

June 30, 2010

2010 Legislative Amendments to the Indiana Rental Purchase Agreements - Effective July 1, 2010

Questions, Answers, and Administrative Interpretations: This document contains a Q&A relating to new provisions in the Indiana Rental Purchase Agreements (“Law”). Careful review of the entire Law is recommended. The new provisions of the Law can be found in Senate Enrolled Act 328 beginning at Section 89 (page 103) at the following link: <http://www.in.gov/dfi/SB0328.PDF>.

1. As a general rule can a lessor accept payments from a lessee and hold those amounts in a reserve account for future payments?

Answer – No, except as explain in #2 below, any amounts paid by a lessee must be applied as a rental payment or to an accrued permissible additional charge.
IC 24-7-4-13(a).

2. Under what circumstances can a lessor accept payments from a lessee and hold the amount in a reserve account for future payments?

Answer – If a lessee makes a payment that exceeds the sum of the scheduled rental payment and any permitted additional charges that are due, the lessor may hold the excess funds in a reserve account subject to the following conditions:

- (1) The balance of the lessee's reserve account may not exceed the amount of the next scheduled rental payment.
- (2) If the balance in the lessee's reserve account reaches the limit specified in subdivision (1), the lessor shall apply the funds to the lessee's next scheduled rental payment.

IC 24-7-4-13(b).

3. What changes to the Department’s enforcement authority have been made by SB 328?

Answer – The department may now impose a civil penalty under IC 4-21.5 of not more than ten thousand dollars (\$10,000) for a violation of the Act or a rule adopted under the Act.

4. What are the minimum record requirements each lessor is required to keep for all payments remitted by a lessee on a rental purchase agreement?

Answer – Every lessor is required to keep and make available for examination in Indiana the following information for all payments remitted on a rental purchase agreement (the sufficiency of which shall be determined by the director):

- (1) The name of the lessee.
- (2) The date of each transaction.
- (3) The total amount of each payment.
- (4) A breakdown of each payment reflecting:
 - (A) each type of charge; and
 - (B) the amount of each type of charge.

5. Does the Law clarify the Department’s examination authority with respect to outside vendors (such as software providers) engaged by lessors?

Answer – Yes, IC 24-7-7-2(h) clarifies the Department’s authority to examine these types of entities as deemed necessary by the Director:

(h) If a lessor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the lessor and be subject to the department's routine examination procedures, the person that provides the service to the lessor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any lessor that receives services from the person refusing the examination to:

- (1) discontinue receiving one (1) or more services from the person; or
- (2) otherwise cease conducting business with the person.