



## Finance Placement Fees

### *Special Supplement Issued*

Recent reports and consumer complaint file reviews indicate that some dealers are including a “finance arrangement” or “finance placement” fee on the Bills of Sale, even though the bank or finance company may not have such a fee. All dealerships that offer financing and all dealership staff involved in offering or arranging financing for consumers should note that:

- Finance arrangement or finance placement fees are “brokerage fees” under the [Business Practices and Consumer Protection Act](#)
- Brokerage fees must be disclosed and form part of the annual percentage rate (APR) calculation
- Failure to meet these requirements may be a breach of the *BPCPA* and the [Disclosure of the Cost of Consumer Credit Regulation](#)
- Both the lender and the dealer may be in breach if these requirements are not met
- A dealership charging a fee to secure financing with a bank or finance company is a “loan broker,” under the *BPCPA*, adding additional requirements
- A person may commit a *deceptive act or practice* under the *BPCPA* when charging finance fees, if specific requirements are not met
- Brokerage fees (finance placement fees) that have been improperly applied or misrepresented may have to be returned to the consumer and administrative penalties assessed
- If there is a discrepancy between a disclosure statement and any contract, the term most favourable to the borrower will likely prevail.

### Recommended Practices

All dealerships that offer financing should review their practices and ensure they are properly accounting for any “brokerage fees,” including them in the APR calculations and in the required disclosure statements.

All dealership staff involved in offering or arranging financing for consumers should read the following special supplement carefully. Printing [this supplement](#) to add to your Salesperson Certification Course binder is recommended.

**Note:** The VSA administers the Cost of Consumer Credit provisions of the *BPCPA* within the motor dealer industry. [Consumer Protection B.C.](#) administers those same provisions outside the motor dealer industry

## Special Supplement

### Finance Placement Fees

Disclosure of the Cost of Consumer Credit Regulation and the BPCPA

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#### Concern About Practices By Some Dealers

Recent reports and consumer complaint file review indicate that some dealers are including a “finance arrangement” or “finance placement” fee on the Bills of Sale, even though the bank or finance company may not have such a fee.

These fees are often not shown in the Conditional Sales Contract, are not a part of the Annual Percentage Rate (APR) calculation or are not disclosed as required by law.

#### Dealer Finance Fees Are Brokerage Fees

Dealer finance fees or finance placement fees are “brokerage fees” as defined in the *Business Practices and Consumer Protection Act (BPCPA)*. As such, they must form a part of the APR calculations and be disclosed in a disclosure statement before a consumer agrees to the credit agreement. Failing to do so may breach provisions of the *BPCPA* and the *Disclosure of the Cost of Consumer Credit Regulation (CCCR)*.

Under the Act, the credit grantor is defined as both the person supplying the credit (the lender) and the assignee of the credit (the dealer). As a result, both may be in breach of these provisions.

#### Legal Requirements

In a credit agreement with a finance arrangement or placement fee, section 6 of the *CCCR* must be used to calculate the APR. Section 9 of the *CCCR* is not applicable.<sup>1</sup>

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#### Note 1

Section 9 is not applicable as sub-section 9(a) is not satisfied. Why? The fee added by the dealer is a “non-interest finance charge” as that term is defined in section 57 of the *BPCPA*.

**9** *The APR for a credit agreement is the annual interest rate stated in the credit agreement if*  
*(a) there are no non-interest finance charges payable by the borrower under the credit agreement,*

## Finance Placement Fees

### Legal Requirements (Continued)

In addition, a dealer who charges a “brokerage fee” to secure financing with a bank or finance company will satisfy the definition of “loan broker” in section 57 of the *BPCPA*.<sup>2</sup> As a result, the disclosure requirements of section 80 apply. Section 80 specifically requires the “loan broker” and the credit grantor to disclose to the borrower the amount of any such “brokerage fee.” Both must also ensure the “brokerage fee” is accounted for in calculating the APR in the disclosure statement.<sup>3</sup>

Section 66 of the *BPCPA* requires that the disclosure statement is provided to the borrower before they enter into a credit agreement and before they make any payments in connection with the credit agreement.

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#### Note 2

"Loan broker" means, subject to a regulation under section 196 (2) (a), a person who, for compensation, arranges, negotiates or facilitates an extension of credit;

#### Note 3

##### *Business credit grantors*

**80** (1) If a loan broker secures for a borrower an extension of credit from a credit grantor who provides credit in the ordinary course of carrying on business,

- (a) the credit grantor must ensure that the initial disclosure statement for the credit agreement, if the credit grantor deducts a brokerage fee from the advance,
  - (i) discloses the amount of the brokerage fee, and
  - (ii) accounts for the brokerage fee in the APR and the total cost of credit, and

- (b) the loan broker must give to the borrower, if the loan broker takes a loan application from the borrower and forwards it to the credit grantor,
  - (i) a disclosure statement containing the information referred to in paragraph (a), and
  - (ii) any other information that, under this Part, is required to be disclosed in the initial disclosure statement for the credit agreement.

(2) If the loan broker gives the borrower a disclosure statement under subsection (1) (b), the credit grantor may

- (a) adopt that disclosure statement as its own disclosure statement, in which case the credit grantor is jointly and severally liable with the loan broker for the contents of that statement, or
- (b) elect to give the borrower a separate disclosure statement containing the information that, under this Part, is required to be disclosed.

## **Finance Placement Fees**

### Potential Penalties and Consumer Remedies

### Recommended Practices

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#### **Deceptive Act or Practice**

The *BPCPA* prohibits a supplier of a good or services from committing a deceptive act or practice. If a vehicle is financed at a specified interest rate, but a fee is added, the interest rate (or APR) may be changed by that fee. If this occurs and the consumer is not advised of the new interest rate, the dealer may have committed a deceptive act and be liable to the consumer.<sup>4</sup>

Similarly, by characterizing any such dealer fee as originating with the credit grantor (bank or finance company), when it did not, the dealer may be committing a deceptive act and be liable to the consumer.

#### **Penalties and Consumer Remedies**

Finance placement fees found to have been improperly applied or misrepresented may be required to be returned to the consumer and administrative penalties may be assessed. Also, if the terms of a disclosure statement and the credit agreement are different, the agreement will almost always be applied in the way most favourable to the borrower.<sup>5</sup>

#### **Recommended Practices**

All dealerships that offer financing should review their practices and ensure they are properly accounting for any “brokerage fees,” including them in the APR calculations and in the required disclosure statements. All dealership staff involved in offering or arranging financing for consumers should read the following special supplement carefully. Printing this supplement to add to your Salesperson Certification Course binder is recommended.

**Note:** The VSA administers the Cost of Consumer Credit provisions of the *BPCPA* within the motor dealer industry. **Consumer Protection B.C.** administers those same provisions outside the motor dealer industry.

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#### **Note 4**

See [1986] B.C.J. No. 2065 (BC Supreme Court) affirmed by [1987] B.C.J. No. 2325 (BC Court of Appeal)

#### **Note 5**

See section 70 of the *Business Practices and Consumer Protection Act*