



State Of California
Business, Transportation And Housing Agency
DEPARTMENT OF CORPORATIONS
California's Investment and Financing Authority

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SALE-LEASEBACK TRANSACTIONS

This release provides guidance in determining whether a sale and leaseback ("sale-leaseback") transaction may be a loan subject to regulation under the California Finance Lenders Law (the "CFLL" as set forth in Division 9 commencing with Section 22000 of the Financial Code). This release does not address transactions that are outside the scope of the CFLL such as motor vehicle conditional sales contracts under the Civil Code.

Under a typical sale-leaseback transaction, the borrower signs an agreement to sell his or her property to a third party, and to lease back that property from the third party for a charge. Under the terms of these agreements, the borrower agrees to pay a certain amount of money to use the property until the "lease" expires. When the "lease" expires, the borrower has the option of repurchasing the property. If the borrower fails to make the lease payments within a certain number of days of the due date, the lender may repossess the property, sell it, and retain the proceeds.

The Department of Corporations regulates consumer and commercial loans under the CFLL. The CFLL requires finance lenders and brokers to be licensed when making or arranging loans, as specified. These loans must comply with certain borrower protections including but not limited to limitations on rates of charges and prohibitions against fraudulent and deceptive acts.

Concerns have been raised about unscrupulous operators seeking to evade the CFLL by disguising their transactions as sale-leaseback transactions. By circumventing the law, these operators may not provide consumers of sale-leaseback transactions with the same level of protection required for borrowers of loans made by licensed finance lenders in compliance with the CFLL.

In an effort to address these concerns, the Department of Corporations has prepared the following list of factors, according to California law, that it will use to determine whether a sale-leaseback transaction may be a loan:

- The borrower seeks money and not the use of goods or property.
- The borrower receives money, followed by a “sale” of the borrower’s property to the lender, with a provision for repayment in the form of rent or payments to the lender.
- The borrower is in possession of the goods or property before obtaining money from the lender.
- The borrower gives up title to goods or property as security in exchange for receiving money.
- There is no risk to the lender of losing capital, other than the insolvency of the borrower.
- The lender has the power to accelerate the principal payment of the “loan” upon default.
- The transaction includes agreements with provisions of title reversions and “repurchase” within specified periods.

The presence of one or more of these factors may indicate, upon further review, the presence of a loan transaction. The mere fact that a sale-leaseback transaction is titled or referred to as a “lease” or a “sale-leaseback” in the forms and paperwork is not determinative. It is the intent of the parties and the economic substance of the transaction, rather than the form of the transaction, which determines whether the transaction is actually a loan. Thus, the Department will examine a so-called sale-leaseback transaction in accordance with the above-referenced factors, in addition to other circumstances including the purpose and terms of the agreement, to help determine whether such transaction may be a loan when enforcing the CFLL.

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