



Regulatory Report

Motor Vehicle Title Lender Tips & Reminders

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- The plain language of § 6.2-2215 (1)(d) of the Code of Virginia (“Code”) provides that “fair market value” shall be determined by reference to the “loan value” for the motor vehicle specified in a recognized pricing guide. Pricing guides, e.g. Black Book, contain several suggested values for a given motor vehicle including “wholesale value”, “loan value” or “finance advance value”, “trade in value”, “retail value”, “residual value”, etc. If the motor vehicle is included in a recognized pricing guide, the “fair market value” in § 6.2-2215 (1)(d) of the Code is the “loan value” (or “finance advance value” if such phrasing is used) for the vehicle in that pricing guide. If the motor vehicle is not included in a recognized pricing guide, a licensee shall determine the “fair market value” of the vehicle by considering factors such as the motor vehicle’s condition, features, and mileage. The Commission’s Motor Vehicle Title Lending Rule 10 VAC 5-210-90 (B) (3) requires that licensees maintain a record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide, and such supporting documentation should include any factors used to determine the value of the motor vehicle, as well as the name of the pricing guide that the licensee relied upon in making the loan.

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Payday Lender Tips & Reminders

The Regulatory Report is published by the Bureau of Financial Institutions and is part of its efforts to improve communication with the companies we regulate. It is distributed to Virginia payday lender and motor vehicle title lender licensees and other interested parties. It is the licensee’s responsibility as a Virginia payday lender or motor vehicle title lender licensee to read this newsletter and to be familiar with the positions and interpretations stated herein. We also encourage you to forward the information contained in this newsletter to your employees who are involved in making payday and title loans and meeting compliance standards.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau of Financial Institutions at P.O. Box 640, Richmond, VA 23218-0640 or via email at: bfquestions@scv.virginia.gov.

- Licensees are reminded that there are specific provisions for prospective borrowers who are reported “eligible” for an extended payment plan by the Virginia Payday Lending Database. A licensee shall immediately provide oral notice to the applicant that:
 - The applicant is eligible to repay the payday loan through an extended payment plan.
 - Information about extended payment plans may be found on the poster in the licensee’s office or in the “Borrower Rights and Responsibilities” pamphlet.
 - The licensee is available to answer any questions that the applicant may have about extended payment plans.

When providing this notice, the licensee shall also direct the applicant to the specific locations of both the poster referred to in 10 VAC 5-200-33 (C)(1) and the section of the pamphlet entitled “Extended Payment Plans.”

While the licensee shall inform the borrower of applicable waiting periods when electing an extended payment plan, branch personnel should remain impartial and not influence applicants’ decisions.

Licensees are encouraged to review § 6.2-1816 (26) of the Code and 10 VAC 5-200-33 of the Virginia Administrative Code with employees.

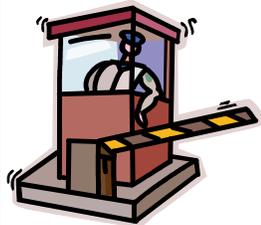
(continued on page 3)

Other Business in PL and VTL Offices

If a payday lending or motor vehicle title lending licensee receives Commission authority to conduct certain other business (e.g. payday lending, motor vehicle title lending, consumer finance business, facilitating or arranging tax refund anticipation loans or tax refund payments, etc.) from a licensed office, the licensee and other business operator shall provide each applicant with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

Privacy Safeguards

To ensure the privacy of borrower's personal financial information and to ensure your compliance with state and federal privacy rules, you are reminded that any information or responses that you send to the Bureau via email which contain personal financial information (i.e. a borrower's loan agreement or loan application) must be sent via an encrypted password-protected zip file. Passwords should not be included with the zip file but instead sent in a separate email to a Bureau employee.



Power of Attorney Prohibited



The Bureau published its interpretation of § 6.2-2215 (5) of the Code of Virginia in its Regulatory Report, Volume 1, October 2011. In it, the Bureau advised that “[a] motor vehicle title lender shall not obtain any agreement from the borrower giving the licensee or any third person power of attorney or authority to confess judgment for the borrower.

This includes the DMV's “Power of Attorney to Sign for Owner When Registering and/or Transferring Ownership of a Motor Vehicle” form (Reference § 6.2-2215 (5)).” The position prohibiting licensees from obtaining any power of attorney for the borrower also applies to payday lending licensees. (Reference § 6.2-1816 (3) of the Code).

Please Distribute!

We receive numerous phone calls from branch personnel with questions regarding changes in the laws, regulations and/or items clarified in issues of this newsletter. We often refer callers to sections of the law, regulations, or the newsletter, but we are told that they did not receive a copy. Licensees should be aware that mailings from the Bureau are sent only to the main office. Branches are not included in the Bureau's mailing list and do not receive mailings from the Bureau. It is the responsibility of main office personnel to distribute this information to all affected branches and employees. The 2012 Edition of the Laws of Virginia Related to Non-Depository Financial Services was mailed out in early September. The 2012 Edition reflects the changes made through the 2012 session of the Virginia General Assembly. Additional copies may be ordered through the publisher, Lexus Nexus (800-443-3410) – ask for product number 3549819. **PLEASE MAKE SURE ALL PERSONNEL ARE PROVIDED THE OPPORTUNITY TO STAY CURRENT WITH ALL REGULATORY ISSUES SINCE FAILURE TO DO SO COULD RESULT IN VIOLATIONS OF LAW AND THE POSSIBILITY OF REGULATORY ACTION.**



License Update

The following is a list of companies that have had their licenses revoked, had an application denied, or entered into a settlement agreement since October 1, 2011. These lists are accurate as of March 1, 2013. Call the Bureau if you have a question concerning a recent denial, revocation or settlement entered into by the Commission. A list of current payday lender and motor vehicle title lender licensees is available on our Web site at: <https://www.scc.virginia.gov/bfi/index.aspx> (under Regulated Institutions click on “Motor Vehicle Title Lenders” or “Payday Lenders”).

Payday Lender or Motor Vehicle Title Lender Licenses Revoked or Denied

None

Payday Lender Settlement Orders

PL - 12 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers – settlement order entered March 20, 2012. Paid \$100,000 for various violations of Chapter 18 of Title 6.2 of the Code.

PL - 36 QC Financial Services, Inc. d/b/a Quik Cash – settlement order entered June 25, 2012. Paid \$55,000 for various violations of Chapter 18 of Title 6.2 of the Code.

PL - 4 Justin Enterprises, Inc. d/b/a Cash To Payday – settlement order entered October 25, 2012. Paid \$25,000 for various violations of Chapter 18 of Title 6.2 of the Code.

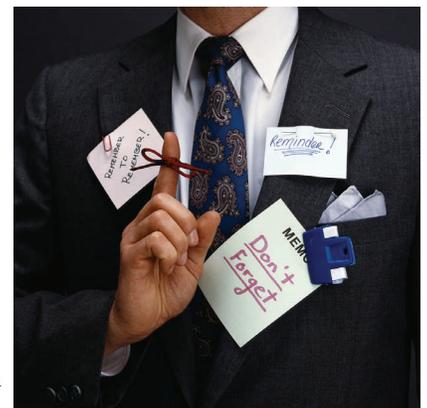
Motor Vehicle Title Lender Settlement Orders

VTL - 15 Dominion Management Services, Inc. d/b/a CashPoint – settlement order entered January 12, 2012. Paid \$35,000; its license to engage in the business of making motor vehicle title loans was suspended for a period of two months for conducting motor vehicle title business without a license in violation of § 6.2-2201; and other various violations of Chapter 22 of Title 6.2 of the Code. Licensee also refunded to borrowers all interest, fees and charges paid in connection with the title loans that were made without a license between October 1, 2010 and December 1, 2010, which totaled nearly \$600,000.

VTL - 27 Evergreen Services Inc. – settlement order entered February 15, 2013. Paid \$23,000 for various violations of Chapter 22 of Title 6.2 of the Code.

Payday Lender Tips & Reminders (continued from page 1)

- A licensee must retain supporting documentation for a borrower’s pay cycle in **each** loan file. Acceptable documentation includes a copy of the borrower’s pay stub or similar periodic earnings statement that clearly reflects the borrower’s pay cycle, or a representation by the borrower in the written loan application. (Reference 10 VAC 5-200-20 G)
- Licensees are prohibited from querying the Virginia Payday Lending Database for eligibility until a prospective borrower has submitted a completed written application to the licensee requesting a payday loan. After the query has been made, the licensee must generate and retain in its records a printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan. (Reference 10 VAC 5-200-110 I)



Motor Vehicle Title Lender Tips & Reminders (continued from page 1)

- The Bureau discovered during examinations that licensees have accepted a manufactured home as security for a motor vehicle title loan. Section 6.2-2200 of Title 6.2 of the Code defines "motor vehicle" as an automobile, motorcycle, mobile home, truck, van, or other vehicle operated on public highways and streets. A manufactured home is not a vehicle that is operated on public streets, is not self-propelled or designed for self-propulsion, is not a structure designed to be loaded on or affixed to a motor vehicle, and is defined in § 46.2-100 of Title 46.2 of the Code as a structure. Accordingly, it is the Bureau's position that a manufactured home is not a motor vehicle and may not be accepted by a licensee as security for a motor vehicle title loan. Depending on certain facts, a loan secured by a manufactured home is either a mortgage loan (pursuant to Chapter 16 of Title 6.2) or a consumer finance loan (pursuant to Chapter 15 of Title 6.2) and will be regulated accordingly.
- When a licensee repossesses and sells a borrower's motor vehicle, the licensee has enforced its security interest and conveyed its ownership interest to the purchaser. Accordingly, regardless of whether a borrower's obligations have been "satisfied in full" or otherwise extinguished as a matter of law, the licensee no longer has a security interest that it can release. Furthermore, the additional requirements prescribed in § 6.2-2215 (13) of the Code of Virginia are triggered "when releasing the security interest in a motor vehicle." Since a licensee is not going to release its security interest in the case of a motor vehicle that has been repossessed and sold, the additional requirements in the above statute are not triggered. Therefore, in the case of a motor vehicle that has been repossessed and sold, a licensee is not required to mark the original loan agreement "paid" or "canceled" and return it to the borrower.
- Section 6.2-2216 (C)(2) of the Code of Virginia provides that "interest shall not accrue" on the principal balance of a motor vehicle title loan 60 days "after the borrower has failed to make a monthly payment" on the loan. The 60-day limitation is triggered by the borrower missing a monthly payment.

For example, if a licensee makes a motor vehicle title loan on January 1st and the first payment is due on February 1st, which the borrower does not make, the 60-day clock begins *after* the borrower fails to make the February 1st monthly payment. Interest can then accrue for an additional 60 days starting on February 2nd. If the licensee repossesses the motor vehicle securing the title loan prior to the 60-day limitation elapsing, interest must stop accruing on the date the motor vehicle is repossessed.



- When a borrower makes a cash payment in person on a motor vehicle title loan, § 6.2-2215 (3) of the Code and Virginia Regulation 10 VAC 5-210-50 (K) require the licensee give a signed, dated receipt to the borrower. The receipt shall reflect the amount the licensee received as well as the remaining balance due on the loan as of that day.

The newsletter formerly known as the Payday Press is now titled the Regulatory Report. Since the General Assembly passed laws requiring the licensing of motor vehicle title lenders, we renamed the Payday Press to include issues related to this new Virginia regulated industry.



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