

INDIRECT FINANCE AND LEASE AGREEMENT CHECKLIST

- Dealer Reserve. Does the agreement on dealer reserve match what you negotiated?
- Customer Insurance. Does the representation and warranty in the agreement about the customer's insurance confirm that the customer has in place insurance for a specific term? Or must you simply verify that there is insurance when the customer took delivery of the vehicle? Do not guarantee the customer has in place insurance for a term.
- Spot Delivery. A representation and warranty that the RISC or lease was assigned prior to delivery of the vehicle is a trap to create a buy back demand when a deal goes bad. It is common to deliver possession of the vehicle before the contract is assigned.
- Perfection of Liens. The U.S. bankruptcy code provides that a transaction cannot be disregarded in bankruptcy if the creditor perfects its lien within 30 days. Make sure the agreement does not contain the outmoded requirement of 20 days.
- Voluntary Protection Products. Are there limits placed on the voluntary protection products the dealership may sell to a customer? Make sure the requirements are not so limited that the dealership cannot offer and sell its standard voluntary protection products.
- Recourse for Complaints. Does the agreement provide that if a customer makes a complaint about the dealer's sales practices or the vehicle purchased, the finance or lease source may require the customer obligation be repurchased by the dealer? Buyback rights should only come into play if the customer's dispute is determined in favor of the customer in litigation or arbitration.
- Remedies for Breach. Be careful that buy back remedies of the finance or lease source if it contends the dealer breached the indirect finance or lease agreement are limited to only obligations affected by the alleged breach.
- Credit Card Downpayments. What does the agreement say about accepting credit cards for downpayments? Personnel should be aware of the downpayment requirements by the indirect finance and lease source to prevent claims of breach of the agreement for taking a credit card downpayment.
- Jurisdiction. Any jurisdiction to which the parties agree should be in tribunals of the state in which the dealership is located. Do not agree that suits may be brought in another state.
- Venue. Venue for a proceeding to determine a dispute should be the city or county in which the dealership is located.
- Arbitration. If there is an arbitration provision, make sure the place of arbitration will be the city or county in which the dealership is located, that the terms of the arbitration are fair, and that expenses do not fall inappropriately on the dealership.
- Attorneys' fees. Attorneys' fees should go to the prevailing party, and not just to the finance or lease source.
- Safeguard Data. The agreement should provide the finance and lease has a process for protecting the nonpublic, personal information of consumers and customers of the dealership(s) as required by the FTC Information Safeguards Rule.
- Data Ownership. Any provision concerning ownership of data should not extinguish the dealer's rights to own the data.
- Indemnification. Beware of unilateral indemnification provisions in which the dealer indemnifies the finance and lease source against all liabilities, including liabilities resulting from the source's own actions and source's proprietary forms.
- Bilateral Indemnification. Any indemnification provision should be bilateral, meaning that the party breaching the obligations of the agreement should indemnify the other party for losses, including attorneys' fees and costs.