
  - (2) A lease of safe deposit box;
  - (3) A lease or bailment of personal property along with the lease of real property; or
  - (4) A lease of an automobile;
  - (5) The lease of real property and/or the fixed improvements thereon.

**Sec. 7603. Disclosures.**

- (a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:
- (1) The total number, total amount and timing of all payments necessary to acquire ownership of the property;
  - (2) A statement that the lessee will not own the property until the lessee has made the total amount of the payments necessary to acquire ownership;
  - (3) A statement that the lessee is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed.
  - (4) A brief description of the leased property, sufficient to identify the property to the lessee and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this Chapter;
  - (5) A statement of the cash price of the property;

- (6) The total of the initial lease payment paid or required at or before consummation of the agreement or delivery of the property, whichever is later;
  - (7) A statement that the total of lease payments necessary to acquire ownership does not include other charges, such as late payment, default, and reinstatement fees, which fees shall be separately disclosed in the contract;
  - (8) A statement clearly summarizing the terms of the lessee's option to purchase, including a statement that the lessee has the right to exercise an early purchase option using the formula or method for determining the price at which the property may be so purchased in accordance with §7609 of this Title;
  - (9) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the lessee acquires ownership of the property, it shall be transferred to the lessee, if allowed by the terms of the warranty;
  - (10) A statement that the lessee may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and
  - (11) Notice of the right to reinstate an agreement as herein provided.
- (b) With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with such Act satisfies the requirements of this section.

**Sec. 7604. Form requirements.**

- (a) The disclosure information required by this Chapter must be disclosed in a lease-purchase agreement, and must:
  - (1) be made clearly and conspicuously with items appearing in logical order and segregated as appropriate for readability and clarity;
  - (2) be made in writing;

- (3) need not be contained in a single writing or made in the order set forth in §7603 of this Title; and
  - (4) may be supplemented by additional information or explanations supplied by the lessor, but none shall be stated, used, or placed so as to mislead or confuse the lessee, or to contradict, obscure, or detract attention from the information required by §7603 of this Title, and so long as the additional information or explanations do not have the effect or circumventing, evading, or unduly complicating the information required to be disclosed by §7603 of this Title.
- (b) Every lease-purchase agreement shall contain a notice in at least eight-point standard type, reading as follows:

"NOTICE TO THE LESSEE: (1) DO NOT SIGN THIS LEASE-PURCHASE AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. (2) YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. (3) UNDER THE LAW, YOU HAVE THE RIGHT TO EXERCISE AN EARLY PURCHASE OPTION WHICH WILL RESULT IN A LOWER COST TO ACQUIRE OWNERSHIP."

- (c) Timing. The lessor shall disclose all information required by §7603 of this Title before the lease-purchase agreement is executed. These disclosures must be made on the face of the writing evidencing the lease-purchase agreement.
- (d) Copy to lessee
- (1) Before any payment is due, the lessor shall furnish the lessee with an exact copy of each lease-purchase agreement. The agreement shall be signed by the lessee and is evidence of the lessee's agreement. If there is more than one lessee in a lease-purchase agreement, delivery of a copy of the lease-purchase agreement to one of the lessees constitutes compliance with this subdivision; however, a lessee not signing the agreement is not liable under it.
  - (2) Any acknowledgment by the lessee of delivery of a copy of the lease-purchase agreement shall be printed or written in a size equal to at least ten-point bold type and, if contained in the lease-purchase agreement, shall also appear directly above the space reserved for the lessee's signature.
  - (3) The lessee's written acknowledgment, conforming to the requirements of this Section for delivery of a copy of the lease-purchase agreement, shall create a conclusive presumption of such delivery and of

compliance with this Section, in any action or proceeding by or against an assignee of the lease-purchase agreement without knowledge to the contrary when he purchases the contract.

- (e) Type size. The terms of the lease-purchase agreement, except as otherwise provided in this Section, must be set forth in not less than eight-point standard type.

**Sec. 7605. Blank spaces.** All blank spaces on lease-purchase agreement forms must be filled in before the lease-purchase agreement is executed. Blank spaces that are provided for items or terms not applicable to the agreement must be crossed out.

**Sec. 7606. Advertising.**

- (a) Prohibition. An advertisement for a lease-purchase agreement may not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.
- (b) Disclosures. If an advertisement for the lease-purchase agreement of a specific item refers to or states the amount of any payment, or the right to acquire ownership, the advertisement must also clearly and conspicuously state the following terms as applicable:
  - (1) that the transaction advertised is a lease-purchase agreement;
  - (2) the total amount of the lease payments necessary to acquire ownership; and
  - (3) that the lessee will not own the property until the total amount necessary to acquire ownership is paid in full or by prepayment as provided for by law.
- (c) Item price disclosures. Every item displayed or offered under a lease-purchase agreement shall have clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, each of the following affixed to the item:
  - (1) the cash price of the item; and
  - (2) the amount of the lease payment and the total amount of the lease payments necessary to acquire ownership.

- (d) Non-application. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

**Sec. 7607. Lessee's reinstatement rights.**

- (a) A lessee who fails to make timely lease payments may reinstate the original lease-purchase agreement without losing any rights or options previously acquired under the lease-purchase agreement if both of the following apply:
  - (1) after having failed to make a timely payment, the lessee has surrendered the property to the lessor, if and when requested by the lessor; and
  - (2) in the case of a lessee that has paid less than 60 percent of the total of payments necessary to acquire ownership of the property, not more than 60 days has passed since the lessee returned the property. If the lessee has paid more than 60 percent of the total of payments necessary to acquire ownership of the property, the lessee's rights to reinstate shall be extended for a period of not less than 180 days after the lessee has returned the property.
- (b) Charges. As a condition to reinstating a lease-purchase agreement, a lessor may charge the outstanding balance of any accrued payments and delinquency charges, a reinstatement fee not to exceed \$5.00, and a reasonable delivery charge, if redelivery of the item is necessary.
- (c) Substitute items. If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same item, if available, leased by the lessee before reinstatement. If the same item is not available, a substitute item of comparable worth, quality, and condition may be used. If a substitute item is provided, the lessor shall provide the lessee with all the information required by §7603 of this Title.

**Sec. 7608. Prohibited provisions.**

A lease-purchase agreement may not contain a provision:

- (1) requiring a confession of judgment;
- (2) authorizing a lessor or an agent of the lessor to commit a breach of the peace in the repossession of property;

- (3) waiving a defense, counterclaim, or right the lessor [lessee] may have against the lessor or an agent of the lessor or any assignee of lessor;
- (4) requiring the payment of a late charge unless a lease payment is delinquent for more than two business days, and the charge or fee shall not be in an amount more than the greater of ten percent of the delinquent lease payment or \$3.00;
- (5) requiring a separate payment in addition to lease payments in order to acquire ownership of the property, other than by exercising an early purchase option pursuant to §7609 of this Title;
- (6) requiring a waiver of any right of action against the lessor or holder of the lease-purchase agreement or other person acting on his behalf, for any illegal act committed in the collection of payment or recovery under the lease-purchase agreement or in the repossession of goods.

**Sec. 7609. Early purchase option.**

A lease-purchase agreement must provide that at any time after the initial rental payment, the lessee may acquire ownership of the property by rendering fifty-five percent (55%) of the difference between the total of rental payments necessary to acquire ownership of the property and the total amount of rent paid for use of the property at that time.

**Sec. 7610. Exempted Transaction.**

This Chapter does not apply to agreements for the rental of property in which the person who rents the property has no legal right to become the owner of the rented property.

**Sec. 7611. Prohibited provisions in a lease-purchase agreement as void.**

Any provision in a lease-purchase agreement which is prohibited by this Chapter shall be void but shall not otherwise affect the validity of the lease-purchase agreement.

**Sec. 7612. Receipts - Acknowledgment of payment in full for ownership.**

- (a) If a lessee so requests, the lessor must give or forward to the lessee a receipt for any payment made in cash. The lessor must also furnish, upon the lessee's request, an accounting of all charges, payments, and their dates in connection with a lease-purchase agreement. A charge of \$5.00 may be imposed upon

the lessee by the lessor for the second and each subsequent accounting request by the lessee in a twelve-month period.

- (b) After all lease payments necessary to acquire ownership have been made by a lessee or the lessee has exercised an early purchase option pursuant to the provisions of §7603(a)(8) of this Title, and upon demand by the lessee, the lessor shall deliver, or mail to the lessee at this last known address, such one or more good and sufficient instruments as shall be necessary to acknowledge the lessee's full ownership in the property to which the lessee acquired ownership pursuant to the lease-purchase agreement.

**Sec. 7613. Award of reasonable attorneys' fees and court costs to prevailing party.**

A lease-purchase agreement may provide for the payment of reasonable attorneys' fees and actual court costs if it is referred to an attorney for collection. Reasonable attorneys fees and costs shall be awarded to the prevailing party in any action on a lease-purchase agreement subject to the provisions of this Chapter regardless of whether such action is instituted by the lessor or lessee. Whether the Defendant alleges in his answer that he tendered either the full amount to which the Plaintiff was entitled or possession of the property, and the allegation is found to be true, then the Defendant is deemed to be a prevailing party within the meaning of this section.

**Sec. 7614. Waiver prohibited - Severability.**

Any waiver by the lessee of this Chapter shall be deemed contrary to public policy and shall be unenforceable and void.

If this Chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the Chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**Sec. 7615. Penalties - Grace period for compliance - Limitation of liability.**

- (a) Any person who shall wilfully violate this Chapter shall be guilty of a misdemeanor.
- (b) In case of a violation of any provision of this Chapter with respect to any transaction, the lessee in such transaction may recover from the person committing the violation, or may set off or counterclaim in any action by such person, actual damages with a minimum recovery of \$300.00 or 25 percent of the lease payment necessary to acquire ownership, whichever is greater, attorneys' fees, and court costs.

- (c) Notwithstanding this section, any failure to comply with any provisions in this Chapter may be corrected within ten days after the date of execution of the lease-purchase agreement by the lessee, and, if so corrected, neither the lessor nor any holder is subject to any penalty under this section.
- (d) A lessor is not liable under this section for damages in excess of the actual damage sustained by the lessee if the lessor shows by a preponderance of the evidence that the violation resulted from a bona fide error notwithstanding the maintenance by the lessor of procedures reasonably adopted to avoid the error. As used in this section, "bona fide error" includes, but is not limited to: clerical, calculation, computer malfunction and programming, and printing errors.

**Sec. 7616. Enforcement.**

A violation of this Chapter shall be within the scope of the enforcement duties and powers of the Division of Consumer Affairs, as described in §8612 of Title 29.

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