

MASSACHUSETTS

Consumer Lease Agreements

MA Gen L ch 93 § 90 et seq.

Section 90 - Definitions Applicable to Secs. 90 to 93

For the purposes of sections ninety to ninety-three, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:—

"Consumer lease", a contract in the form of a lease or bailment for the use of personal property by a natural person for an initial period of time of 4 months or less and for a total contractual obligation not exceeding \$25,000, primarily for personal, family or household purposes, that is automatically renewable with each periodic payment after the initial period, but does not obligate the lessee to continue leasing beyond the initial period, and that permits the lessee to become the owner of the property, except that such term shall not be construed to be nor subjected to laws governing any of the following:

- (i) a lease agreement that constitutes a credit sale as defined in section 1 of chapter 140D;
- (ii) a lease for agriculture, business or commercial purposes;
- (iii) a lease made to the commonwealth or a political subdivisions thereof, including, but not limited to, agencies, boards, departments or other such instrumentalities of the commonwealth or a political subdivisions thereof;
- (iv) a lease made to an organization;
- (v) a lease or agreement that constitutes a retail installment sale agreement as defined in section 1 of chapter 255D;
- (vi) a lease or rental of motor vehicles, as defined in section 1 of chapter 90, or tools or garden equipment; and
- (vii) a lease or rental of an item of personal property that is leased or rented for less than 7 consecutive days, including all renewals and extensions of the lease or rental agreement.

"Lessee", a natural person who leases or is offered a consumer lease.

"Lessor", a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

"Security" and "security interest", any interest in property which secures payment or performance of an obligation.

Section 91 - Written Statement of Information Prior to Execution of Consumer Lease

Each lessor shall give to the lessee prior to the execution of the lease a dated written statement on which the lessor and lessee are identified, setting out accurately and in a clear and conspicuous manner the following information with respect to such lease, as applicable:

- (i) a brief description or identification of the leased property, including whether the property is new or used;
- (ii) the amount of any payment required by the lessee at or before the execution of the lease;
- (iii) the amount paid or payable by the lessee for fees or taxes;
- (iv) the amount and description of other charges payable by the lessee and not included in the periodic payments;
- (v) if an ongoing option to purchase shall exist, a statement of the method of determining the purchase price at any point in time;
- (vi) a statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property and identifying the party responsible for maintaining or servicing the leased property together with a description of the party's responsibility;
- (vii) a brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;
- (viii) a statement that the lessee acquires no ownership rights in the property until the total amount necessary to acquire ownership is paid or any available ongoing purchase option is exercised;
- (ix) the number, amount and due dates or periods of payments under the lease and the total amount of such periodic payments necessary to acquire ownership of the leased property by making periodic payments;
- (x) a statement that the lessee may terminate the consumer lease without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease period along with any past due payments or charges;
- (xi) the date of the transaction and the identities of the lessor and lessee;
- (xii) notice of the lessee's right to reinstate a consumer lease as provided in section 92B; and
- (xiii) the party liable for loss, damage in excess of normal wear and tear or destruction of the leased property.

The disclosures required pursuant to this section may be made in the lease contract to be signed

by the lessee or in a separate written document which shall be attached to the lease contract. Any of the information required to be disclosed pursuant to this section may be given in the form of estimates where the lessor is not in a position to know the exact information.

Section 92 - Advertisement for Consumer Lease; Statement Regarding Payment

(a) If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement shall also clearly and conspicuously state the following items, as applicable:

- (i) that the transaction advertised is a lease or rental-purchase agreement;
- (ii) the total of initial payments required at or before execution of the lease or delivery of the property, whichever is later;
- (iii) that a security deposit is required, if applicable; and
- (iv) the number, amounts and timing of scheduled payments.

(b) If an advertisement for a consumer lease refers to or states the amount of any payment and that the lessee has the right to acquire ownership of any particular item, the advertisement shall further clearly and conspicuously state the following items, as applicable:

- (1) the total of payments necessary to acquire ownership if ownership is acquired through the accumulation of periodic payments; and
- (2) that the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid or the option to purchase is not exercised by payment of the purchase price.

(c) Any owner or the agents or employees of any owner of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

Section 92a - Consumer Lease; Item Disclosure

For each item offered under a consumer lease the lessor shall clearly and conspicuously disclose:

- (i) the cash price of the item;
- (ii) the amount of the periodic payment; and
- (iii) the total number and total amount of periodic payments necessary to acquire ownership.

Section 92b - Reinstatement of Agreement Following Failure of Timely Payment

(a) A lessee who fails to make a timely payment may reinstate the agreement within 7 days of that date without losing any rights or options that exist under the agreement, by the payment of:

(i) the past due payments and renewal payment; and

(ii) the applicable late fee.

(b) If the lessee returns or voluntarily surrenders the property, during the reinstatement period set forth in subsection (a), other than through judicial process, the lessee may reinstate the agreement during a period of not less than 180 days after the date of the unpaid lease payment by the payment of:

(1) the past due payments and renewable payment;

(2) the reasonable cost of pick-up and redelivery; and

(3) the applicable late fee.

(c) upon reinstatement pursuant to subsection (b), the lessor shall provide the consumer with the same or substitute property of comparable quality and condition.

Section 93 - Liability of Lessor; Limits on Recovery; Offset and Counterclaim

(a) Any lessee who suffers harm due to the lessor's failure to comply with any requirement imposed under section ninety-one or section ninety-two shall be entitled to recover from such lessor:

(1) any actual damage sustained by the lessee as a result of such failure;

(2) twenty-five per cent of the total amount of monthly payments under the lease, except that the liability imposed under this subsection shall not be less than one hundred nor more than one thousand dollars; and

(3) in case of any successful action to enforce the foregoing liability, the costs of such action, together with a reasonable attorney's fee as determined by the court.

(b) Such actions alleging a failure to disclose or otherwise comply with the requirements of section ninety-one or section ninety-two shall be brought within one year of the termination of the lease agreement.

(c) A lessor shall not be held liable in any action brought under this section if he shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. A bona fide error shall include, but shall not be limited to, clerical, calculation, computer malfunction and programming and printing errors; provided, however, that an error of legal

judgment with respect to a person's obligations under section ninety-one or section ninety-two shall not be a bona fide error.

(d) A lessor shall not be deemed liable under subsection (a) of this section for a violation of the provisions of section ninety-one if within sixty days after discovering the error, and before an action is filed in accordance with the provisions of this section or written notice of the error is received from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the account necessary to assure that the consumer shall not be required to pay an amount in excess of the amounts actually disclosed. This provision shall apply whether the discovery of the error was made through the lessor's own procedures, or otherwise.

(e) When there is more than one lessee in a consumer lease, there shall be no more than one recovery of damages under said subsection (a) for a violation of section ninety-one or section ninety-two.

(f) The continued or repeated failure to disclose to any person any information required under section ninety-one or section ninety-two to be disclosed in connection with a consumer lease, shall entitle the person to a single recovery under said subsection (a); provided, however, that continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

(g) A person may not take any action to offset any amount for which a lessor is potentially liable to such person under said subsection (a) against any amount owed by such person, unless the amount of the lessor's liability under sections ninety-one to ninety-three, inclusive, has been determined by judgment of a court of competent jurisdiction in an action in which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of section ninety-one or section ninety-three as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under said section ninety-one or said section ninety-three.