

The space between: Legal gray areas for vehicle subscription programs

February 24, 2022

Thinking back as far as 2017 can be a challenge these days. Did the world exist before March 2020? It was around that time that vehicle subscription services began to expand beyond startups, and industry disruptors started to take hold of the imaginations of new product developers within OEMs. The term “subscription” was intended to mean something new — not a lease, rental, or purchase, but akin to a streaming service for cars that would eliminate the annoyances that consumers report when buying or leasing a new car. These include aggressive sales tactics, confusing finance and insurance (F&I) presentations, long-term commitments, and, importantly, the need to physically enter a dealership to complete the transaction.

The business case for these products varied, but from a legal and compliance standpoint there were immediate challenges.

- First, the law did not recognize a vehicle “subscription.” Companies instead were forced to operate in a legal grey area between short-term rental laws and more traditional leasing laws, borrowing concepts they liked from each while attempting to avoid the more challenging compliance questions.
- Second, while an “all-in” product simplifies the process for consumers, insurance and ancillary product bundling increases complexity, particularly for companies not well-versed in dealing with insurance regulations.
- Third, for OEM affiliates, creating a product with such a direct link to the consumer caused friction with their dealer networks.

Several years and a global pandemic later, consumers are more comfortable with completing entire vehicle purchase transactions digitally, and retailers and finance companies have become more willing to accommodate those preferences. But the law on vehicle subscriptions has remained, for the most part, stagnant. While dealer licensing laws in a handful of states — such as North Carolina for example — now account for vehicle subscriptions, and other states — like Tennessee — have clarified some taxation questions, there has been little progress in defining how vehicle subscriptions should be viewed as a financing transaction.

Avoiding pitfalls

Despite operating in legal gray areas, companies offering subscription services can employ strategies to avoid compliance pitfalls. While the strict disclosure requirements of the Consumer Leasing Act and its implementing

regulation, Regulation M, are only triggered for consumer leases greater than four months, products that are not well understood by consumers and regulators can generate claims of unfair, deceptive, and abusive conduct. Transparency is key to helping consumers and regulators understand that these programs provide unique benefits to consumers and are not a subterfuge to avoid the compliance requirements of existing leasing and rental laws.

Consumers can enroll in most vehicle subscription programs on a mobile device. Lengthy, small-print terms and conditions may work for a streaming service, but when consumers are “subscribing” to use their primary vehicle, ensuring that they see and understand the key terms of the contract is essential.

Lenders can help to resolve future disputes and regulatory inquiry by making clear and conspicuous disclosure about:

- What fees and charges a consumer may incur at the beginning and end of the subscription;
- What responsibility the consumer may have to insure the vehicle or be liable for damage beyond the limits of any included insurance coverage;
- What happens if the payment method selected by the consumer fails; and
- What vehicle telematics data is collected, and the purposes for which it is used and shared.

Finally, for OEM-affiliated companies, attempts to shift the initial relationship with a consumer from the dealer will be met with intense scrutiny — and potentially enforcement action — as demonstrated by an investigation by the California Department of Motor Vehicles in recent years. These companies should consider how dealers can use subscription services to reach new customers who otherwise would not be interested in full-time possession of a vehicle.

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