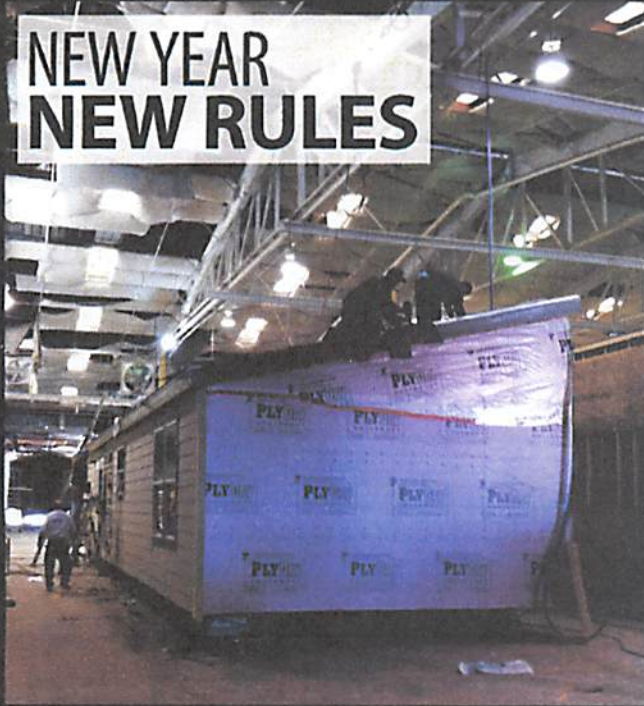




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## NEW YEAR NEW RULES



## THE END OF "LEASE PURCHASE" CHANGES + STATE, FEDERAL LAW

## S.A.F.E. ACT & THE CFPB NEW REGULATORY AGENCY



above: TMHA TOUR LOCAL AUSTIN PLANT SPECIAL THANKS TO GUIDE KEITH ALEXANDER & PALM HARBOR HOMES

everything  
you've ever  
wanted to  
know about  
lease purchases,  
and then some.

by DJ Pendleton | Executive Director

# LEASE PURCHASE

WE RECEIVE CALLS EVERY WEEK regarding the use of lease purchases from community members. The volume of calls and the complexity of the questions is trending up, and now we have some concrete answers.

Over a year ago I wrote a *TMHA TODAY* article going over the basics of what is commonly referred to as "lease purchases." You might also hear the terms "rent-to-own," "contract for deed" or "executory contracts."

I am also aware there are many in the community industry using some variation of a lease purchase, or, more correctly stated, a lease with a purchase option (more on this distinction in a bit).

I believe the increased use and growing acceptance of

this type of contract stems from many factors.

With the questions and use of "lease purchase" agreements only increasing, along with some disturbing recent reports detailing improper use, my goal is to educate the membership about the correct methods for this unique contract.

**HELLO**  
my name is

*Lease Purchase*

*folks also know me as:*

- Rent-To-Own
- Contract For Deed
- Executory Contracts

**THE BASICS:**  
lease-purchase  
contracts  
for personal  
property,  
manufactured  
home sales do  
not exist in  
Texas

FIRST, WE HAVE TO get our nomenclature correct when discussing this topic.

I have had countless phone conversations with people about this topic and the starting place is to know exactly what we are talking about, as well as what we are not.

"Lease purchase," "rent to own" and even "executory contracts" as they relate to personal-property manufactured home transactions do not exist in Texas.

These words, phrases or titles should be expelled from all our vocabularies.

For those nodding your head because

you already know this fact, terrific. But for those scratching your head, allow me to explain.

The types of transactions commonly referred to as "lease purchase" agreement are nearly always disguised credit transactions. Federal Truth in Lending law and Regulation Z clearly state if, at the end of the term in a lease purchase contract, the individual leasing the property (lessee or "renter") obtains title from the individual offering the lease (lessor or "landlord") for either zero or nominal (\$1, for example) consideration

# FIRST STEPS: WHAT YOU NEED TO CONSIDER

## LEASE WITH A PURCHASE OPTION: *make this two-part transaction work for you*

ONE

Assuming you choose to use a contract that does not pass title for zero or nominal consideration and you are no longer using "lease purchase" or "rent-to-own" terms, what is a viable option?

The answer is a lease with a purchase option.

This might sound like a bunch of lawyer semantics trying to distinguish between a "lease purchase" (bad) and a "lease with a purchase option" (allowed with conditions), but this distinction is significant.

- The basic distinction account for what we have previously discussed.
- For a viable lease with a purchase option, the renter has the option to purchase the home at the conclusion of the lease term. However, the option-to-purchase price is NOT for zero or nominal consideration.
- The legal cases dealing with this topic typically describe a proper option price as the property's fair market value.

- It is best to think of these types of purchases as two separate transactions contained in a single document.
- The first part/transaction is a simple home lease. This is a lease for the home and lot, not merely the lot space.
- The second part/transaction takes place at the conclusion of the home lease term. It is then that consumer's right to exercise their purchase option kicks in, and the former renter may choose to purchase the house for its fair market value.

As a quick aside, TMHA receives a constant stream of requests to develop a lease with a purchase option form.

This process can also easily be accomplished by separating out the two contracts. First, use a home and space lease agreement during the lease term. At the lease term's end, simply allow the renter to purchase the home in a normal cash purchase transaction, using the applicable forms.

## NECESSARY CHANGES TO BUSINESS PRACTICE: *prepare to change how you conduct these sales*

TWO

We are hearing more and more members are no longer selling homes in their communities, having transitioned to using leases with purchase options.

Again, this can be accomplished when these contracts are structured

absolutely properly.

However, performing correctly under such contracts requires a change in day-to-day business practices from the steps you previously followed when renting spaces and selling homes.

## TEXAS PROPERTY CODE, CHAPTER 94 & 92: *know which law applies to each contract*

THREE

Leases for the lot only (the dirt) fall under the exclusive jurisdiction of Chapter 94 of the Texas Property Code. Community owners are familiar with Chapter 94, and have been operating under its provisions for years.

However, when you enter into a lease with a purchase option, during the lease term the home and space lease is like any other residential lease. The same contracts are used to rent apartments or residential homes in Texas. When using an agreement such as this, Chapter 92 of the Texas Property Code is the applicable law during the home lease term.

Chapter 92 and Chapter 94 are similar in many instances, but also

very different. Later in this feature, I address additional requirements to comply with Chapter 92, including what must be in the lease agreement, specific required home structures like interior dead-bolt locks and a much larger range of landlord maintenance responsibilities.

The landlord's role is limited when merely providing a lot space on which a homeowner may place their property. If anything happens to the home or fails to work properly it is the homeowner's responsibility, not the lot landlord. But leasing a home and the lot greatly expands a landlord's responsibility.

TURN THE PAGE FOR THE LAST TWO STEPS...

When the contract is a disguised credit transaction, not a lease purchase.

Additionally, Texas law states, in Chapter 1201 of the Texas Occupations Code, that title must be transferred into the name of the purchaser at the time of sale. In a disguised credit transaction, this is the moment the contract is originally signed.

There are significant risks, penalties and liabilities at the federal and state regulatory levels as well as civil liability for using a lease purchase that is determined to be a disguised credit transaction.

### THE TAKE AWAY:

do not use a "lease purchase" contract.

The first step to avoiding this is to make sure the contract doesn't provide for the title to the home to automatically transfer to the renter at the conclusion of the lease term for zero or nominal consideration.



# FIRST STEPS: WHAT YOU NEED TO CONSIDER CONTINUED

## LEASE TERMS: *as a landlord, understanding lease terms can be your key to hassle-free business*

FOUR

Many communities that merely enter lot rental agreements offer terms ranging from six months (the Texas statutory minimum) to several years.

However, in some leases with purchase options, terms can and typically do extend longer. We have seen some contracts with terms of a single year, and others lasting 10, 12 or even 15 years.

Again, Chapter 92 controls the initial contracted lease term. Longer-term leases rarely expire and convert to month-to-month leases. Conversions to month-to-month leases are common when dealing with basic lot lease agreements.

Once a lot-only lease converts to month-to-month and future

relationships deteriorate between landlord and renter, each party has the right to choose not to renew the lease agreement with 60 days notice. No reason or "cause" from either party is needed.

However, when entered into a term contract choosing not to renew a lease is not an option. If relationships deteriorate both parties' options are limited to formal, court eviction proceedings, suing based on breach of lease contract or breaking the lease.

We have learned some industry members may not have fully understood the above, extremely important distinction before entering into leases-with-purchase-option contracts that include several year lease terms.

## STATE & FEDERAL LAW COMPLIANCE: *Texas Chapter 92 and the fed's Regulation M*

FIVE

Many operators may not be familiar with two specific areas of law applicable to lease with purchase options.

Regardless of awareness, individuals performing transactions must comply with these laws when structuring a lease with a purchase option.

We have already touched on the first law - Chapter 92 of the Texas

Property Code.

The second area of compliance is a federal regulation: Regulation M (Reg M) under the federal Consumer Leasing Act.

Reg M governs personal property leases with purchase options, and might be unfamiliar to many members. Individual analysis is required to determine if Reg M applies to a specific lease with a purchase option.

## now let's break down Chapter 92 of the Property Code

CHAPTER 92 IS FAR MORE extensive than Chapter 94.

Specifically, there are certain limitations and prohibitions to which landlords must adhere within Chapter 92 that are not in Chapter 94.

Chapter 92 has specific laws regarding the following topics:

1. Interruption of utilities and utility cutoff
2. Removal of resident's property
3. Locking out/changing locks due to non-payment of rent
4. Tenant's right of reentry following a lock out
5. Occupancy limits
6. Vehicle towing/parking rules and procedures
7. Resident's rights to terminate a leases due to a deceased tenant, family violence, certain sexual offenses, and certain military service
8. Landlord's duty to repair
9. Security deposits
10. Security devices, such as deadbolt locks and door viewers

11. Smoke detectors
12. Rental Applications

Landlords must comply with these expansive laws during the term of the home lease. *Community owners leasing homes should review the laws contained in Chapter 92.*

Failure to adhere to the many state laws can result in significant landlord liability, including statutory damages and attorney's fees.

Additionally, it is clear in the statute that most of the legally stipulated duties and the remedies available cannot be waived by an agreement of the parties. ★



# TEXAS

## CHAPTER 92

FROM TEXAS LAW  
 these specific topics  
 found in Chapter 92  
 of the Texas Property  
 Code, pertain to  
 lease-with-a-purchase  
 option contracts:

CORRECTION  
CORRECTION  
CORRECTION:

HELLO

my name is

~~Lease Purchase~~

Lease with a  
Purchase Option

LAW

## RESIDENTIAL TENANCIES

### LEASE TERMS

Several provisions require specific language be included in the lease contract. Other potential landlord rights are conditional on specific language in the lease.

### CASH PAYMENTS

A landlord must accept cash rental payments, supply a receipt and maintain record payment book, unless the lease specifically states tenants are to make rental payments by check.

### TOWING AND PARKING RULES

If a community has parking rules, the landlord must provide the tenant a copy of the rules prior to signing the lease.

The title to the paragraph containing the parking rules and details must read "Parking" or "Parking Rules" and must be capitalized, underlined or printed in bold.

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### LEASE EARLY TERMINATION RIGHTS

Every lease must contain the following language:

- "Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."
- "Tenants may have special statutory rights to terminate the lease early in certain situations involving sexual assault or sexual abuse."

### LATE PAYMENT FEE

A landlord cannot charge a late payment of rent fee unless the notice of the fee is included in a written lease and the amount is reasonable.

### EMERGENCY PHONE NUMBER

A landlord must provide to tenants a telephone number that will be answered 24 hours a day for the purpose of reporting emergencies that materially affect the physical health or safety of a tenant.

**LANDLORDS DUTY TO REPAIR NOTICE**

If a landlord wants to require repair request notices from tenants be in writing, such a requirement must be specifically included in the written lease underlined or in bold. This includes notice to repair security devices.

**OBLIGATION TO REFUND SECURITY DEPOSIT**

A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

**REQUIRED SECURITY DEVICES**

When leasing a home certain security devices must be in place in order to comply with state law, and they must be installed at the landlord's expense.

Every leased home must be equipped with:

1. window latch on each exterior window of the dwelling;
2. doorknob lock or keyed dead bolt on each exterior door;
3. sliding door pin lock on each exterior sliding glass door of the dwelling;
4. sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and
5. keyless bolting device and a door viewer on each exterior door of the dwelling.

In addition a keyed dead bolt or a keyless bolting device is required, and must be installed at a height: not lower than 36 inches and not higher than 48 inches from the floor. The dead bolt strike plate must be screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed; or be installed in a door with a metal doorjamb that serves as the strike plate.

The landlord must change the locks not later than seven days after a tenant leaves the property. This expense must be paid by the landlord.

**SMOKE DETECTORS**

The landlord must install at least one smoke detector outside, but in the vicinity of, each separate bedroom in the home, except:

1. if dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke detector must be located inside the room;
2. if the bedrooms are served by the same corridor, at least one smoke detector must be installed in the corridor in the immediate vicinity of the bedrooms; and
3. if at least one bedroom is located on a level above the living and cooking area, the smoke detector for the bedrooms must be placed in the center of the ceiling directly above the top of the stairway.

The landlord must determine that the smoke detector is in good working order at the beginning of the tenant's possession by testing the device with smoke, operating the testing button, or following other recommended test procedures of the manufacturer for the particular model.

**RENTAL APPLICATION**

The landlord must provide a prospective tenant making a rental application with a notice including the landlord's rental selection criteria. The landlord must get the prospective tenant's sign receipt acknowledging receipt of the notice.

The notice should contain the following specific language: "Signing this acknowledgment indicates that you have had the opportunity to review the landlord's tenant selection criteria. The tenant selection criteria may include factors such as criminal history, credit history, current income, and rental history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your application may be rejected and your application fee will not be refunded."

The acknowledgment may be part of the rental application if the notice is underlined or in bold print.

**CONSUMER LEASING ACT: REGULATION M****FEDERAL LAW****QUICK ANALYSIS: DOES REG M APPLY?**

**A QUICK LOOK:** use this guide to quickly check if your lease with a purchase option falls under Reg M

1. Is the contract a credit sale contract (including a disguised credit sale)?
  - YES: Reg M does not apply
  - what does apply: Reg Z, other Truth in Lending and Dodd/Frank-related laws, and the S.A.F.E. Act
  - NO: proceed to #2
2. Does the lease include a purchase option?
  - YES: proceed to #3
  - NO: Reg M does not apply
3. Have you offered more than five (5) leases with purchase options in the preceding or current calendar years?
  - YES: proceed to #4
  - NO: Reg M does not apply
4. Does the total contractual obligation (total of the lease amounts and purchase option price) exceed the threshold amount (currently \$51,800)?
  - YES: Reg M does not apply
  - NO: REG M APPLIES

## THE DODD-FRANK IMPACT:

passed in the summer of 2010, we are still waiting for the full effects of this federal reform law to develop

THESE DAYS IT SEEMS nearly every discussion we have somehow leads to the Dodd-Frank Wall Street Reform and Consumer Protection Act passed into law July 21, 2010. This is again true when discussing personal property leases with purchase options.

First, Dodd-Frank created the Consumer Financial Protection Bureau (CFPB). One of the numerous areas of authority within this new agency is its responsibility to enforce the Consumer Leasing Act, which includes Reg M.

On December 19, 2011 new administrative rules, published in the Federal Register, transferred Reg M enforcement authority away from the Federal Reserve System Board of Governors to the CFPB. The Bureau then took over its authority of Reg M enforcement, effective December 30, 2011.

Most importantly, Reg M stayed exactly the same - now the law is simply regulated by a new federal entity.

Reg M's future lies in the hands of the CFPB. Any new, substantive changes will originate with the CFPB and be posted in the Federal Register.

In addition to Reg M, leases are specifically included in Dodd-Frank Title X related to the CFPB in the definition of a "Financial Product or Service."

The pertinent section of the definition reads:

*"(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if -*

1. *the lease is on a non-operating basis;*
2. *the initial term of the lease is at least 90 days; and*
3. *in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau"*

## The General Rule to Reg M

THE APPLICABILITY OF Reg M to a manufactured home lease with a purchase option requires an analysis based on the specifics of each individual contract.

The general rule is Reg M applies to all individuals who lease personal property to be used primarily for personal, family or household purposes for a period exceeding four (4) months.

Clearly a lease on a home is used for "personal, family or household purposes." Therefore the general rule is if the lease term is greater than four months, then Reg M applies.

## Reg M Exceptions

1. Does not apply to credit sales. This includes my previous explanation of disguised credit transactions.
2. Does not apply to leases that do not include the option to purchase the property at the end of the lease term. This means a simple home lease agreement without a purchase option is not covered by Reg M.
3. De minimus exception: individuals offering to lease personal property up to five (5) or less times in the preceding calendar year, or up to five (5) or less times in the current calendar year are excluded from Reg M.
4. The final exception applies to what is referred to as the

"threshold amount." The threshold amount is a set, annually-updated total. In order for Reg M to apply the total contractual obligation can NOT exceed the applicable threshold amount. In recent history it was this threshold exception that excluded manufactured home leases with purchase options.

- Prior to July 21, 2010 the threshold amount was only \$25,000. Meaning if a lease with a purchase option's total contractual amount exceeded \$25,000, then Reg M did not apply. Exceeding this threshold could normally be achieved.
- Example: a lease for \$600/month for three years with a fair-market option purchase price of \$10,000 at the end of the three years has a total contractual amount of \$31,600 ( $\$600 \times 36\text{months} + \$10,000$ ). This total amount exceeds the threshold, and therefore Reg M would not apply.
- The enactment of the Dodd/Frank law increased the threshold amount from July 21, 2011 through December 31, 2011 to \$50,000.
- The threshold amount increases annually based on the Consumer Price Index.
- Currently the newest threshold amount, effective January 1, 2012, is \$51,800. ★

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## What does Reg M require?

### DISCLOSURES

All disclosures must be made clearly and conspicuously in writing in a form the consumer may keep. Disclosures may be provided to the renter in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

The disclosures must be given to the lessee together in a dated statement identifying the lessor and lessee. Disclosures may be made either in a separate statement identifying the consumer lease transaction or in the contract. Alternatively, disclosures required to be segregated from other information (see next paragraph) may be provided in a separate, dated statement identifying the lease, while the other required disclosures may be provided in the lease contract.

Certain disclosures must be segregated from other information and must contain only information directly related to:

- amount due at lease signing or delivery
- payment schedule and total amount of periodic payments
- other charges
- total of payments
- payment calculation
- early termination notice
- notice of wear and use standard
- end of lease term
- statement referencing nonsegregated disclosures; and
- rent and other charges

The headings, content and format for disclosures must be provided in a manner significantly similar to the applicable model form provided in Reg M.

In another section of this article, we provide the detail and description of exactly what must be in the disclosure statement. However, a quick point of reference can be found in one of the Model Disclosures provided in Reg M.

**An example of the Model Disclosure can be found to the right.**

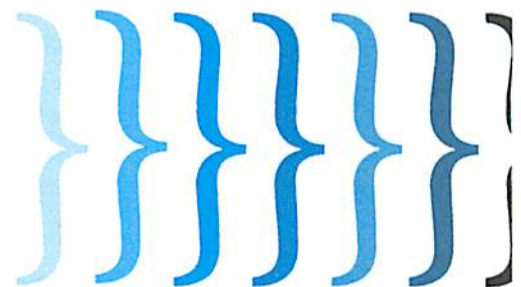
A lessor must provide the disclosures to the lessee prior to the consummation of a consumer lease.

When a transaction involves more than one lessor the disclosures required by this part may be created by one lessor on behalf of all the lessors. When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.

If an amount or other item needed to comply with a required disclosure is unknown or unavailable after reasonable efforts have been made to ascertain the information, the lessor may use a reasonable estimate.

See REG, page .

you've done the proper analysis and determined Reg M applies to your transaction  
**Now you must comply with the disclosure, advertising and record retention requirements**





## Regulation M Addendum to Home and Space Lease Agreement

Date \_\_\_\_\_

Lessor(s) \_\_\_\_\_ Lessee(s) \_\_\_\_\_

<b>Amount Due at Lease Signing or Delivery</b>  (Itemized below)*  \$ _____	<b>Monthly Payments</b>  Your first monthly payment of \$ _____ is due on _____, followed by _____ payments of \$ _____ due on the _____ of each month. The total of your monthly payments is \$ _____.	<b>Other Charges</b> (not part of your monthly payment)  Disposition fee (if you do not purchase the manufactured home) \$ _____  _____  Total \$ _____	<b>Total of Payments</b> (The amount you will have paid by the end of the lease)  \$ _____
---	---	---	---

### \* Itemization of Amount Due at Lease Signing or Delivery

**Amount Due At Lease Signing or Delivery:**

Capitalized cost reduction \$ \_\_\_\_\_  
 First monthly payment \_\_\_\_\_  
 Refundable security deposit \_\_\_\_\_  
 Title fees \_\_\_\_\_  
 Registration fees \_\_\_\_\_  
 \_\_\_\_\_  
 Total \$ \_\_\_\_\_

**How the Amount Due at Lease Signing or Delivery will be paid:**

Net trade-in allowance \$ \_\_\_\_\_  
 Rebates and noncash credits \_\_\_\_\_  
 Amount to be paid in cash \_\_\_\_\_  
 \_\_\_\_\_  
 Total \$ \_\_\_\_\_

### Your monthly payment is determined as shown below:

<b>Gross capitalized cost.</b> The agreed upon value of the manufactured home (\$ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior creditor lease balance) .....	\$ _____
If you want an itemization of this amount, please check this box <input type="checkbox"/>	
<b>Capitalized cost reduction.</b> The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost .....	-
<b>Adjusted capitalized cost.</b> The amount used in calculating your base monthly payment .....	=
<b>Residual value.</b> The value of the manufactured home at the end of the lease used in calculating your base monthly payment .....	-
<b>Depreciation and any amortized amounts.</b> The amount charged for the manufactured home's decline in value through normal use and for other items paid over the lease term .....	=
<b>Rent charge.</b> The amount charged in addition to the depreciation and any amortized amounts .....	+
<b>Total of base monthly payments.</b> The depreciation and any amortized amounts plus the rent charge .....	=
<b>Lease term.</b> The number of months in your lease .....	÷
<b>Base monthly payment</b> .....	=
<b>Monthly sales/use tax</b> .....	+
_____	+
<b>Total monthly payment</b> .....	=\$ _____

**Early Termination.** You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

**Excessive Wear and Use.** You may be charged for excessive wear based on our standards for normal use.

**Purchase Option at End of Lease Term.** [You have an option to purchase the manufactured home at the end of the lease term for \$ \_\_\_\_\_ [and a purchase option fee of \$ \_\_\_\_\_].] [You do not have an option to purchase the vehicle at the end of the lease term.]

**Other Important Terms.** See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the non-segregated disclosures required under Regulation M]

Description of Leased Property				
Year	Manufacturer	Model	No. of Sections	ID, Serial or Texas Seal #

**Official Fees and Taxes.** The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: \$ \_\_\_\_\_.

**Insurance.** The following types and amounts of insurance will be acquired in connection with this lease:

\_\_\_\_\_

We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$ \_\_\_\_\_.

You (lessee) agree to provide insurance coverage in the amount and types indicated above.

**Standards for Wear and Tear.** The following standards are applicable for determining unreasonable or excess wear and tear of the leased manufactured home: Under Texas Property Code, Section 92.001(4) wear and tear means deterioration that results from the intended use of a dwelling, including, for the purposes of Repair or Closing the Leasehold (Subchapter B) and Security Devices (Subchapter D), breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, by a member of the tenant's household, or by a guest or invitee of the tenant.

**Maintenance.**

[You are responsible for the following maintenance and servicing of the manufactured home:

\_\_\_\_\_].

[We are responsible for the following maintenance and servicing of the manufactured home:

\_\_\_\_\_].

**Warranties.** The leased manufactured home is subject to the following express warranties:

\_\_\_\_\_.

**Early Termination and Default.** (a) You may terminate this lease before the end of the lease term under the following conditions:

\_\_\_\_\_.

The charge for such early termination is:

\_\_\_\_\_.

(b) We may terminate this lease before the end of the lease term under the following conditions:

\_\_\_\_\_.

Upon such termination we shall be entitled to the following charge(s) for:

\_\_\_\_\_.

(c) To the extent these charges take into account the value of the manufactured home at termination, if you disagree with the value we assign to the manufactured home, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the \_\_\_\_\_ value of the leased manufactured home which could be realized at sale. The appraised value shall then be used as the actual value.

**Security Interest.** We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

\_\_\_\_\_.

**Late Payments.** The charge for late payments is:

\_\_\_\_\_.

**Option to Purchase Leased Property Prior to the End of the Lease.** [You have an option to purchase the leased manufactured home prior to the end of the term. The price will be [\$ \_\_\_\_\_ / [the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

# What does Reg M require? CONTINUED

hat is based on the best information available to the lessor, is clearly identified as an estimate, and is not used to circumvent or evade any disclosures required by this part.

## DETAIL OF THE CONTENT OF DISCLOSURES

Leases must disclose the following information, as applicable:

1. Description of property.
2. Amount due at lease signing or delivery. The total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation, using the term "amount due at lease signing or delivery." The lessor shall itemize each component by type and amount, including any refundable security deposit, advance monthly or other periodic payment, and capitalized cost reduction.
3. Payment schedule and total amount of periodic payments. The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.
4. Other charges. The total amount of other charges payable to the lessor, itemized by type and amount that are not included in the periodic payments. Such charges include the amount of any liability the lease imposes upon the lessee at the end of the lease term; the potential difference between the residual and realized values referred to in paragraph (k) of this section is excluded.
5. Total of payments. The total of payments, with a description such as "the amount you will have paid by the end of the lease." This amount is the sum of the amount due at lease signing (less any refundable amounts), the total amount of periodic payments (less any portion of the periodic payment paid at lease signing), and other charges.
6. Payment calculation.
7. Early termination. A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term; and the amount or a description of the method for determining the amount of any penalty or other charge for early termination, which must be reasonable.
8. Maintenance responsibilities. The following provisions are required:
  - A statement specifying whether the lessor or the lessee is responsible for maintaining or servicing the leased property, together with a brief description of the responsibility;
  - A statement of the lessor's standards for wear and use (if any), which must be reasonable; and
9. Purchase option. A statement of whether or not the lessee has the option to purchase the leased property, and:
  - End of lease term. If at the end of the lease term, the purchase price; and

- During lease term. If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.
10. Statement referencing nonsegregated disclosures. A statement that the lessee should refer to the lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.
  11. Liability between residual and realized values. A statement of the lessee's liability, if any, at early termination or at the end of the lease term for the difference between the residual value of the leased property and its realized value.
  12. Right of appraisal. If the lessee's liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain, at the lessee's expense, a professional appraisal by an independent third party (agreed to by the lessee and the lessor) of the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties.
  13. Liability at end of lease term based on residual value. If the lessee is liable at the end of the lease term for the difference between the residual value of the leased property and its realized value:
    - Rent and other charges. The rent and other charges, paid by the lessee and required by the lessor as an incident to the lease transaction, with a description such as "the total amount of rent and other charges imposed in connection with your lease [state the amount]."
    - Excess liability. A statement about a rebuttable presumption that, at the end of the lease term, the residual value of the leased property is unreasonable and not in good faith to the extent that the residual value exceeds the realized value by more than three times the base monthly payment (or more than three times the average payment allocable to a monthly period, if the lease calls for periodic payments other than monthly); and that the lessor cannot collect the excess amount unless the lessor brings a successful court action and pays the lessee's reasonable attorney's fees, or unless the excess of the residual value over the realized value is due to unreasonable or excessive wear or use of the leased property (in which case the rebuttable presumption does not apply).
    - Mutually agreeable final adjustment. A statement that the lessee and lessor are permitted, after termination

of the lease, to make any mutually agreeable final adjustment regarding excess liability.

14. Fees and taxes. The total dollar amount for all official and license fees, registration, title, or taxes required to be paid in connection with the lease.
15. Insurance. A brief identification of insurance in connection with the lease including:
  - Through the lessor. If the insurance is provided by or paid through the lessor, the types and amounts of coverage and the cost to the lessee; or
  - Through a third party. If the lessee must obtain the insurance, the types and amounts of coverage required of the lessee.
16. Warranties or guarantees. A statement identifying all express warranties and guarantees from the manufacturer or lessor with respect to the leased property that apply to the lessee.
17. Penalties and other charges for delinquency. The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.
18. Security interest. A description of any security interest, other than a security deposit, held or to be retained by the lessor; and a clear identification of the property to which the security interest relates.
19. Limitations on rate information. If a lessor provides a percentage rate in an advertisement or in documents evidencing the lease transaction, a notice stating that "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure.

The lessor must not use the term "annual percentage rate," "annual lease rate," or any equivalent term.

## RENEGOTIATIONS, EXTENSIONS, AND ASSUMPTIONS

A renegotiation occurs when a consumer lease is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except if

1. there is a reduction in the rent charge;
2. the deferral of one or more payments, whether or not a fee is charged; the extension of a lease for not more than six months on a month-to-month basis or otherwise;
3. a substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;
4. the addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent; or
5. an agreement resulting from a court proceeding.

# What does Reg M require? CONTINUED

An extension is a continuation, agreed to by the lessor and the lessee, of an existing consumer lease beyond the originally scheduled end of the lease term, except when the continuation is the result of a renegotiation. An extension that exceeds six months requires new disclosures, except as provided above.

New disclosures are not required when a consumer lease is assumed by another person, whether or not the lessor charges an assumption fee.

## ADVERTISING

An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

Advertising related disclosures must be made clearly and conspicuously.

1. Amount due at lease signing or delivery.
2. Advertisement of a lease rate.

A catalog or other multipage advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

Advertisements containing "triggering terms"

of the amount of any payment, or a statement of any capitalized cost reductions or others payment prior to or at consummation of by delivery, if delivery occurs after consummation, require additional disclosure. The additional disclosures listed below must be made unless they fall within an exception.

1. That the transaction advertised is a lease;
2. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
3. The number, amounts, and due dates or periods of scheduled payments under the lease;
4. A statement of whether or not a security deposit is required; and
5. A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

Exceptions to the additional disclosures are merchandise tags and televisions or radio advertisements. A merchandise tag stating any triggering terms may comply by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures (1-5 above).

An advertisement made through television or radio stating a triggering term complies with

the additional disclosure requirement if advertisement states the items listed in paragraph 1 through 5, and:

- Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by 1-5 above; or
- Directs the consumer to a written advertisement in a publication of general circulation in the community served by media station, including the name and date of the publication, with a statement that information required by 1-5 above included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast. The lessor shall provide information required by 1-5 above orally, or writing upon request.

## RECORD RETENTION.

A lessor must retain evidence of compliance with the requirements imposed by Reg M, other than the advertising requirements, for a period not less than two years after the date the disclosures are required to be made or an action is required to be taken. ★

it's our **60<sup>th</sup>**

SAVE THE DATE

**2012 CONVENTION**

our biggest birthday yet! • TMHA turns 60 - come celebrate with us

Galveston, Texas

**SEPTEMBER 16-18**

# TEXAS LAW: PART 2

## lease with a purchase option and Chapter 1201 of the Texas Occupations Code

CHAPTER 1201 OF THE Texas Occupations Code is the main body of state law governing the manufactured housing industry.

We are all familiar with this law, especially anyone who is or has ever been in the business of selling manufactured homes.

A bill passed during the 2007 Legislative Session that added the term “lease purchase” to several Chapter 1201 provisions. The bill’s passage led to the addition of “lease purchase” onto specific provisions related to disclosures that must be provided to consumers.

I know what you are thinking. You are thinking, “But you just told us ‘lease purchase’ contracts are disguised credit transactions and are not allowed.”

This still holds true. However, during the bill-drafting process, non-industry pressure lacked a comprehensive understanding of the specific distinctions and federal laws tied to such contracts. This will probably be an area Texas Legislature takes up again in the future to provide clarity.

The argument can be made for either case (as can all legal

arguments - don’t you just love lawyers?) as to if these various provisions in Chapter 1201 referencing “lease purchases” similarly apply to “leases with a purchase options.”

“Lease purchase” is defined in the Occupations Code to mean “entering into a lease contract for a manufactured home, in which the lessor retains title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home.”

The definition describes a lease with a purchase option, but fails to acknowledge the federal requirement that the purchase option price must be for greater than zero or nominal consideration.

Each member concerned regarding this area should, as always, consult your own attorney before making a business decision related to compliance.

Those interested in voluntary compliance regarding Chapter 1201 may apply the requirements listed for “lease purchases” within the statute to your lease with a purchase option contracts. ★

### CHAPTER 1201: the applicable Occupations Code sections on lease purchase

#### RIGHT OF RESCISSION

The three-day right of rescission applies to lease purchase contracts. Section 1201.1521 states:

*A person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.*

The three-day right of rescission begins at the time the purchase option is exercised.

#### GOOD AND MARKETABLE TITLE

*Sec. 1201.451. TRANSFER OF GOOD AND MARKETABLE TITLE REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase a used manufactured home without the appropriate transfer of good and marketable title to the home.*

Providing good and marketable title is required at the time the purchase option is exercised.

#### USED HOME HABITABILITY WARRANTY

Section 1201.455 requires a 60 day habitability warranty and notice of warranty be provided on homes entered into as lease-purchase contracts. The 60 day habitability period begins after the lessee exercises their option to purchase.

*Sec. 1201.455. WRITTEN DISCLOSURE AND WARRANTY OF HABITABILITY REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase a used manufactured home to a consumer for use as a dwelling without providing: (1) a written disclosure, on a form not to exceed two pages prescribed by the department, describing the condition of the home and of any appliances that are included in the home; and (2) a written warranty that the home is and will remain habitable until the 60th day after the later of the installation date or the date of the purchase agreement. (b) Unless, not later than the 65th day after the later of the installation date or the date of*

*the sale, exchange, or lease-purchase agreement, the consumer notifies the seller in writing of a defect that makes the home not habitable, any obligation or liability of the seller under this subchapter is terminated. The warranty must conspicuously disclose that notice requirement to the consumer.*

#### PROHIBITION TO LEASE-PURCHASE A SALVAGED HOME

The Occupations Code prohibits the lease-purchase of a salvage home. Section 1201.461(h) states:

*A licensee may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.*

#### PROHIBITION TO INSTALL A HOME IN SPECIAL FLOOD HAZARD AREA DESIGNATED BY FEMA

Similar to home sales, a retailer cannot enter into a lease-purchase contract for a home that they will deliver, arrange delivery, install, arrange installation, or assist the consumer in the delivery or installation of a home

in an area declared by the director of FEMA to be a special flood hazard area.

The exception to the general rule above requires the retailer to comply with the requirements of the National Flood Insurance Act, Chapter 16 of the Texas Water Code and any other local, state or federal law.

*Sec. 1201.512. PROHIBITED DELIVERY OR INSTALLATION OF MANUFACTURED HOME. (a) In this section, "homesite" means the land on which the foundation system for a manufactured home is or will be located. (b) Unless the retailer, broker, or salesperson complies with the requirements of the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.), Subchapter I, Chapter 16, Water Code, and any other applicable local, state, or federal law, and ensures the consumer's compliance with applicable law by requiring the evidence (a copy of, any required permit to install a septic tank on the homesite), a retailer, broker, or salesperson who sells, exchanges, or lease-purchases a new or used manufactured home to a consumer for use as a permanent dwelling in this state may not: (1) deliver or arrange for the delivery of the home to a homesite in a special flood hazard area designated by the director of the Federal Emergency Management Agency; (2) install or arrange for the installation of the home at a homesite in that area, or (3) assist the consumer in the delivery or installation of, or in making arrangements for the delivery or installation of, the home to or at a homesite in that area.*

now you're an expert on lease with a purchase option  
So where do you go from here? What's the next step?

CONSULT YOUR ATTORNEY  
FOR FURTHER GUIDANCE CONCERNING ANY FUTURE LEASE WITH A PURCHASE OPTION

- **TMHA cannot legally provide counsel (legal advice) to members**
- All Texas statutes (Property Code: Chapter 92, Occupations Code: Chapter 1201) are available online: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)
- Reg M online: [www.fdic.gov/regulations/laws/rules/6500-2000.html](http://www.fdic.gov/regulations/laws/rules/6500-2000.html)
- The sample Reg M form from pages 18-19 will be available soon in the Community Forms section of our website - [www.texasmha.com](http://www.texasmha.com)

For clarification or specific questions regarding the information included in this issue, e-mail [info@texasmha.com](mailto:info@texasmha.com)