Personal Property Leases in Louisiana

David S. Willenzik
PERSONAL PROPERTY LEASES IN LOUISIANA

David S. Willenzik*

Equipment leasing activities have expanded tremendously in recent years. In Louisiana, this expansion has covered virtually all areas of personal property leasing, including leasing of oil field-related equipment, construction and off-road equipment, computer and data processing equipment, and motor vehicles. The number of equipment lessors operating in Louisiana, including both domestic leasing companies and regional and nationwide equipment leasing companies, has also increased.

Accompanying this expansion of equipment leasing activities and the increase in the number of personal property lessors has been a corresponding increase in the level of confusion among both domestic and non-Louisiana leasing companies as to the specific laws governing personal property leases in this state. This confusion is due partially to the lack of a compilation of Louisiana laws applicable to personal property leases. The law, as it is, is found in various sources, including the Louisiana Civil Code, unrelated sections of the Louisiana Revised Statutes, and jurisprudential rules. The confusion is even greater for out-of-state equipment lessors in that Louisiana has not adopted articles 2 and 9 of the Uniform Commercial Code (UCC).1

This article is intended to clarify some of the confusion surrounding equipment leasing in Louisiana by summarizing the various Louisiana laws governing personal property leases and providing guidance as to their applicability. A quick reference outline is also included at the end of this article.

TYPES OF PERSONAL PROPERTY LEASES

Personal property leases may be grouped into two major categories: "true" leases and "financed" leases. True equipment leases are characterized under Louisiana law as "leases," while financed leases are considered to be "credit sales" transactions which are disguised as leases.2 The feature

---

1. While Louisiana has not adopted articles 2 (sales) and 9 (security devices) of the Uniform Commercial Code, Louisiana has adopted UCC articles 1, 3, 4, and 5. See La. R.S. 10:1-101 to :8-501 (1983); see also Charlton, Louisiana's Civil Law Renaissance; A Bar to Adoption of the U.C.C.?, 18 AM. BUS. L.J. 1, 10-12 (1980); Mashaw, A Sketch of the Consequences for Louisiana Law of the Adoption of "Article 2: Sales" of the Uniform Commercial Code, 42 TUL. L. REV. 740 (1968); Sachse, Report to the Louisiana Law Institute on Article Nine of the Uniform Commercial Code, 41 TUL. L. REV. 505 (1967).
2. See infra note 17 and accompanying text.
3. See infra note 198 and accompanying text.
which distinguishes a financed lease from a true lease is that the lessee under a financed lease agrees to pay a sum substantially equivalent to, or in excess of, the value of the leased equipment and has the option or the obligation to purchase the leased property at the conclusion of the lease term for no consideration or for nominal consideration. This option or obligation does not exist in a true equipment lease.

Under each of these two major divisions, personal property leases may also be grouped into three separate subcategories by the purpose or purposes for which they are entered into, including: (1) consumer leases to individuals for primarily personal, family, or household purposes; (2) agricultural purpose equipment leases; and (3) business or commercial purpose equipment leases.

Different laws, and more particularly, different usury laws, apply to personal property leases depending upon the type of lessee. For example, agricultural purpose equipment leases to individuals, proprietorships, and ordinary business partnerships are subject to usury laws, while agricultural purpose equipment leases to corporations, limited partnerships, and partnerships in commendam are totally exempt from usury laws.

Different Louisiana laws also apply to personal property leases, depending upon the type of equipment subject to the lease. For example, there are special rules which apply only to motor vehicle leases, as well as additional special rules which apply only to leases of certain types of construction and other heavy equipment.

**TRUE PERSONAL PROPERTY LEASES**

A “true” personal property lease is a lease of movable property where legal title and ownership of the leased equipment remain with the

---

4. See cases cited infra note 197.
6. Agricultural purpose is defined in La. R.S. 9:3516(1) quoted infra note 143.
7. By analogy, see Federal Reserve Board Official Staff Commentary under Regulation Z, subpart A, comment 3(a)-2, 46 Fed. Reg. 50,288, 50,297 (1981), for guidance as to the criteria to be used when distinguishing between business and commercial equipment leases and consumer purpose equipment leases to individual lessees. See also infra note 273.
8. See infra note 94 and accompanying text.
9. See infra notes 92-93 and accompanying text.
lessor\textsuperscript{13} and the lessee is permitted to use the leased equipment over the lease term\textsuperscript{14} in consideration for payment of stipulated rentals.\textsuperscript{15} As distinguished from a lessee under a "financed" lease, the lessee under a "true" lease is not obligated to pay total payments over the lease term which equal or exceed the value of the leased equipment and does not have the option or the obligation to purchase the leased equipment at the conclusion of the lease term for no consideration or for nominal consideration.\textsuperscript{16}

True personal property leases are subject to the general Louisiana Civil Code articles governing leases\textsuperscript{17} as well as to a number of special Louisiana laws incorporated in the Louisiana Revised Statutes. These special statutes and their applicability are separately discussed below.

\textit{Louisiana's Lease of Movables Act}

Louisiana's Lease of Movables Act (LMA),\textsuperscript{18} enacted by Act 114 of 1974, provides for optional remedies to equipment lessors following the lessee's default. The LMA arguably applies to all personal property leases entered into in the state of Louisiana\textsuperscript{19} or involving leased equipment located in this state at the time of the lessee's default.\textsuperscript{20} The LMA does not apply to "financed" personal property leases, which are in actuality disguised conditional or credit sales transactions.\textsuperscript{21}

\begin{itemize}
\item \textsuperscript{13} LA. Civ. CODE art. 2677. See Logan v. State Gravel Co., 158 La. 105, 103 So. 526 (1925), in which the supreme court stated:
\begin{quote}
The essential difference between a sale and a lease is this: That in a sale the property, or ownership, of the thing sold passes at once out of the vendor and to the purchaser, his heirs and assigns, forever; whilst in a lease the property, or ownership, of the thing leased remains in the lessor (landlord) and the lessee (tenant) acquires only the use or enjoyment of the thing leased, and must restore it at the end of the term.
\end{quote}
158 La. at 107, 103 So. at 526.
\item \textsuperscript{14} LA. Civ. CODE arts. 2674, 2684.
\item \textsuperscript{15} LA. Civ. CODE arts. 2670, 2671, 2710(2).
\item \textsuperscript{16} See cases cited infra note 197.
\item \textsuperscript{17} LA. Civ. CODE arts. 2668-2744. Civil Code article 2678 provides that the Civil Code applies to leases of both immovable (real) and of movable (personal) property. See Bill Garrett Leasing, Inc. v. General Lumber & Supply Co., 164 So. 2d 364, 366 (La. App. 1st Cir.), cert. denied, 246 La. 595, 165 So. 2d 485 (1964) ("The law governing leases in this state makes no distinction between movable or immovable property."); see also Celestin v. Employers Mut. Liab. Ins. Co., 387 F.2d 539 (5th Cir. 1968); Lyons v. Jahncke Serv., 125 So. 2d 619 (La. App. 1st Cir. 1960).
\item \textsuperscript{18} LA. R.S. 9:3261-3271 (1983).
\item \textsuperscript{19} The term lease is defined in LA. R.S. 9:3271(1) to include "a contract or agreement of lease of any movable property, whether for a fixed term or for an indefinite duration terminable at the end of any month." For discussion of the applicability of the LMA to personal property leases contractually governed under the laws of other states, see infra text accompanying notes 150-52.
\item \textsuperscript{20} See infra text accompanying note 156.
\item \textsuperscript{21} See infra text accompanying note 293.
\end{itemize}
Section 3261 of the LMA\(^\text{22}\) gives the lessor two mutually exclusive remedies following the lessee’s default: (1) the lessor may file suit against the lessee to enforce all of the rights granted to it under the lease, including the right to collect accelerated future rental payments when the lease so provides; or (2) the lessor may cancel the lease and exercise the rights granted generally to equipment lessors under the LMA, including the right to regain possession of the leased property.\(^\text{23}\)

While there is some disagreement as to the legal effects of the LMA,\(^\text{24}\) the optional remedy provisions of section 3261 arguably are consistent with prior Louisiana jurisprudential rules to the effect that an equipment lessor does not have the right to recover possession of the leased property following the lessee’s default and also assert a claim against the lessee for accelerated future rental payments.\(^\text{25}\)

When the lessor seeks to regain possession of the leased property following the lessee’s default,\(^\text{26}\) the lessor forfeits any rights to future rental payments under the lease.\(^\text{27}\) When the lessor recovers possession of the leased property, the lessee is denied the continued peaceable possession of the leased equipment mandated by the public policy provisions of Civil Code article 2692(3),\(^\text{28}\) and the lessee’s obligation to pay future rentals automatically terminates.\(^\text{29}\) Conversely, when the lessor elects to file suit


\(^{23}\) LA. R.S. 9:3261 provides as follows:

In the event of default by the lessee, the lessor of movable property has the option to enforce judicially all of his rights under the lease contract, including, if the lease so provides, his right to accelerate all rentals that will become due in the future for the full base term of the lease, or to cancel the lease and to exercise the rights granted him under this chapter.

\(^{24}\) See infra text accompanying notes 38-42.


See infra text accompanying note 52; see also Hickman v. Dahlen, 19 La. App. 723, 122 So. 85 (2d Cir. 1929).


\(^{27}\) Article 2692(3) provides: “The lessor is bound from the very nature of the contract, and without any clause to that effect: To cause the lessee to be in a peaceable possession of the thing during the continuance of the lease.”

\(^{28}\) The Louisiana Fourth Circuit Court of Appeal stated in Mid-Continent Refrig. Co.
against the lessee for accelerated future rentals, the lessor must be prepared to permit the lessee to continue in peaceable possession of the leased property over the remaining lease term. As a matter of public policy, this absolute right may not be waived or contractually abrogated under the lease agreement.

The lessee's right to continued peaceful possession is, however, contingent upon satisfaction of the lessee's obligation to pay accelerated future rental payments. If the lessee fails to satisfy a final judgment for accelerated rentals, the lessor has the right to seize and sell the lessee's possessory rights to the leased property. The lessor is permitted to purchase such possessory rights at judicial sale, and the lessee is potentially liable for any resulting deficiency. While this procedural remedy may achieve the same result as if the lessor had initially repossessed the leased property and also filed suit against the lessee for accelerated future rentals, the courts have required personal property lessors to go through the formalities of suing the lessee for accelerated rentals, obtaining a final judgment against the lessee, and then satisfying this judgment by seizing and selling the lessee's possessory rights to the leased equipment.

If the lessee pays accelerated rentals, the lessor may not subsequently interfere with the lessee's continuing peaceable possession of the leased property during the continuance of the lease.

See Clay-Dutton, Inc. v. Coleman, 219 So. 2d 307 (La. App. 1st Cir. 1969); Kinchen v. Arnold, 60 So. 2d 114 (La. App. 1st Cir. 1952); Maggio v. Price, 1 So. 2d 404 (La. App. 1st Cir. 1941); see also LA. CIV. CODE art. 2729.

30. The Louisiana Fourth Circuit Court of Appeal pointed out in Mid-Contingent Refrig. Co. v. Williams, 285 So. 2d 247, 251 (La. App. 3d Cir. 1973), cert. denied, 290 So. 2d 899 (La. 1974): "If [the lessor] elects to enforce the lease contract, he may demand payment of all future rentals, but he thereby waives his right to repossess the leased property and he remains obligated to continue the lessee in peaceable possession of the property during the continuance of the lease."


32. See LA. CIV. CODE art. 11.


34. However, the lessee's possessory rights to the leased property must be appraised before the judicial sale. The Deficiency Judgment Act, LA. R.S. 13:4106-4107 (1968).

property over the remaining term of the lease. Should such an interference occur, the lessee may have a cause of action against the lessor to recover the unaccrued portion of the previously paid accelerated rentals, together with such compensatory damages as the court may award.

One set of commentators has suggested that the LMA has the effect of reversing the above discussed jurisprudential rules by permitting personal property lessors to exercise the cumulative remedies of taking back the leased equipment following the lessee's default and collecting accelerated future rental payments under the lease. This rather optimistic interpretation of the LMA is, however, not supported by the language of the statute and is directly contrary to the public policy of this state which requires that equipment lessors choose between the mutually exclusive optional remedies.

If an equipment lessor following the lessee's default elects to commence an ordinary judicial proceeding to enforce the rights granted the lessor under the lease, the final clause under section 3261 implies that the remaining provisions of the LMA are not applicable. Accordingly, when the lessor elects this first option, the ordinary enforcement action arguably will be subject to the above discussed prior Louisiana jurisprudential rules which prohibit equipment lessors, as a matter of public policy, from regaining possession of the leased equipment and also asserting a claim against the lessee for accelerated future rental payments.

Furthermore, it is submitted that had the legislature intended to overturn the prior public policy of this state in order to permit equipment lessors to exercise the cumulative remedies of taking back the leased property and also suing for accelerated rentals, the legislature would have clearly provided for such cumulative remedies under the statute. Accordingly, until a Louisiana court rules otherwise, or until the legislature clarifies

---

36. LA. CIV. CODE art. 2692(3); Maggio v. Price, 1 So. 2d 404 (La. App. 1st Cir. 1941).
37. LA. CIV. CODE arts. 2696, 2703-2704.
39. The final clause of LA. R.S. 9:3261 provides: “or to cancel the lease and to exercise the rights granted him under this chapter.” Emphasis added.
40. As the specific language of LA. R.S. 9:3261 does not clearly provide for cumulative remedies, it must be presumed that the legislature did not intend to overturn these jurisprudential rules when enacting the LMA.
41. No reported decisions have interpreted and applied the LMA, and more specifically, LA. R.S. 9:3261, to permit the types of cumulative default remedies suggested by these commentators. While the Louisiana Third Circuit Court of Appeal recently held, in Ouachita Equip. Rental Co. v. Simons, No. 83-313 (La. App. 3d Cir. Dec. 14, 1983), that the LMA does not bar recovery of accelerated rentals after default by the lessee and repossession of the leased equipment by the lessor, the court limited the lessor's recovery to liquidated damages stipulated in the lease, subject to review by the court for reasonableness under LA. R.S. 9:3267. Using its own calculations, the court awarded lessor the sum of the future
this issue,\(^{42}\) the LMA must be viewed as a codification of prior existing Louisiana jurisprudential rules and section 3261 of the LMA must be interpreted and applied by equipment lessors to provide for the two mutually exclusive optional remedies.

When the lessor elects to cancel the lease following the lessee’s default under the second optional remedy of section 3261, section 3262 of the LMA\(^{43}\) requires the lessor to forward a written notice of cancellation to the lessee by certified mail.\(^{44}\) Section 3263\(^{45}\) further provides that the lessee must surrender possession of the leased equipment to the lessor within five days following the mailing of such a notice.\(^{46}\) In the event that the lessee fails or refuses to surrender possession of the leased equipment within this five-day period, section 3264 of the LMA\(^{47}\) gives the lessor the right to commence an appropriate summary judicial action against the lessee. The court will immediately issue a rule directing the lessee to show cause why the leased equipment should not be returned to the lessor.\(^{48}\) A hearing must then be held within fifteen days following the issuance of the rule, at which time the lessee may present any defense which it may have.\(^{49}\) If the court determines that the lessee’s defenses are without merit, the court must immediately render a judgment ordering the lessee to surrender possession of the leased property.\(^{50}\) If the lessee does not comply with this judgment within twenty-four hours following its rendition, the lessor may request the clerk of court to issue a writ of possession directing the sheriff to seize and deliver possession of the leased equipment to the lessor.\(^{51}\)

rental payments due under the lease less the equipment’s future rental value and less the equipment’s unrealized depreciation. The case thus does not stand for the proposition suggested by these commentators, that the lessor may foreclose, then recover the full amount of accelerated rental payments under the lease. The court in Simons limited lessor’s recovery to lost profits and allowed this recovery only because the lease contained a stipulation for such liquidated damages.

42. The legislature should consider amending the LMA in order to clarify this issue.


44. Notice of cancellation should be mailed to the lessee’s address stated in the lease, or, if no address is provided, to the lessee’s last known address and must be forwarded to any known sublessees of the leased equipment. Cancellation notices are effective when deposited in the United States mails, certified, and postage prepaid. The lessee may not plead failure to receive such a cancellation notice as a defense. LA. R.S. 9:3262 (1983).


46. However, where the lease provides for a greater time period, the lessee must surrender possession of the leased property to the lessor within the time period provided in the lease. LA. R.S. 9:3263 (1983).


49. LA. R.S. 9:3264(1) (1983). The lessee must be judicially served with a certified copy of such a rule to show cause, as required under articles 1201-1314 of the Code of Civil Procedure. The lessee may plead improper service of process as a defense. See Rollins, Inc. v. Farris, 402 So. 2d 723 (La. App. 4th Cir. 1981).


There are only two methods by which an equipment lessor may legally retake possession of leased equipment following the lessee's default: (1) the lessor may obtain the lessee's agreement to voluntarily surrender possession of the leased equipment, or (2) the lessor may commence an appropriate judicial proceeding against the lessee to cancel the lease and recover possession of the leased property. The lessor may not attempt to repossess the leased equipment through any other means. Such an attempt would violate Louisiana's strict public policy prohibition against self-help repossession and would expose the lessor to a claim for wrongful seizure and compensatory damages.

In addition to the right of cancelling the lease and recovering possession of the leased property, the lessor under sections 3266 and 3267 of the LMA has the right to bring a separate ordinary collection action against the lessee, seeking to recover stipulated liquidated damages as provided in the lease agreement. Section 3267 provides that such liquidated damages may be awarded only if the court finds the amount stipulated to be reasonable. When the amount of contractual liquidated damages is found to be unreasonable, the court may award damages within the court's discretion.

The only reported decision interpreting the liquidated damage provisions of the LMA is *Ouachita Equipment Rental Co. v. Baker Brush Co.* in which the Louisiana Second Circuit Court of Appeal permitted the lessor to recover contractual liquidated damages in an amount representing the

---


53. See U-Haul Co. v. Lumzy, 405 So. 2d 1099, 1102 (La. App. 4th Cir. 1981) (awarding the plaintiff compensatory damages in the form of mental anguish, humiliation, and embarrassment as a result of the lessor/defendant's wrongful seizure of the leased property under a prohibited form of self-help repossession; citing Boisdore v. International City Bank & Trust Co., 361 So. 2d 925 (La. App. 4th Cir.), cert. denied, 363 So. 2d 1384 (La. 1978); Hernandez v. Harson, 237 La. 389, 111 So. 2d 320 (1959)).


55. LA. R.S. 9:3266 provides that the lessor may commence an ordinary proceeding against the lessee to cancel the lease and to enforce all of the rights under the lease agreement to which the lessee is entitled as a result of cancellation. Such an ordinary proceeding may be brought either in lieu of or in addition to the summary proceeding provided under LA. R.S. 9:3264. A lessor may commence an ordinary proceeding to cancel the lease under LA. R.S. 9:3266, and have the property immediately sequestered by the court pursuant to LA. R.S. 9:3268-3270, discussed infra notes 70-77, without first providing the lessee with a five-day cancellation notice required under LA. R.S. 9:3262. *Supra* note 44.


57. See infra text accompanying notes 59-69; see also infra notes 163-65.

58. The second sentence of LA. R.S. 9:3267 further implies that the court has discretion to award reasonable liquidated damages to the lessor even where stipulated liquidated damages are not contractually provided under the lease agreement.

59. 388 So. 2d 477 (La. App. 2d Cir. 1980).
difference between the actual resale proceeds of the leased equipment and the original cost of the equipment to the lessor.\textsuperscript{60} The court further held that the lessor’s private sale of the leased equipment, and the lessee’s resulting liability for the difference between the actual sale proceeds and the equipment’s original cost, did not violate Louisiana’s Deficiency Judgment Act.\textsuperscript{61}

Certain types of contractual liquidated damages arguably may not be recovered under section 3267 of the LMA. For example, in Mossy Enterprises, Inc. v. Piggy-Bak Cartage Corp.,\textsuperscript{62} the Louisiana Fourth Circuit Court of Appeal refused to permit the lessor of a pre-LMA true equipment lease to recover contractual liquidated damages in the form of a “rental termination adjustment” factor.\textsuperscript{63} The lessee claimed that the rental termination adjustment factor constituted a disguised form of accelerated future rentals which the lessor was precluded from recovering after terminating the lease and regaining possession of the leased equipment.\textsuperscript{64} Choosing to base its decision on other grounds, the court held that such a rental termination adjustment constituted a disguised form of “interest” as defined under Civil Code article 1935,\textsuperscript{65} stating that such an amount was in excess of the lawful interest or “usury” rate and, therefore, could not be recovered.\textsuperscript{66} Although the court did not base its decision on the lessee’s contention, it may be argued that Louisiana courts will not permit recovery of similar contractual liquidated damage amounts under section 3267 if such stipulated damages are designed or intended to partially compensate the lessor for early termination of the lease by allowing him to recover accelerated future rentals.\textsuperscript{67} Additionally, it is questionable whether an equipment lessor may retain prepaid rental payments and lessee security deposits following the lessee’s default and the lessor’s cancellation of the lease.\textsuperscript{68} While Louisiana courts have yet to consider this issue, forfeitures of such amounts arguably constitute a form of partial com-

\textsuperscript{60.} Id. at 479-80. Pre-LMA decisions allowing recovery of similar “value termination adjustment factors,” following the lessee’s default under true equipment leases, include Executive Car Leasing Co. v. Alodex Corp., 265 So. 2d 288 (La. App. 4th Cir. 1972), aff’d, 279 So. 2d 169 (La. 1973).

\textsuperscript{61.} Id. at 410-11.

\textsuperscript{62.} Id. at 410-11.

\textsuperscript{63.} Id. at 411.

\textsuperscript{64.} Article 1935 defines interest as “damages due for delay in the performance of an obligation to pay money.”

\textsuperscript{65.} Id. at 412.

\textsuperscript{66.} This conclusion is consistent with supra text accompanying notes 24-42 to the effect that the LMA merely codifies prior existing Louisiana jurisprudential rules. But see Ouachita Equip. Rental Co. v. Simons, No. 83-313 (La. App. 3d Cir. Dec. 14, 1983), discussed supra note 41.

\textsuperscript{67.} The security deposit rules under LA. R.S. 9:3251-:3254 are applicable solely to residential real estate leases and, therefore, do not extend to personal property equipment leases.
pensation for the loss of future rental payments, which the lessor may not retain under such circumstances. 69

Sections 3268 through 3270 of the LMA 70 provide equipment lessors an additional sequestration remedy which arguably is applicable only when the lessee has the power to conceal or to dispose of the leased equipment, to subject the leased equipment to waste or destruction, or to remove the leased equipment from the parish during the pendency of the lessor's lawsuit. 71 Section 3268 of the LMA 72 provides that the lessor may, upon posting bond, obtain a writ of sequestration from the court directing that the leased property be immediately seized by the sheriff and placed into the court's possession. 73 Once the property is seized, section 3269 of the LMA 74 further empowers the court to release the sequestered property to the possession of the lessee, conditioned upon the lessee's posting a sufficient bond to protect the lessor's rights. 75 Where the lessee does not apply to the court for release of the property within ten days following the seizure, section 3270 of the LMA 76 provides that the court may subse-

---

69. Equipment lessees commonly prepay at least the final month's rental as a form of security deposit. Whether these advance rental payments must be returned or credited to the lessee following cancellation of the lease and return of the leased property to the lessor is questionable. The lessee, however, may be held liable for any loss or extraordinary wear and tear to the leased property as a form of liquidated damages under LA. R.S. 9:3267. See supra notes 56-61.


71. LA. R.S. 9:3268 provides that the lessor may petition the court to sequester the leased property "as provided by law." Sequestration thus is arguably proper only where the grounds for sequestration set out in article 3571 of the Code of Civil Procedure are satisfied. In addition, sequestration is available only where the lessor commences an ordinary proceeding against the lessee to cancel the lease as provided under LA. R.S. 9:3266, see supra note 55, and is not available where the lessor commences a summary proceeding against the lessee as provided under LA. R.S. 9:3264. Supra note 47. The first clause of LA. R.S. 9:3268 provides for sequestration only in an ordinary proceeding commenced against the lessee under LA. R.S. 9:3266.

In addition, the sequestration remedy provided in LA. R.S. 9:3268-3270 is arguably not available where the lessor elects to file suit against the lessee for accelerated rental payments under the first option of LA. R.S. 9:3261. See supra text accompanying note 39. See Bordelon Leasing, Inc. v. Thibodeaux Air Conditioning Sales, 386 So. 2d 120 (La. App. 3d Cir. 1980) (refusing to award rental payments to the lessor for the period following judicial sequestration of the leased equipment). It may also be argued that the sequestration remedies under LA. R.S. 9:3268-3270 are not available in connection with financed equipment leases. See Holliman v. Griffis, 415 So. 2d 306 (La. App. 2d Cir.), cert. denied, 420 So. 2d 456 (La. 1982).


73. LA. R.S. 9:3268 requires the lessor to furnish "security in an amount determined by the court to be sufficient to protect the lessee against all damage he may sustain." Cf. LA. CODE CIV. P. art. 3574.


75. Cf. LA. CODE CIV. P. arts. 3576, 3507-3508.

quently release the sequestered property to the lessor’s possession without
the lessor posting additional security.\textsuperscript{77}

Arguably, neither the sequestration articles of the Louisiana Code of
Civil Procedure nor the LMA provides a quick, expedient, and relatively
safe remedy to true personal property lessors to protect and preserve leased
personal property which has been or is in the process of being abandoned
by the lessee.\textsuperscript{78} Such an additional remedy is provided under Louisiana
jurisprudence for circumstances in which leased immovable property is
abandoned. The courts have permitted real estate lessors to take possession
of the abandoned leased premises under such limited circumstances
without resort to judicial proceedings and without forfeiting the lessor’s
right to file suit against the lessee for accelerated future rentals.\textsuperscript{79} However,
this additional remedy has not been extended in the jurisprudence nor
under statutory law to personal property lessors. This exclusion is unfor-
tunate in that abandoned movable property is even more susceptible than
abandoned real property to theft, loss, vandalism, waste, and destruction.

The LMA accordingly should be amended to provide personal property
lessors a comparable remedy, which may be used in those limited
situations in which the lessee has abandoned or is in the process of aban-
doning the leased equipment. It is suggested that this amendment should
provide that the lessor may institute an ordinary proceeding against the
lessee in which the lessor may apply to the court for an \textit{ex parte} order
authorizing the lessor or its agents to take possession of the abandoned
leased equipment wherever it may be found.\textsuperscript{80} The amendment should fur-
ther provide that the court will issue such an \textit{ex parte} order only upon
the lessor’s (1) posting an appropriate bond in an amount determined by
the court,\textsuperscript{81} (2) submitting a verified affidavit under oath stating that,
within the lessor’s reasonable judgment, the lessee has abandoned or is

\textsuperscript{77} \textit{Cf.} LA. CODE CIV. P. art. 3576.

\textsuperscript{78} Sequestration arguably is not available under LA. R.S. 9:3268 and article 3571 of
the Code of Civil Procedure where the lessee abandons or is in the process of abandoning
the leased equipment. Abandonment is not listed as proper grounds for sequestration under
article 3571. \textit{See supra} note 71.

\textsuperscript{79} Weil v. Segura, 178 La. 421, 151 So. 639 (1933); Sliman v. Fish, 177 La. 38, 147
So. 493 (1933); Bernstein v. Bauman, 170 La. 378, 127 So. 874 (1930); Riccobono v. Kearney,

\textsuperscript{80} In the proposed amendment, the lessor would be permitted to take possession of
abandoned leased property under a peaceable form of self-help repossession comparable
to UCC \S\ 9:503. As in section 503, the lessor would not be permitted to trespass on the
lessee’s property or to disturb the peace in attempting to recover possession of the leased
(defendant held liable for damages as a result of wrongful seizure of the leased
property under self-help repossession where the defendant asserted that the lessee had aban-
doned the leased sewing machine).

\textsuperscript{81} \textit{Cf.} LA. R.S. 9:3268 (1983); LA. CODE CIV. P. art. 3574.
in the process of abandoning the leased equipment, and (3) presenting sufficient evidence to the court to establish its ownership interest in the leased equipment.

Additionally, it is suggested that the LMA be amended to provide that, once the lessor has obtained possession of the abandoned leased equipment, the lessor must turn the equipment over to the sheriff of the jurisdiction in which suit is brought. The court may then release the equipment to the lessee’s possession, conditioned upon the lessee’s posting bond in an amount which the court deems to be sufficient to protect the lessor’s rights. If the seized equipment is not released to the lessee within ten days following deposit of the seized equipment with the sheriff, the court may subsequently release the equipment to the lessor without the lessor posting an additional bond.

This amendment should provide further that the lessor’s seizure of the abandoned leased property under the above suggested procedures will not prejudice the lessor’s subsequent right either (1) to cancel the lease and obtain permanent possession of the leased property pursuant to sections 3262 through 3264 of the LMA, or (2) to enforce all of the rights granted to the lessor under the lease pursuant to the first option of section 3261, including the right to collect accelerated future rentals.

While the suggested amendment to the LMA constitutes an exception to Louisiana’s strict public policy prohibition against self-help repossession, the procedures recommended are similar to the self-help remedy now provided under Act 367 of 1983 applicable to abandoned mobile homes. This additional remedy arguably would also comply with

83. The lessor should be required to file with the court a duplicate signed copy of the lease agreement, containing a detailed description of the leased equipment.
84. Deposit of the seized equipment into the registry of the court is necessary in order to preserve the lessor’s subsequent option to sue for accelerated future rental payments in lieu of cancelling the lease and taking permanent possession of the leased equipment. See infra text accompanying note 87.
87. This amendment would extend the jurisprudential rules, discussed supra text accompanying note 79, to abandoned leased equipment by permitting the lessor to protect and preserve the abandoned equipment while at the same time maintaining its option to sue for accelerated future rental payments permitted under La. R.S. 9:3261.
88. See supra note 52.
90. La. R.S. 9:5363.1 provides for similar, but not identical, procedures by which a mortgagee/creditor may apply to a court of competent jurisdiction for an ex parte order authorizing the mortgagee/creditor to seize an abandoned mobile home under a controlled form of self-help repossession. This statute is the sole exception to Louisiana’s strict public policy prohibition against self-help repossession of non-possessory secured collateral, such as collateral secured by a mortgage or chattel mortgage. The prohibition against self-help,
Personal Property Leases

constitutional requirements of due process of law and would promote the public policy of this state by avoiding needless waste and destruction of abandoned leased property. At the same time, it would provide a quick, expedient, and relatively safe remedy to equipment lessors.

Applicability of Louisiana Usury Laws to True Equipment Leases

The Louisiana usury laws apply to only certain types of true personal property leases. The factors which determine whether usury laws apply to true equipment leases include (1) the purpose of the lease, and (2) the type of lessee.

Business, commercial, and agricultural purpose equipment leases to corporations, limited partnerships, and partnerships in commendam are exempt from usury limitations as a result of Louisiana Revised Statutes 12:703. Business and commercial purpose equipment leases to individuals, proprietorships, and general business partnerships are also exempt from usury as a result of Louisiana Revised Statutes 9:3509. These leases are totally unregulated, and the lessor may charge any amount which the lessee is willing to pay.

The usury laws apply, however, to consumer and agricultural purpose true equipment leases to individual lessees, as well as to agricultural purpose true equipment leases to proprietorships and general business partnerships. The Louisiana Consumer Credit Law governs consumer purpose true equipment leases to individual lessees as well as agricultural purpose true equipment leases to individuals and proprietorships, while however, is not applicable to possessory security interests, such as pledges, where the secured collateral is already in the possession of the creditor.

92. LA. R.S. 12:703 provides that corporations, limited partnerships, and partnerships in commendam may agree to pay any rate of interest on loans and other extensions of credit, notwithstanding the applicable Louisiana conventional interest rate or usury limitations. While there are no Louisiana decisions on point, LA. R.S. 12:703 has the effect of exempting late charges, deferral charges, and post-maturity interest on true equipment leases to corporations, limited partnerships, and partnerships in commendam from usury limitations.
93. LA. R.S. 9:3509 has the similar effect of exempting business and commercial loans and other extensions of credit to individuals, proprietorships, and ordinary business partnerships from applicable Louisiana usury limitations. This statute thus exempts late charges, deferral charges, and post-maturity interest on business or commercial true equipment leases to individuals, proprietorships, and ordinary business partnerships from the coverage of usury statutes.
94. LA. R.S. 9:3509 applies solely to business or commercial extensions of credit and arguably does not extend to "agricultural purpose" transactions as defined in LA. R.S. 9:3516(1). See infra text accompanying note 143.
the general usury provisions of Civil Code article 2924⁹⁶ govern agricultural purpose true equipment leases to ordinary business partnerships.⁹⁷

In the limited instances in which the Louisiana usury laws apply to true equipment leases, such laws do not govern all aspects of the transactions. For example, the markup or profit factors built into all true personal property leases are not subject to Louisiana usury limitations. These markup or profit factors are considered to be a cost of the lease, representing the difference between the original acquisition costs of the leased equipment to the lessor and the total of rental payments under the lease agreement.⁹⁸ Such markup or profit margins are not regulated under Louisiana law and are limited solely by what the lessee is willing to pay to lease the equipment.

Certain other charges commonly assessed in connection with true personal property leases remain subject to usury limitations. For example, late charges on delinquent payments have been held to be a form of "interest" as defined under Civil Code article 1935⁹⁹ and, therefore, are subject to usury limitations.¹⁰⁰ Charges for extending or deferring payment of regularly scheduled lease payments are also a form of interest subject to usury limitations.¹⁰¹ The Louisiana usury laws additionally apply to certain types of liquidated damage provisions included in true equipment lease agreements.¹⁰²

---

⁹⁶. Article 2924 limits the maximum rate of simple conventional interest to 12% per annum.
⁹⁷. See infra text accompanying notes 138-42.
⁹⁸. Markup or profit factors built into true equipment lease payments are equivalent to the markup or profit factors built into the sales price of general goods and services. Cf. Ouachita Equip. Rental Co. v. Baker Brush Co., 388 So. 2d 477, 480-81 (La. App. 2d Cir. 1980) (holding that the lessee's contingent liability for the difference between the actual resale proceeds of the leased equipment and the original cost of the equipment to the lessor, the "value termination adjustment factor," constituted a cost of the lease).
¹⁰¹. Equipment lessors commonly charge an additional fee where the lessee requests a deferral or extension of a scheduled true lease payment. Such deferral or extension charges fall within the definition of "interest" under Civil Code article 1935, supra note 65, and, therefore, are subject to applicable Louisiana usury limitations where not otherwise exempt from usury as a result of LA. R.S. 9:3509 or LA. R.S. 12:703. See infra text accompanying notes 116-18, 140-41.
¹⁰². For example, usury laws apply to "rental termination adjustment" factors. Mossy Enters., Inc. v. Piggy-Bak Cartage Corp., 177 So. 2d 406, 411-12 (La. App. 4th Cir. 1965); see also Associated Press v. Toledo Invs., Inc., 389 So. 2d 752 (La. App. 3d Cir. 1980).
Applicability of the Louisiana Consumer Credit Law to True Equipment Leases

The Louisiana Consumer Credit Law (LCCL) governs virtually all leases entered into in the state of Louisiana for a consumer purpose and with an individual lessee.\(^{103}\) Agricultural purpose true equipment leases to individuals and proprietorships are also subject to the LCCL.\(^{104}\) The LCCL further governs consumer and agricultural purpose true motor vehicle leases to individuals and proprietorships which do not fall within the scope of Louisiana's Motor Vehicle Sales Finance Act.\(^{105}\) The only true consumer and agricultural purpose equipment leases which are not subject to the LCCL are short-term leases of less than four months duration. Such short-term leases are instead subject to the general usury limitations of Civil Code article 2924.\(^{106}\)

Although the LCCL is applicable to "consumer lease" transactions,\(^{107}\) the statute does not indicate which sections of the LCCL apply to true

---

103. The term consumer is defined in LA. R.S. 9:3516(9) to include a natural person entering into a consumer loan, consumer credit sale, or a consumer lease transaction for a "personal, family, household or agricultural purpose." Consumer purpose true equipment leases are also subject to disclosure under the federal Consumer Leasing Act of 1976, 15 U.S.C. §§ 1667-1667e (1982), and Regulation M of the Board of Governors of the Federal Reserve System, 12 C.F.R. §§ 213.1-.8 (1983). While true equipment leases in excess of $25,000 are exempt from disclosure under Regulation M, 12 C.F.R. § 213.2(a)(6) (1983), the LCCL contains no maximum dollar amount limitations.

104. Agricultural purpose is defined in LA. R.S. 9:3516(1). See infra text accompanying note 143. In addition, the LCCL arguably applies to agricultural purpose true equipment leases to proprietorships, in that a Louisiana proprietorship is nothing more than the alter ego of an individual, e.g., "John Smith, d/b/a South Louisiana Timber Co." Agricultural purpose true equipment leases are exempt from consumer leasing disclosures under Regulation M. 12 C.F.R. § 213.2(a)(6) (1983); see infra note 148.

105. LA. R.S. 6:951-:964 (Supp. 1984). As more fully discussed infra text accompanying note 250, the Motor Vehicle Sales Finance Act applies to financed motor vehicle leases falling within the definition of retail installment contracts under LA. R.S. 6:951(5). The Motor Vehicle Sales Finance Act, however, does not apply to true motor vehicle leases. As no provisions of the LCCL exclude true motor vehicle leases from the scope of the statute or the definition of consumer lease under LA. R.S. 9:3516(13), it may be argued that consumer and agricultural purpose true motor vehicle leases to individual lessees and proprietorships are subject to the LCCL. Compare LA. R.S. 9:3516(11) which excludes motor vehicle transactions subject to the Motor Vehicle Sales Finance Act from the definition of consumer credit sale under the LCCL.

106. The definition of consumer lease under LA. R.S. 9:3516(13) excludes a lease of goods to a consumer for a term of less than four months. Such short-term leases are, therefore, by default, subject to the general usury limitations under article 2924. See infra text accompanying note 131. Such short-term consumer lease transactions are further exempt from disclosure under the federal Consumer Leasing Act of 1976 and Regulation M. 12 C.F.R. § 213.2(a)(6) (1983). See Smith v. ABC Rental Systems, 491 F. Supp. 127 (E.D. La. 1978), aff'd, 618 F.2d 397 (5th Cir. 1980).

107. LA. R.S. 9:3516(12) specifically provides that the LCCL is applicable to "consumer leases" which are defined in LA. R.S. 9:3516(13).
equipment leases and which sections do not apply. It is thus necessary to interpret each section of the LCCL in order to determine which sections are applicable.

As discussed above, markup or profit factors built into true personal property lease payments are considered to be a cost of the lease and, therefore, are not subject to usury limitations. Accordingly, the maximum interest rate limitations of sections 3519(A) and 3520(A) of the LCCL do not apply to true equipment leases. Such leases are unregulated in this regard, and a true equipment lessor may charge lease payments in any amount agreed to by the lessee.

As true equipment leases do not satisfy the definition of a “precomputed consumer credit transaction” under section 3516(23) of the LCCL, such leases are not subject to (1) the late charge provisions of section 3525, (2) the deferral charge provisions of section 3526, (3) the rebate upon prepayment provisions of sections 3528 and 3529, and (4) the post-

108. While the Uniform Consumer Credit Code (UCCC), 7 U.L.A. 233-581 (1968), on which the LCCL was originally based, generally indicates which sections of the UCCC are applicable to consumer lease transactions, the LCCL provides no comparable guidance. The legislature should consider amending the LCCL to provide such guidance.

109. LA. R.S. 9:3519(A) applies to consumer loan transactions and LA. R.S. 9:3520(A) applies to consumer credit sales transactions. The maximum interest rate limitations under LA. R.S. 9:3523, applicable to revolving charge account and seller credit card transactions, as well as the maximum rate limitations under LA. R.S. 9:3524, applicable to lender credit card transactions, also do not apply to true equipment leases.

110. While the markup or profit factors built into consumer and agricultural purpose true equipment leases are unregulated, such leases nevertheless remain subject to the maximum late charge, deferral charge, and post-maturity interest limitations and the other provisions of the LCCL. See infra text accompanying notes 116-18.

111. LA. R.S. 9:3516(23) provides: “A consumer credit transaction is ‘precomputed’ if the debt is expressed as a sum comprising the amount financed, or deferred additional charges, and any loan finance or credit service charges as defined herein computed in advance.” True equipment leases do not fall within this definition in that markup or profit factors built into true equipment leases are considered to be a cost of the lease rather than a form of precomputed capitalized interest. See supra note 98. Time-price differential charges capitalized into financed equipment leases are considered to be a cost of financing the lease/purchase, resulting in financed equipment leases being classified as “precomputed consumer credit transactions” under LA. R.S. 9:3516(23). See infra text accompanying note 228.

112. LA. R.S. 9:3525(A)(1) permits the assessment of five percent or fifteen dollar late charges on delinquent installment payments which are not paid in full within ten days of their respective due dates. LA. R.S. 9:3525(A) is, however, limited to precomputed consumer credit transactions, and accordingly, equipment lessors are not entitled to assess five percent or fifteen dollar late charges in connection with delinquent true lease payments subject to the LCCL.

113. LA. R.S. 9:3526(A) permits the assessment of deferral charges upon extensions of otherwise scheduled installment payments. The deferral charge provisions of LA. R.S. 9:3526(A) are, however, limited to precomputed consumer credit transactions; accordingly, equipment lessors are not entitled to assess deferrals of true consumer lease payments.

114. LA. R.S. 9:3528-3529 require that unearned precomputed charges be rebated under
maturity interest provisions of sections 3522 and 3529. Late charges on delinquent true lease payments subject to the LCCL are limited to a maximum of one percent per month on the delinquent amount, consistent with Civil Code article 2924. Charges for deferring or extending true lease payments are also limited to a maximum of twelve percent per annum, again consistent with article 2924. Post-maturity interest on judgments for accelerated rental payments is further limited to a maximum of twelve percent per annum, consistent with the "legal interest" provisions of article 2924.

However, true equipment leases remain subject (1) to the insurance limitations of sections 3542 through 3549 of the LCCL, as applicable to credit life, credit disability, and required property insurance; (2) the Rule of 78's, see infra note 239, whenever a precomputed interest consumer credit transaction is prepaid in full prior to maturity or whenever the maturity of such a transaction is accelerated as a result of the customer's default and suit is filed against the customer. For additional discussion, see infra notes 238-40 and accompanying text.

115. LA. R.S. 9:3522, :3529 provide for post-maturity interest following acceleration of maturity and filing of suit on precomputed consumer credit transactions subject to the LCCL. For additional discussion, see infra notes 241-43 and accompanying text.

116. As true consumer leases are not subject to the five percent or fifteen dollar late charge provisions of LA. R.S. 9:3525(A), supra note 112, late charges on delinquent true equipment lease payments to the LCCL are arguably limited to a maximum of one percent per month as permitted by article 2924. While it may be argued that an equipment lessor may assess late charges on delinquent true consumer lease payments at a rate of up to 36% per annum, which is the maximum "loan finance charge" rate permitted by LA. R.S. 9:3519(A), assessment of late charges in excess of 12% per annum would arguably subject the lessor to the LCCL's supervised loan licensing requirements under LA. R.S. 9:3553-3561. See infra note 126.

117. Because equipment lessors are not entitled to assess deferral charges under LA. R.S. 9:3526(A), discussed supra note 113, deferral charges on true consumer purpose equipment leases subject to the LCCL arguably are limited to a maximum of 12% per annum as permitted by article 2924. Arguably, if an equipment lessor were to assess deferral charges in excess of 12% per annum, the lessor would be required to obtain a supervised loan license under the LCCL. See infra note 126.

118. Article 2924 also limits the rate of legal interest that may be assessed on judgments to a maximum of 12% per annum. As equipment lessors are not entitled to assess post-maturity interest at the higher rates permitted under LA. R.S. 9:3522, :3529, discussed supra note 115, post-maturity interest on suits for accelerated rental payments subject to the LCCL is limited to the legal rate of interest provided under article 2924.


120. Equipment lessors commonly offer credit life insurance and credit disability insurance in connection with true equipment leases. In doing so, equipment lessors should be aware of the credit insurance premium limitations of LA. R.S. 9:3542, as well as LA. R.S. 9:3547-3548, which provide certain additional requirements in connection with the sale of credit life and credit disability insurance.

121. Equipment lessors routinely require that the lessee purchase and maintain property insurance coverage on the leased equipment over the term of the lease. In some instances, the lessee is required to purchase property insurance from the lessor or from an affiliated entity. This practice violates LA. R.S. 9:3546, which requires that the lessee have the option
to the right of prepayment provisions of section 3527;\textsuperscript{122} and (3) to the reasonable attorney fees provisions of section 3530,\textsuperscript{123} limiting attorney fees to a maximum of twenty-five percent of the unpaid debt after default and referral to an attorney for collection.\textsuperscript{124} True equipment leases are also subject to the unauthorized collection practices prohibitions of section 3562 of the LCCL.\textsuperscript{125}

While lessors are not required to obtain a supervised loan license under sections 3553 through 3561\textsuperscript{126} in order to engage in the making of true consumer and agricultural purpose personal property leases under the LCCL,\textsuperscript{127} such lessors must nevertheless file annual notifications with the Louisiana Commissioner of Financial Institutions and must pay annual notification fees to the Commissioner, as required by sections 3563 through 3565 of the LCCL.\textsuperscript{128}

\begin{itemize}
\item of purchasing mandatory property insurance from any agent or broker of the lessee's choice. \textit{See infra} text accompanying note 133.
\item \textsuperscript{122} \textit{L. A. R. S. 9:3527} provides that the customer has the right to prepay a consumer credit transaction, which would include a consumer lease, in full at any time and without penalty. However, there appears to be little, if any, incentive for a consumer lessee ever to prepay a true equipment lease in full prior to maturity since the lessee arguably would not be entitled to any reduction or credit in his or her total lease payment obligations.
\item \textsuperscript{123} \textit{L. A. R. S. 9:3530} (1983).
\item \textsuperscript{124} Attorney fees are limited to a maximum of 25% of the amount of the lessee's accelerated rental payments sought following the lessee's default. \textit{L. A. R. S. 9:3530} further requires that attorney fees be contracted for under the customer's true lease agreement in order to be recovered.
\item \textsuperscript{125} \textit{L. A. R. S. 9:3562} (1983).
\item \textsuperscript{126} \textit{L. A. R. S. 9:3557-:3561} (1983).
\item \textsuperscript{127} Creditors entering into "supervised loan" transactions subject to the LCCL must obtain supervised loan licenses from the Louisiana Commissioner of Financial Institutions as required under \textit{L. A. R. S. 9:3557}. A \textit{supervised loan} is defined in \textit{L. A. R. S. 9:3516(28)} to include any loan on which interest is assessed at a rate greater than 12% per annum. If an equipment lessor were to assess late or deferral charges on a consumer or agricultural purpose lease transaction in excess of 12% per annum, assessment of such late or deferral charges would arguably result in the classification of the transaction as a "supervised loan." \textit{See supra} notes 116-17. The lessor would thus be required to obtain a supervised loan license under \textit{L. A. R. S. 9:3557(1)}. Banks and other "supervised financial organizations," as defined in \textit{L. A. R. S. 9:3516(27)}, are, however, exempt from the supervised loan licensing requirements of the LCCL. \textit{See \textit{L. A. R. S. 9:3557(1)}} (1983).
\item \textsuperscript{128} \textit{L. A. R. S. 9:3563-:3565} require equipment lessors to file annual notification forms with the Louisiana Commissioner of Financial Institutions and to pay annual notification fees to the Commissioner in order to engage in the making of true consumer and agricultural purpose lease transactions subject to the LCCL in Louisiana. The notification and fee requirements of \textit{L. A. R. S. 9:3563-:3565} apply to all equipment lessors entering into true consumer and agricultural purpose personal property leases in Louisiana, including banks and other "supervised financial organizations." This classification arguably includes non-Louisiana banks and other leasing companies which do not otherwise maintain offices or facilities in Louisiana. In addition, non-Louisiana leasing companies may under certain circumstances be required to qualify to do business in Louisiana under Louisiana's Foreign Corporation Law, \textit{L. A. R. S. 12:301-:316} (1969 & Supp. 1984), in order to engage in the making of true personal property leases in this state. \textit{See \textit{L. A. R. S. 12:302}} (Supp. 1984).
\end{itemize}
Many personal property lessors operating in Louisiana are not aware that the LCCL applies to true equipment leases. This is particularly true in connection with consumer and agricultural purpose true motor vehicle leases to individual lessees and proprietorships, which few motor vehicle lessors realize are subject to the LCCL.129

Personal property lessors commonly violate the LCCL in a number of ways. The most common violation is the assessment of late charges on delinquent true lease payments at a rate greater than one percent per month.130 As indicated earlier, the late charge provisions of section 3525(A) of the LCCL are limited solely to precomputed consumer credit transactions, which would not include true equipment leases. As there are no other special statutes which permit true equipment lessors to assess late charges at a higher rate, late charges on true equipment leases subject to the LCCL are limited to a maximum of twelve percent per annum, consistent with Civil Code article 2924.131

Equipment lessors further violate the LCCL by assessing deferral or extension charges in connection with true equipment leases at a rate in excess of twelve percent per annum.132 The deferral charge provisions of section 3526 of the LCCL are also limited to precomputed consumer credit transactions, and, therefore, do not apply to true equipment leases.

It is also common for true equipment lessors to require individual lessees to purchase insurance on the leased equipment, either from the lessor itself or from an affiliated entity. This practice violates section 3546 of the LCCL, which requires that the customer be permitted to purchase mandatory property insurance through any insurer of the customer's choice.133

129. True motor vehicle leases, which are entered into in favor of individual lessees or proprietorships for primarily personal, family, household, or agricultural purposes, are arguably subject to the LCCL. See supra note 105. Nevertheless, few, if any, motor vehicle lessors are aware of the applicability of the LCCL to true motor vehicle lease transactions. It is suggested that the legislature consider amending the definition of consumer lease in LA. R.S. 9:3516(13) in order to clarify the applicability of the LCCL to true motor vehicle leases.

130. Equipment lessors commonly assess five percent or fifteen dollar late charges in connection with true consumer and agricultural purpose lease transactions subject to the LCCL. The late charge provisions of LA. R.S. 9:3525(A) are not applicable to true equipment lease transactions in that such leases do not fall within the definition of precomputed consumer credit transactions in LA. R.S. 9:3516(23).

131. Article 2924 is the Louisiana general usury statute. The LCCL is an exception to the 12% general usury limitations of article 2924. As equipment lessors are not permitted to assess five percent or fifteen dollar late charges under LA. R.S. 9:3525(A) in connection with delinquent true lease payments, such late charges fall under the general usury provisions of article 2924.

132. Similarly, no special statutes permit equipment lessors to assess deferral charges and post-maturity interest in excess of 12% per annum in connection with true consumer and agricultural purpose equipment leases subject to the LCCL.

133. LA. R.S. 9:3546 (1983); see supra note 131.
In addition, many true equipment lessors, and more particularly, motor vehicle lessors, commonly fail to file annual notifications with the Louisiana Commissioner of Financial Institutions and fail to pay annual notification fees as required under sections 3563 through 3565 of the LCCL. Failure to comply with the notification requirements, as well as the additional requirements of the LCCL applicable to true personal property leases, may subject equipment lessors (1) to potential civil penalties under section 3552 of the LCCL, (2) to potential criminal penalties under section 3553, and (3) to potential administrative sanctions under section 3554.

Agricultural Purpose True Equipment Leases to Ordinary Business Partnerships

Agricultural purpose true equipment leases to ordinary business partnerships are subject to the general Louisiana usury limitations of Civil Code article 2924. Louisiana Revised Statute 9:3509, which exempts business and commercial purpose leases and other credit transactions to individuals, proprietorships, and ordinary general partnerships from applicable Louisiana usury limitations, arguably does not extend to agricultural purpose leases and other extensions of credit.

Late charges under agricultural purpose true equipment leases to ordinary business partnerships arguably are limited to a maximum of one percent per month on the delinquent amount, consistent with article 2924. Deferral charges and post-maturity interest arguably are also limited to a maximum of twelve percent per annum. Assessment of late charges, deferral charges, or post-maturity interest in excess of this twelve percent annual rate may expose the lessor to potential usury penalties under Louisiana Revised Statutes 9:3501.

134. See supra notes 128-29.
137. LA. R.S. 9:3554 (1983). LA. R.S. 9:3555 also permits the Commissioner to file an injunctive proceeding against equipment lessors that violate the LCCL.
138. See supra note 131.
139. See supra note 94.
140. As there are no special statutes which permit equipment lessors to assess late charges in excess of one percent per month on delinquent agricultural purpose true equipment lease payments to ordinary business partnerships, late charges are limited to a maximum of 12% per annum under the general usury provisions of article 2924. See supra note 131.
141. This limitation is also consistent with article 2924. See supra note 132.
142. LA. R.S. 9:3501 provides for usury penalties in the form of forfeiture of the entire amount of interest contracted. National bank equipment lessors are, however, subject to the usury penalties under 12 U.S.C. § 86, which provides for forfeitures of twice the amount of interest contracted for in connection with state usury law violations. Leasing companies
PERSONAL PROPERTY LEASES

Many true equipment lessors are also confused as to what constitutes an agricultural purpose lease. The term *agricultural purpose* is defined in section 3516(1) of the LCCL\(^{143}\) in an extremely broad manner, and the definition includes a number of activities which personal property lessors and other creditors may ordinarily consider as being for a business or commercial purpose, otherwise exempt from applicable Louisiana usury limitations as a result of Louisiana Revised Statutes 9:3509. For example, the definition of agricultural purpose arguably includes true equipment leases (1) to a food or seafood processor, wholesaler, distributor, or retailer; (2) to a forestry products company or a lumber or paper processor, wholesaler, distributor, or retailer; or (3) to a florist or nursery.

In order to eliminate confusion as to what constitutes an agricultural purpose transaction, it is suggested that the Louisiana Legislature amend Louisiana Revised Statutes 9:3509 to exempt agricultural purpose extensions of credit and equipment leases from applicable Louisiana usury limitations. Agricultural purpose credit transactions and leases should not be treated any differently from business and commercial purpose transactions, which are presently exempt from usury limitations.\(^{144}\)

The legislature additionally should consider amending the LCCL to eliminate any reference to agricultural purpose credit transactions, including agricultural purpose true equipment leases. Agricultural credit transactions were originally included within the scope of the Uniform Consumer Credit Code\(^{145}\) and the LCCL in order to be consistent with the disclosure requirements under the federal Truth in Lending Act and Regulation Z.\(^{147}\) Agricultural purpose extensions of credit are, however, now exempt from Truth in Lending Act disclosures as a result of the federal Truth in Lending Simplification and Reform Act,\(^{148}\) and there is no longer any reason

---

\(^{143}\) L.A. R.S. 9:3516(1) defines *agricultural purpose* to include any “purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products.” *Agricultural products* is further defined to include “products such as horticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.”

\(^{144}\) Cf. 12 U.S.C. § 86a(a) (1982) (preempts business, commercial, and *agricultural purpose* loans by national banks from applicable state usury limitation).

\(^{145}\) The LCCL was originally based on the Uniform Consumer Credit Code. See supra note 108.


\(^{147}\) 12 C.F.R. §§ 226.1-29 (1983). The original federal Truth in Lending Act and Regulation Z applied to agricultural purpose extensions of credit to individual customers.

\(^{148}\) See Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, §§ 601-625, 94 Stat 132-86 (exempted agricultural purpose extensions of
that agricultural purpose credit and true equipment lease transactions should remain subject to the LCCL.

Problems of Non-Louisiana Leasing Companies Entering into True Personal Property Leases in Louisiana

Many national and regional leasing companies engaging in true equipment leasing activities in Louisiana are presently operating under the impression that they may safely use lease contracts adopting the laws of other states in connection with their leasing operations in Louisiana. This may not be true in all instances. While Louisiana courts have generally honored choice of law covenants in which the parties agree that the laws of other states will govern the transaction for any and all purposes, Louisiana courts have refused to apply the laws of another state where those laws are in conflict with Louisiana public policy considerations.149

Many out-of-state equipment lessors routinely include provisions in their true personal property lease agreements providing for cumulative remedies following the lessee's default, including cancellation of the lease, return of the leased property, and liability on the part of the lessee for accelerated future rental payments. Such cumulative remedies arguably are unenforceable in Louisiana even though the lease agreement may provide that the transaction is to be governed by the laws of another state which may permit such cumulative remedies. As previously discussed, Louisiana has a strong public policy prohibition against permitting the lessor to cancel the lease and take possession of the leased property following the lessee's default and also file suit against the lessee for accelerated future rentals.150

The Louisiana Fourth Circuit Court of Appeal decision in United States Lending Corp. v. Keiler151 illustrates this point. The lessor, a national leasing company based in California, leased a photocopier to two
Louisiana residents. The lessor's standard lease agreement provided for typical cumulative remedies upon the lessee's default, and further provided that the lease was to be governed by the laws of California. The lessees subsequently defaulted and returned the leased equipment to the lessor, which sold the photocopier at private sale. The lessor then filed suit against the lessees for accelerated future rental payments under the lease. The court refused to apply California law to the transaction, holding that the cumulative remedy provisions of the lease were unenforceable in Louisiana as a result of Louisiana public policy considerations. The court refused to permit the lessor to take back the leased property and also sue for accelerated rentals, despite the clear and unequivocal provisions of the lease and its choice of law convenant.

Non-Louisiana leasing companies should also be aware of Louisiana's strict public policy prohibition against self-help repossession. Louisiana is one of only two states which prohibit self-help, and use of the prohibited remedy in Louisiana may give rise to a civil claim for wrongful seizure and may be punishable under Louisiana criminal trespass and conversion laws.

Out-of-state leasing companies should additionally be aware that the optional remedy provisions of the LMA arguably may apply to leased equipment which is originally located in another state and subsequently moved to Louisiana. For example, a New York leasing company may enter into an equipment lease with a New York lessee, which may subsequently move the leased equipment to a facility in Louisiana. The New York lessor arguably would be required to comply with the optional remedy provisions of the LMA when repossessing the leased equipment while such property is located in Louisiana.

Leasing companies may also find themselves exposed to potential usury claims when entering into consumer or agricultural purpose true equip-

152. Id. at 431.
153. See supra text accompanying notes 52-53; see also Fassitt v. United T.V. Rental, 297 So. 2d 283 (La. App. 4th Cir. 1974).
154. Wisconsin is the other state. But see supra note 90 (discussing LA. R.S. 9:3563.1 (1983)).
156. This conclusion is consistent with the Louisiana Fourth Circuit Court of Appeal decision in Bologna Bros. v. Morrissey, 154 So. 2d 455 (La. App. 2d Cir.), cert. denied, 245 La. 56, 156 So. 2d 601 (1963), and as subsequently reaffirmed in Davis v. Humble Oil & Refining Co., 283 So. 2d 783 (La. App. 1st Cir. 1973), as a general rule of conflict of laws, "the law of the place where a contract is sought to be enforced will govern as to remedy." Id. at 789 (quoting Bologna Brothers, 154 So. 2d at 460). This rule that the law of the forum controls procedural rights of the parties is referred to as lex fori, as distinguished from lex loci, the doctrine that the law of the place where the contract was entered governs the substantive rights of the parties.
ment leases in Louisiana. The Louisiana usury laws are strictly enforced and arguably apply to all consumer and agricultural purpose true equipment leases to individual lessees residing in Louisiana when the leased property is also located in this state.\(^{157}\)

**Drafting True Personal Property Leases to Comply with Louisiana Law**

Lessees under true personal property leases commonly have the option of purchasing the leased equipment at the conclusion of the lease term. Such purchase option covenants should be carefully drafted in order to preserve "true" lease status as well as favorable federal income tax treatment.\(^{158}\) As pointed out in the introductory section of this article, the feature which distinguishes a true personal property lease from a financed equipment lease is that the lessee under a financed lease agrees to pay total rental payments over the lease term which are substantially equivalent to, or which exceed the value of, the leased equipment, and the lessee has the option or obligation to purchase the leased property at the conclusion of the lease term for no consideration or for nominal consideration.\(^{159}\) Accordingly, the longer the term of the lease and the smaller the optional purchase price of the leased equipment at the end of the lease term, the more likely it is that a court will construe a true lease as a full-pay-out financed lease.\(^{160}\)


The most favored lender doctrine arguably does not, however, apply to non-financial institution equipment lessors, which may be exposed to potential usury violations in Louisiana when entering into true equipment leasing transactions to Louisiana customers. See also Meadow Brook Nat'l Bank v. Recile, 302 F. Supp. 62 (E.D. La. 1969) (effectively overruled by the United States Supreme Court in Marquette).

158. This article will not discuss the federal income tax implications of equipment lessors entering into true leases as compared to financed leases.

159. See infra note 197.

160. A financed lease subject to Louisiana's Motor Vehicle Sales Finance Act, LA. R.S. 6:951-964 (Supp. 1984), includes a motor vehicle lease under which the lessee obligates itself to pay total lease payments over the lease term which are substantially equivalent to, or in excess of, the original value of the vehicle and under which the lessee is granted the option, or has the obligation, to purchase the leased vehicle at the conclusion of the lease term for any price, including arguably the vehicle's fair market value at that time. Accordingly, the longer the term under a true equipment lease, the more likely it will be that total rental payments will equal or exceed the original cost of the leased equipment, and the more likely it will be that a court will construe such a true lease as a full-pay-out financed lease/purchase conditional sales agreement. For a more thorough discussion, see infra note 250.
In addition, options to purchase leased equipment should always be included in the lease agreement itself rather than conveyed on an oral basis. Louisiana courts have held that the parol evidence rule is not applicable to personal property leases. An equipment lessor may thus unknowingly find itself in the position of having a true personal property lease construed as a financed lease as a result of an oral purchase option thoughtlessly conveyed to the lessee.

The default and remedy provisions contained in true personal property leases should also be carefully drafted in order to be consistent with the LMA. The lease should provide that, in the event of the lessee's default, the lessor has the option of (1) accelerating rental payments under the lease, or (2) cancelling the lease and obtaining possession of the leased property. The lease should also include appropriate liquidated damage provisions as authorized under section 3267 of the LMA. While section 3267 implies that a court may award liquidated damages which are not contractually provided for in the lease, it is likely that courts will limit a lessor's recovery to stipulated liquidated damages. The lease should provide further for payment of attorney fees and late charges on delinquent lease payments, which must be contracted for in Louisiana in order to be recovered.

In addition, true equipment leases commonly include a waiver by the

---

161. Bailey v. Lowery, 334 So. 2d 482 (La. App. 1st Cir.), cert. denied, 338 So. 2d 293 (La. 1976); Southern Fleet Leasing Corp. v. Brown, 257 So. 2d 819 (La. App. 1st Cir. 1972); see LA. CIV. CODE art. 2276 (parol evidence rule); Salley v. Louviere, 183 La. 92, 162 So. 811 (1935); see also Pastorek v. Lanier Systems Co., 249 So. 2d 224 (La. App. 4th Cir. 1971). But see American Capital Corp. v. Falk, 181 So. 2d 241 (La. App. 4th Cir. 1965), cert. denied, 248 La. 1032, 183 So. 2d 653 (1966) (an oral option to purchase leased equipment held not to have the effect of converting a true lease into a financed lease).

162. Although LA. R.S. 9:3261 provides for mutually exclusive remedies following the lessee's default, supra text accompanying notes 22-42, nothing appears to prohibit equipment lessors from contractually providing for cumulative default remedies in true equipment lease agreements. Furthermore, nothing would prohibit equipment lessors from including provisions for self-help repossession in their equipment lease forms, provided that equipment lessors recognize that self-help remedies are not available in Louisiana. See supra text accompanying notes 52-53.

163. See supra text accompanying notes 54-69.

164. See supra note 58.

165. Attorney fees and late charges must be contracted for in Louisiana in order to be recovered. See LA. R.S. 9:3525(A), :3530 (1983). In Raytheon Mfg. Co. v. Jack Neilson, Inc., 196 So. 2d 675, 679 (La. App. 4th Cir.), cert. granted, 250 La. 901, 199 So. 2d 916, cert. dismissed, 251 La. 58, 202 So. 2d 661 (1967), the court refused to permit recovery of attorney fees where the lease agreement did not provide for attorney fees following default. See also Breaux v. Simon, 235 La. 453, 104 So. 2d 168 (1958). The court in Raytheon, however, permitted the lessor to recover storage and other out-of-pocket expenses resulting from the lessee's default. 196 So. 2d at 679. The lease should further provide that, where the lessor elects to cancel the lease and to recover possession of the leased property, the lessee remains liable for any past due rental payments accruing prior to cancellation of the lease.
lessee of any and all warranties of fitness and/or merchantability of the leased equipment. While such rights may be waived under Louisiana law and jurisprudence, while such rights may be waived under Louisiana law and jurisprudence, personal property lessors should at least be aware of the Louisiana decisions setting forth the required content and conspicuousness of such waivers.

Personal property lessors should further be aware of Act 330 of 1983, adding Louisiana Revised Statutes 9:2775, which, as a matter of public policy, prohibits manufacturers, fabricators, and suppliers of equipment or machinery used in connection with construction projects from contractually avoiding liability for special or consequential damages resulting from expressed or implied warranty defects. Arguably, Act 330 of 1983 also applies to lessors of construction-related equipment.

It is also common for personal property leases to contain so-called “hell or high water” covenants under which the lessee unconditionally agrees to make lease payments to the lessor notwithstanding any foreseeable or unforeseeable circumstances. While such “hell or high water” covenants are generally enforceable in Louisiana, arguably they may not be enforced in situations in which a lessee lawfully withholds rental payments as a result of the lessor's failure to provide the lessee with peaceable possession of the leased equipment over the lease term. The right of peaceable possession guaranteed by Civil Code article 2692(3) as a matter of public policy may not be waived.

Securing Loans to True Personal Property Lessors

Some confusion exists among both banks and other commercial lenders...
as to the types of Louisiana security interests which are available to creditors when entering into secured loans to true equipment lessors.

In extending credit to true personal property lessors, banks and other asset-based lenders may secure loans by taking collateral assignments of all or specified equipment leases to which the lessor/borrower is a party, as specifically permitted by Louisiana Revised Statutes 9:4401. Louisiana law does not require that such collateral lease assignments be in any particular form other than that they be in writing and executed by the lessor/assignor. Such collateral lease assignments should also contain basic security interest language as required under Civil Code article 3158, which is applicable to written pledge agreements. While collateral assignments of personal property leases need not be recorded, the lessee must be notified in writing of the assignment in order for such a security interest to be effective against third parties.

Banks and other asset-based lenders may also secure loans to true personal property lessors by taking a collateral assignment of the lessor/borrower’s accounts receivable as permitted by the Louisiana Assignment of Accounts Receivable Act. The definition of accounts receivable in Louisiana Revised Statutes 9:3101(1) includes any indebtedness arising out of a lease of movable or immovable property. Assignments of ac-

174. LA. R.S. 9:4401(A) requires that collateral lease assignments be in the form of "a separate written instrument of assignment, or . . . a separate written instrument of pledge."
175. As a collateral lease assignment is a type of "pledge" referred to in LA. R.S. 9:4401(A), it is recommended that such collateral lease assignments contain appropriate pledge agreement security interest language as required in article 3158. See infra note 319. It is also recommended that such collateral lease assignments contain provisions prescribing appropriate remedies following the lessor/borrower’s default similar to the remedies commonly found in written pledge agreements.
176. The final sentence of LA. R.S. 9:4401(A) requires that collateral assignments of real estate leases be recorded in order to affect third parties, including the lessee. While collateral assignments of personal property leases need not be recorded, the third sentence of LA. R.S. 9:4401(A) requires that the lessee be notified in writing of the assignment of its lease obligations.

It is questionable whether an original signed copy of the lease agreement must actually be delivered to and remain in the possession of the secured creditor in order for such a collateral lease assignment, or pledge, to be effective as to third persons. As LA. R.S. 9:4401(A) implies that a collateral lease assignment is a form of pledge, such a security interest would arguably be subject to article 3158, which requires that pledged promissory notes, stocks, bonds, and other "written obligations of any kind" (emphasis added) be actually delivered to the creditor, or alternatively, to the creditor's third-party agent as provided by Civil Code article 3162. For additional discussion, see infra note 320.
178. LA. R.S. 9:3101(1) defines accounts receivable to include the following:

all or any part of any indebtedness owing to the assignor in connection with all or any part of the assignor's business, profession, occupation, or undertaking that is carried on wholly or partly in this state, including but not limited to the
counts receivable should be evidenced by a written agreement\textsuperscript{179} executed by the lessor/borrower and become effective against third parties upon the filing of a written statement of assignment as required under Louisiana Revised Statutes 9:3104.\textsuperscript{180}

Loans to true personal property lessors may also be secured by Louisiana chattel mortgages on individual items of leased equipment. Such loans may additionally be secured by Louisiana collateral chattel mortgages on the lessor/borrower's entire inventory of lease equipment.\textsuperscript{181} Collateral chattel mortgages are permitted under Louisiana Revised Statutes 9:5351 for inventory other than motor vehicles,\textsuperscript{182} and are further permitted under Louisiana Revised Statutes 32:710 for motor vehicle floor plan loans.\textsuperscript{183} The advantages of taking a Louisiana collateral chattel mortgage over a conventional chattel mortgage are that a collateral chattel mortgage may secure a line of credit with multiple loan advances to the lessor/borrower\textsuperscript{184} and does not require that each item of mortgaged equipment be individually identified and described in the mortgage.\textsuperscript{185} A

\textsuperscript{179} There is no requirement that a collateral assignment of accounts receivable be in writing. Rond v. Sims, 355 So. 2d 591 (La. App. 4th Cir.), cert. denied, 357 So. 2d 1164 (La. 1978). In Dale, Inc. v. Killilea, 94 So. 2d 146 (La. App. Orl. 1957), however, the court strongly suggested that collateral assignments of accounts receivable be in the form of a written security agreement in order to define the rights of the creditor.

\textsuperscript{180} LA. R.S. 9:3104 (Supp. 1984).


\textsuperscript{184} The first sentences of LA. R.S. 9:5351 and LA. R.S. 32:710(A)(2a) specifically provide that a collateral chattel mortgage may secure loans and other extensions of credit providing for future advances. See Nathan & Marshal, \textit{The Collateral Chattel Mortgage}, 33 LA. L. Rev. 497 (1973); Vetter, \textit{The Validity and Ranking of Future Advance Mortgages in Louisiana}, 21 Loy. L. Rev. 141 (1975).

\textsuperscript{185} Collateral subject to a conventional chattel mortgage must be specifically described in the mortgage instrument, including a full description of the mortgaged property by model, make, and manufacturer's serial number, where applicable. See LA. R.S. 9:5352(A) (1983) (final sentence); see also Domengeaux v. Daniels, 401 So. 2d 655 (La. App. 3d Cir. 1981); J.P. Messina Contractors, Inc. v. Cortez Constr. Corp., 372 So. 2d 799 (La. App. 3d Cir. 1979); All State Credit Plan Houma, Inc. v. Fournier, 175 So. 2d 707 (La. App. 1st Cir. 1965). \textit{Contra} Young v. Squeeze Tools, Inc., 350 So. 2d 967 (La. App. 2d Cir. 1977). A complete description of the secured collateral is not required, however, where a Louisiana collateral chattel mortgage is taken on the borrower/mortgagor's bulk inventory or equipment. See LA. R.S. 9:5352(A) (1983) (second sentence); LA. R.S. 9:5366 (1983); see also Arenson Int'l, Inc. v. Shelving Sys. Corp., 369 So. 2d 1212 (La. App. 2d Cir. 1979).
creditor's security interest under a Louisiana collateral chattel mortgage will also attach to additional items of equipment inventory without the necessity of amending the mortgage or executing additional chattel mortgages. 186

There are two major problems associated with taking Louisiana chattel mortgages and collateral chattel mortgages on leased equipment. The first problem arises from an inadequate description of the location or locations at which the mortgaged property will be kept. 187 This problem is particularly acute when the mortgaged equipment is subject to being moved from location to location. It is also acute when a creditor takes a Louisiana collateral chattel mortgage on the lessor's entire lease equipment inventory since the mortgaged equipment may be located in a number of parishes throughout Louisiana and even in other states. A suggested solution to this problem is to state in the chattel mortgage or the collateral chattel mortgage that the mortgaged property is subject to lease by the mortgagor and, when not in use elsewhere, will be kept at the mortgagor's address recited in the mortgage instrument. 188

The second problem arises in situations in which a creditor takes a chattel mortgage or collateral chattel mortgage on leased equipment and the lessor/borrower's loan is also secured by a collateral assignment of such equipment leases. When the creditor exercises its rights under the lease assignment following the lessor/borrower's default, the creditor may find itself in the position of being inhibited or precluded from subsequently foreclosing against the leased equipment under the lessor's chattel mortgage. By exercising its rights under the lease assignment, the creditor arguably assumes the position of lessor under the assigned lease and, by foreclosing under the lessor's chattel mortgage, the creditor arguably may deprive the lessee of its right to continued peaceable possession of the leased/mortgaged property. 189 Accordingly, when the creditor takes a col-

187. The final sentence of La. R.S. 9:5352(A) requires that the mortgage instrument specify the location at which the mortgaged property will be kept. While failure to comply with this requirement will not result in the invalidity of the mortgage, a failure to designate the location at which the mortgaged property will be kept may make it extremely difficult for the sheriff to seize the mortgaged property at the time of foreclosure. See Peoples Homestead & Sav. Ass'n v. Cann, 180 So. 197 (La. App. 2d Cir. 1938).
188. While there are no Louisiana cases on point, this suggested approach is the only practical alternative available to secured creditors when taking a Louisiana chattel mortgage or collateral chattel mortgage on leased equipment which is subject to being moved from location to location.
189. When a secured creditor exercises its rights under a collateral lease assignment following the lessor/borrower's default, the creditor arguably assumes some type of fiduciary duty to the lessee not to take any action which may have the effect of depriving the lessee of continued peaceable possession of the leased equipment for as long as the lessee continues to make rental payments under its lease to the assignee/creditor. However, when a secured
lateral assignment of a true equipment lease and also a chattel mortgage or collateral chattel mortgage on the leased equipment, the creditor arguably may be required to elect between the mutually exclusive remedies of either (1) enforcing its rights under the collateral assignment or (2) foreclosing under the lessor’s chattel mortgage.190

Creditors entering into loans to non-Louisiana leasing companies commonly secure such loans under the provisions of article 9 of the Uniform Commercial Code (UCC).191 When the leased equipment is originally financed in another state and subsequently moved into Louisiana, such a UCC security interest may be lost if the creditor does not perfect its UCC security rights in Louisiana under the special procedures set forth in Louisiana Revised Statutes 9:5353(B) and 5354.192 While Louisiana has not adopted article 9 of the UCC, it is possible for a creditor to perfect an existing UCC security interest on personal property moved into Louisiana by recording a certified or multiple original copy of the borrower’s security agreement and UCC-1 financing statement in the mortgage records of the parish in which the property is then located.193 This special procedure is available only when the borrower is not domiciled in Louisiana at the time the UCC security interest was originally granted and when the creditor’s existing UCC security interest is properly recorded in Louisiana within sixty days following notice to the creditor that the secured collateral has been moved into Louisiana.194

Notwithstanding the above procedures, in those situations in which UCC secured property is subsequently moved into Louisiana, creditors should consider taking an additional security interest in the collateral in the form of a Louisiana chattel mortgage or collateral chattel mortgage. This procedure is recommended because while the creditor’s UCC secur-

creditor subsequently forecloses under the lessor/borrower’s chattel mortgage, the leased/mortgaged equipment is seized by the sheriff and judicially sold at public sale. This foreclosure would have the effect of depriving the lessee of its right to continued peaceable possession of the leased equipment, arguably exposing the creditor to a damage claim by the lessee. While no reported Louisiana decisions have so held with regard to personal property leases, such claims have been asserted on a number of occasions in connection with real estate mortgage foreclosures where the creditor also has a collateral assignment of leases affecting the mortgaged property.

190. While real estate lessees are permitted to record their leases in order to prime subsequent mortgages granted on the leased property by the lessor, there are no comparable provisions which similarly would allow recordation of personal property leases to prime subsequent mortgages. It is therefore suggested that the Louisiana legislature consider enacting such a statute.

191. See supra note 1; see also Comment, Security Rights in Movables Under the Uniform Commercial Code and Louisiana Law—A Transactional Comparison, 40 Tul. L. Rev. 744, 794 (1966).


PERSONAL PROPERTY LEASES

ity interest in the property may be perfected in Louisiana pursuant to Louisiana Revised Statutes 9:5353(B) and 5354, the remedy provisions of the UCC, as well as the default and foreclosure provisions of the borrower’s security agreement, may not be enforceable in Louisiana as a result of Louisiana public policy considerations. The creditor may thus find itself in the position of having a perfected UCC security interest in Louisiana, but having no way to foreclose against the secured collateral other than through commencement of an ordinary collection action. 195 By securing such a loan with a Louisiana chattel mortgage or collateral chattel mortgage, in addition to its existing UCC security interest, the creditor has the right to foreclose against the mortgaged collateral under Louisiana executory process provisions. 196

FINANCED PERSONAL PROPERTY LEASES

A “financed” personal property lease is a written agreement between a supplier of equipment and an equipment user which, although drafted in the form of a lease, obligates the lessee to pay total rental payments under the lease which are substantially equivalent to, or which exceed the value of, the leased equipment, and under which the lessee has the option or the obligation to purchase the leased equipment at the conclusion of the lease term for no consideration or for nominal consideration. 197 Such financed leases are not considered to be true “leases” under applicable Louisiana law, but instead are properly classified as “credit sales” transactions which are disguised as leases. 198 While other states regularly classify

195. The remedy provisions commonly included in UCC security agreements, including consents to self-help repossession, U.C.C. § 9-503, and to private sale of the secured collateral, U.C.C. §§ 9-504, arguably are not enforceable in Louisiana because they are contrary to Louisiana public policy considerations. See Comment, Conflict of Laws as to Chattel Mortgages in Louisiana, 10 Tul. L. Rev. 275 (1936); Note, Conflict of Laws: Security Interests in Movables, 35 La. L. Rev. 913 (1975); see also Jones v. Bradford, 353 So. 2d 1348, 1352 (La. App. 3d Cir. 1977).


financed leases as "conditional sales" transactions, Louisiana does not recognize the validity of conditional sales as a matter of public policy.\(^9\)

As a special exception to the above general rule, Act 208 of 1983\(^2\) provides that certain limited types of financed personal property leases may be treated in the same manner and will have the same legal effect as "true" leases, despite the fact that the lessee may have the obligation or option to purchase the leased equipment at the conclusion of the lease term for no consideration or for nominal consideration.\(^2\)

Act 208 of 1983 is, however, extremely limited in scope and applies to only a few specific types of otherwise financed equipment leases. In order to qualify under the special exception of Act 208 of 1983, a financed lease must be entered into primarily for a commercial purpose and must involve the following types of leased equipment: (1) mobile, motorized self-propelled farm equipment and attachments;\(^2\) (2) mobile, motorized self-propelled earth moving equipment and attachments; or (3) mobile, motorized self-propelled construction equipment and attachments. The leased equipment must also have a dealer cost of not less than three thousand dollars per unit and must be exempt from the motor vehicle certificate of title provisions of title 32 of the Louisiana Revised Statutes.\(^2\)


\(^2\) LA. R.S. 9:3509.2 provides:

The parties that enter into a commercial transaction for the lease or lease-purchase of equipment of [the types described under the statute] may designate such transaction as a lease without regard to the obligations of the lessee at lease termination. The transaction shall be treated as a lease for all legal purposes without the necessity of filing a chattel mortgage and the lessor shall be deemed the owner of such equipment during the term of the lease.

\(^2\) The first clause of LA. R.S. 9:3509.2 requires that such financed leases be entered into primarily for a "commercial" purpose. However, agricultural purpose leases in Louisiana are treated differently than business or commercial purpose leases. See supra text accompanying note 139. Accordingly, it is questionable whether a financed lease of "mobile, motorized self-propelled farm equipment and attachments" (emphasis added) may be entered into primarily for a "commercial purpose" as required under LA. R.S. 9:3509.2.

Laws Governing Financed Personal Property Leases

Financed personal property leases, other than those subject to the special exemption provisions of Act 208 of 1983, are subject to the general Louisiana laws governing credit sales transactions. These laws are contained in the "sales" articles of the Louisiana Civil Code.\(^{204}\)

Consistent with Civil Code article 2456,\(^{205}\) legal and equitable ownership of the leased property automatically passes from the lessor/seller to the lessee/purchaser at the time a financed personal property lease is executed.\(^{206}\) The lessee/purchaser then has an obligation under Civil Code article 2549(1)\(^{207}\) to pay the purchase price of the leased equipment, which corresponds to rental payments under the customer's financed lease. As long as the leased property remains in the possession of the lessee/purchaser, the lessee's obligation to pay the rental/purchase price is secured by a vendor's privilege on the leased equipment.\(^{208}\) In the event the lessee/purchaser defaults under its lease/purchase obligations, Louisiana law precludes the lessor/seller from attempting to take back the leased property through any form of self-help repossession.\(^{209}\) The exclusive remedy available to the lessor/seller is to file an ordinary collection action against the lessee/purchaser and to exercise its security rights against the leased property under its vendor's privilege.\(^{210}\)

Financed personal property leases in Louisiana, other than those subject to the special exemption provisions of Act 208 of 1983, additionally are subject to a number of special laws governing credit sales transactions. These special laws include the various Louisiana interest rate limitations, which are discussed below.

Applicability of Louisiana Interest or Time-Price Differential Rate Limitations to Financed Personal Property Leases

Since financed personal property leases are properly classified in Louisiana as disguised credit sales transactions, financed equipment leases

\(^{204}\) \textit{La. Civi. Code} arts. 2438-2659.
\(^{205}\) \textit{La. Civi. Code} art. 2456.
\(^{206}\) Tangipahoa Bank & Trust Co. v. Kent, 70 F.2d 139 (5th Cir. 1934); Lee Constr. Co. v. L.M. Ray Constr. Corp., 219 La. 246, 52 So. 2d 841 (1951); Byrd v. Cooper, 166 La. 402, 117 So. 441 (1928); Grapico Bottling Works v. Liquid Carbonic Co., 163 La. 1057, 113 So. 454 (1927); Doullut v. Rush, 142 La. 443, 112 So. 709 (1927); Seelig v. Dumas, 48 La. Ann. 1494, 21 So. 91 (1896).
\(^{207}\) \textit{La. Civi. Code} art. 2549(1).
\(^{210}\) See infra notes 295-96 and accompanying text.
arguably are subject to Louisiana interest or time-price differential rate limitations 211 where not otherwise exempted by special statute.212

Unlike true personal property leases, time-price differential charges capitalized into financed equipment leases arguably constitute a cost of financing the lease/purchase of the equipment, and, therefore, arguably are subject to applicable Louisiana interest rate limitations.213 Such time-price differential charges represent the difference between the price for which the lessor/seller would otherwise be willing to sell the leased equipment on an all-cash basis and the total amount of rental payments under the customer's financed lease.214

211. A number of Louisiana courts have held that time-price differential factors capitalized into credit sales contracts are not subject to conventional interest rate or "usury" limitations. See State ex rel. Guste v. Council of New Orleans, 309 So. 2d 290 (La. 1975); Cohen v. Ventura Aircraft Corp., 188 So. 2d 705 (La. App. 4th Cir.), cert. denied, 249 La. 746, 190 So. 2d 910 (1966); Borel v. Living, 28 So. 2d 392 (La. App. 1st Cir. 1946); General Motors Acceptance Corp. v. Swain, 176 So. 636 (La. App. 1st Cir. 1937); Robbins v. W.W. Page & Son, 10 La. App. 207, 120 So. 683 (2d Cir. 1929); Mills v. Crocker, 9 La. Ann. 334 (1854). However, none of these decisions involved financed leases subject to the LCCL or Louisiana's Motor Vehicle Sales Finance Act, LA. R.S. 6:951-964 (Supp. 1984), infra text accompanying notes 224-76, which specifically apply to financed lease transactions.

This article adopts a more modern approach in asserting that time-price differential charges capitalized in financed personal property leases are subject to Louisiana conventional interest rate or usury limitations where not otherwise exempt from usury laws by special statute. While no Louisiana decisions specifically so hold, this approach is consistent with the LCCL, the Motor Vehicle Sales Finance Act, see infra note 213, and with decisions construing the laws of other states in which time-price differential factors capitalized into financed equipment leases have been held to be subject to usury limitations. See, e.g., McGalliard v. Liberty Leasing Co., 534 P.2d 528 (Alaska 1975); Bell v. Itek Leasing Corp., 262 Ark. 22, 555 S.W.2d 1 (1977); May v. United States Leasing Corp., 239 So. 2d 73 (Fla. Dist. Ct. App. 1970); Rouse v. People's Leasing Co., 96 Wash. 2d 722, 638 P.2d 1245 (1982).

This approach is further consistent with the Louisiana Fourth Circuit Court of Appeal decision in Southern X-Ray, Inc. v. Hendler, 320 So. 2d 330 (La. App. 4th Cir. 1975), in which the court recognized that a "five percent add-on interest" factor had been capitalized into the plaintiff's commercial purpose financed equipment lease of X-ray equipment.

212. See infra text accompanying notes 217-20.

213. While Louisiana has not adopted the "time-price differential" concept found in other states, it may be argued, under the more modern view, discussed supra note 211, that the difference between the price for which a seller is willing to sell property on a credit sales basis and the price for which the same seller is willing to sell the same property on an all-cash basis constitutes a form of interest under Civil Code article 1935. In addition, time-price differential charges fall within the definition of credit service charges under LA. R.S. 9:3516(15) and the definition of finance charges under LA. R.S. 6:951(8), and are further included within the definition of finance charges under 15 U.S.C. § 1605(a) and 12 C.F.R. § 226.4(a).

214. It is questionable whether time-price differential charges under financed equipment leases also include the optional purchase price of the leased equipment at the conclusion of the lease term. For example, if a lessor is willing to sell a specific item for $1000 on an all-cash basis, and that lessor agrees to lease the same item for $100 a month over an 18-month term, with the option of purchasing the leased equipment at the conclusion of the lease for $50, the question is whether the time-price differential charge under the lease
The various Louisiana interest rate limitations also apply to late charges, deferral and extension charges, post-maturity interest, and various other types of fees and penalties which may be assessed in connection with financed personal property leases. The amount of such fees and charges is dependent upon the particular Louisiana interest rate statute governing the transaction.

Consumer purpose financed equipment leases to individual lessees are subject to either the LCCL or Louisiana’s Motor Vehicle Sales Finance Act, which are discussed below.

Commercial and business financed personal property leases to corporations, limited partnerships, and partnerships in commendam are exempt from applicable Louisiana interest rate limitations as a result of Louisiana Revised Statutes 12:703. Commercial and business financed leases to individuals, proprietors, and ordinary business partnerships are additionally exempt from interest rate limitations as a result of Louisiana Revised Statutes 9:3509. Such leases are therefore unregulated, and lessors entering into financed equipment leases for business or commercial purposes may arguably assess time-price charges in any amount and at any rate which the lessee/purchaser will agree to pay.

Agricultural purpose financed leases to corporations, limited partner-
ships, and partnerships in commendam are also exempt from applicable Louisiana interest rate limitations as a result of Louisiana Revised Statutes 12:703. However, agricultural purpose financed leases to individuals, proprietorships, and ordinary business partnerships remain subject to Louisiana interest rate limitations since Louisiana Revised Statutes 9:3509 arguably does not extend to agricultural purpose transactions. Agricultural purpose financed leases to individual lessees and proprietorships, including agricultural purpose financed motor vehicle leases, are subject to the LCCL. Agricultural purpose financed leases to ordinary business partnerships are subject to the general interest rate limitations of Civil Code article 2924.

Applicability of the Louisiana Consumer Credit Law to Financed Equipment Leases

Financed consumer and agricultural purpose equipment leases to individual lessees and proprietorships, which are actually disguised conditional or credit sales transactions, are subject to the various provisions of the LCCL applicable to "consumer credit sales" transactions. The LCCL arguably also governs agricultural purpose financed motor vehicle leases to individuals and proprietorships, which are not subject to the Motor Vehicle Sales Finance Act.

As previously discussed, time-price differential charges capitalized into financed personal property leases represent the difference between the dollar amount for which the lessor/seller would be willing to sell the leased equipment on an all-cash basis and the total amount of rental payments under the customer's financed lease. Such time-price differential charges

---

220. While LA. R.S. 9:3509 arguably does not extend to agricultural purpose extensions of credit and financed lease transactions, agricultural purpose financed leases to corporations, limited partnerships, and partnerships in commendam are nevertheless exempt from applicable Louisiana usury limitations under LA. R.S. 12:703.

221. See supra note 94.

222. See supra note 104; see also infra note 248.

223. See infra text accompanying notes 277-81.

224. The term credit sale is defined in LA. R.S. 9:3516(11), and does not specifically mention financed equipment lease transactions. Cf. 12 C.F.R. § 226.2(a)(16), which defines credit sale to include the following:

[A] bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer: (i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and (ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

225. See infra note 248.

226. See supra text accompanying note 214 (definition of time-price differential charges). Time-price differential charges are considered to be a type of "credit service charge" under LA. R.S. 9:3516(15) for purposes of the LCCL.
PERSONAL PROPERTY LEASES

are subject to the rate limitations of section 3520(A) of the LCCL:227 (1) a total of (a) twenty-four percent per annum on the unpaid principal balance up to a maximum of $1750, and (b) eighteen percent per annum on the unpaid principal balance in excess of $1700, up to a maximum of $5000, and (c) twelve percent per annum on the unpaid principal balance in excess of $5000; or (2) eighteen percent per annum on the unpaid principal balance, regardless of amount.

Because financed equipment leases additionally fall within the definition of a precomputed consumer credit transaction under section 3516(23) of the LCCL,228 section 3525(A)229 permits lessors/sellers to assess five percent or fifteen dollar late charges on delinquent financed lease payments which are not paid in full within ten days of when due.230 In the event of partial payment, five percent or fifteen dollar late charges may be assessed only on the amount of the lease payment which remains unpaid, rather than on the full amount of the delinquent installment payment.231 In addition, section 3525(B) of the LCCL232 provides for a "last in, first out" imputation of payments formula whereby, if the lessee is delinquent in making more than one rental payment, subsequent payments must be applied to the most current due rental installment in order to avoid pyramiding of late charges.233

Section 3525(B) of the LCCL234 further requires that a notice be mailed to the lessee/purchaser within fifteen days following the initial assessment of a late charge. This notice must inform the lessee that a late charge has been assessed and the amount of the late charge and advise the lessee that similar late charges will be assessed in the event of future late payments.235

228. LA. R.S. 9:3516(23) (1983); see also supra note 111.
230. LA. R.S. 9:3525(A)(1) permits assessment of late charges on delinquent precomputed installment payments which are not paid in full within ten days after their scheduled or deferred due dates. Such late charges are limited to "five percent of the unpaid amount of the installment but not exceeding fifteen dollars." LA. R.S. 9:3525(A)(1) (1983).
231. LA. R.S. 9:3525(B) (1983). Cf. LA. R.S. 9:956(G)(a) (permits the assessment of five percent or fifteen dollar late charges on the entire amount of a delinquent installment payment subject to the Motor Vehicle Sales Finance Act, even where a partial payment is made by the customer).
233. The "last in, first out" imputation of payments requirement of LA. R.S. 9:3525(B) is an exception to the general "first in, first out" imputation of payments requirement under Civil Code article 2166.
235. LA. R.S. 9:3525(B) (1983) (fourth sentence). Equipment lessors are required to mail late charge notices to delinquent customers only at the time that late charges are initially assessed under a financed equipment lease. Additional late charge notices are not required over the remaining term of the contract.
Section 3526(A) of the LCCL further permits lessors/sellers to assess deferral charges whenever the lessee requests a deferral or extension of an otherwise scheduled financed lease payment. Deferral charges arguably are limited to the deferral charge rate stipulated in the customer’s lease, which may be assessed against the amount deferred over the period of deferral, counting each day as one-thirtieth of a month.

As financed equipment leases fall within the definition of a precomputed consumer credit transaction under the LCCL, such financed leases are further subject to the rebate upon prepayment provisions of sections 3528 and 3529. These provisions require that unearned time-price differential charges capitalized into the customer’s lease be rebated under the Rule of 78’s whenever the maturity of a financed lease is accelerated as a result of the lessee’s default or whenever the lessee prepays its lease obligations in full prior to conclusion of the lease term. A twenty-five dollar prepayment penalty may be deducted from the original amount of the time-price charge capitalized into the lease, prior to calculation of the rebate, provided that the maturity of the lease is accelerated or the lease is prepaid in full within the first half of its term.

Whenever the maturity of a financed lease is accelerated for any reason and suit is filed against the lessee, the lessor may be entitled to additional post-maturity interest on the remaining unpaid principal balance owed by the lessee. Sections 3522 and 3529 of the LCCL limit such post-maturity interest to the rate of interest previously charged on the obligation until the first anniversary date following the day on which the final lease payment would have otherwise been due. Post-maturity interest is thereafter limited to a maximum of eighteen percent per annum. As interest must be contracted for in Louisiana in order to be recovered, appropriate in-

---

237. The first sentence of LA. R.S. 9:3526(A) provides that the deferral charge rate may not exceed “the rate previously stated to the consumer.” It appears to be necessary to include contractual deferral charge language in financed equipment lease agreements subject to the LCCL, further specifying the deferral charge rate to be assessed. See Reliable Credit Corp. v. Smith, 406 So. 2d 231 (La. App. 4th Cir. 1981).
239. The Rule of 78’s is a common method of rebate calculation in connection with precomputed consumer credit transactions and is equivalent to the “sum of the digits” method of rebate calculation recognized in various other states.
240. The second sentence of LA. R.S. 9:3528 provides for deduction of a $25 prepayment penalty prior to calculation of the customer’s rebate under the Rule of 78’s provided that the customer’s contract is prepaid in full within the first half of its term. The first clause of LA. R.S. 9:3529 implies that similar $25 prepayment penalties may be assessed where the maturity of the customer’s precomputed interest contract is accelerated within the first half of its term.
242. LA. R.S. 9:3522 and LA. R.S. 9:3529 must be read together in order to produce this result.
terest after maturity language should be included in the financed lease agreement.243

While it does not appear to be necessary for a personal property lessor to obtain a supervised loan license under sections 3557 through 3559 in order to engage in the making of consumer and agricultural purpose financed equipment leases under the LCCL,244 lessors/sellers must nevertheless file annual notifications with the Louisiana Commissioner of Financial Institutions as required under sections 3563 and 3565 of the LCCL,245 and additionally must pay annual notification fees to the Commissioner as required under section 3564.246

**Louisiana’s Motor Vehicle Sales Finance Act**

Motor vehicle leases are subject to Louisiana’s Motor Vehicle Sales Finance Act (MVSFA) when:247 (1) the lease is to be made to an individual for a personal, family, or household purpose;248 (2) the leased equipment

---

243. In order for a lessor to be entitled to post-maturity interest under a financed equipment lease at a rate greater than 12% per annum, which is the “legal interest” rate provided under Civil Code article 2924, post-maturity interest must be contractually provided in the customer’s lease agreement. See La. Civ. Code art. 1940. Since La. R.S. 9:3522 and La. R.S. 9:3529, when read together, provide that the lessor may charge post-maturity interest at the rate previously assessed on the customer’s obligation, it apparently is necessary for the customer’s lease agreement to specify such a contract rate.

244. La. R.S. 9:3557-3559 (1983); see supra text accompanying notes 126-27.


246. La. R.S. 9:3564 (1983); see supra text accompanying note 134. In addition, consumer and agricultural purpose financed equipment leases are subject to the various additional sections of the LCCL applicable to true equipment leases. See supra text accompanying notes 119-25.

247. La. R.S. 6:951-:964 (Supp. 1984). Financed motor vehicle leases are specifically made subject to the MVSFA as a result of the definition of retail installment contract in La. R.S. 6:951(5), which includes the following:

[A] contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

248. The MVSFA is presently limited to financed motor vehicle lease transactions to individual lessees, entering into such leases primarily for personal, family, or household (i.e., consumer) purposes. Prior to September 12, 1983, the MVSFA also applied to business and commercial purpose financed motor vehicle leases, arguably including financed motor vehicle leases to corporations, limited partnerships, and Louisiana partnerships in commen- dam, which are otherwise exempt from usury limitations as a result of La. R.S. 12:703. The MVSFA, however, was amended by Act 244 of 1983 which became effective September 12, 1983, in order to exclude business or commercial purpose motor vehicle transactions from the scope of the statute. Notwithstanding this amendment, business and commercial purpose financed motor vehicle leases consummated prior to September 12, 1983 remain subject to the MVSFA. Accordingly, equipment lessors entering into business or commercial purpose financed motor vehicle leases before the effective date of Act 244 of 1983
includes one or more motor vehicles as defined under section 951(1) of the MVSFA; and (3) the lessee contractually agrees to pay a sum substantially equivalent to or in excess of the value of the leased vehicle over the lease term, and the lessee is obligated to become, or has the option of becoming, the owner of the leased vehicle at the conclusion of the lease."

In order for lessors/sellers to engage in the making of financed motor vehicle leases under the MVSFA, equipment lessors must prepare separate
motor vehicle lease forms which are specially designed to comply with the various requirements imposed by the statute. Such specially designed forms must be printed in at least eight-point type and must also contain required contract language as mandated under section 956(B) of the MVSFA. Financed motor vehicle leases must further include an acknowledgement directly above the lessee's signature, attesting that the lessee/purchaser received a completed copy of the lease prior to signing. The lessor's name and business address, the lessee's name and address, and the year, model, make, serial number, and license number of the leased/purchased vehicle must also be stated in the lease.

In addition, time-price differential charges capitalized into financed motor vehicle leases are subject to the rate limitations of section 957 of the MVSFA. Section 957(A) provides for different rate limitations depending upon whether the leased vehicle is new or used, and depending upon the model year of the vehicle. Time-price rates on financed leases of new vehicles of the same or the previous model year are limited to a maximum of eighteen percent per annum. Time-price rates on financed leases of new vehicles which are older than the previous model year, as well as on financed leases of used vehicles of up to two model years in age, are limited to a maximum of twenty-four percent per annum. Time-price rates on financed leases of used vehicles of three to four model years in age are limited to a maximum of thirty percent per annum. Time-price rates on financed leases of used vehicles older than four model years in age are limited to a maximum of thirty-three percent per annum.

Financed motor vehicle leases are further subject to the maximum late charge limitations of section 956(G) of the MVSFA. Section

---

252. LA. R.S. 6:956(B)(1) requires that a specific statement be included in the lease form, where applicable, to the effect that liability insurance coverage for bodily injury and property damage caused to others is not included under the lease. LA. R.S. 6:956(B)(2) further requires that the following notice be printed in the lease form: "Notice to the Buyer: Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign." Both notices are required to be printed in at least ten-point bold type.
253. LA. R.S. 6:956(C) also requires that such an acknowledgement be printed in at least ten-point bold type.
255. LA. R.S. 6:957(A) (Supp. 1984) (limits maximum finance charge rates in connection with financed motor vehicle lease transactions subject to the MVSFA). The term finance charge is defined in LA. R.S. 6:951(8) to include time-price differential charges capitalized into financed motor vehicle lease payments.
permits assessment of five percent or fifteen dollar late charges on lease payments which are delinquent for a period of more than ten days. As an alternative, section 956(G)(b) permits assessment of late charges at a rate of 1.5% per month on the amount of the delinquent payment, beginning on the day on which the payment becomes delinquent.

Section 956(G)(b) of the MVSFA additionally permits recovery of reasonable attorney fees upon referral of a financed motor vehicle lease to an attorney for collection. Attorney fees are limited to a maximum of twenty-five percent of the original amount of the customer's lease obligation, with a minimum of fifteen dollars. Section 956(G)(b) also permits the lessor to recover a maximum of $150 in out-of-pocket collection expenses following the lessee's default.

Sections 958(A) and (C) of the MVSFA further require that any unearned time-price charges capitalized into financed motor vehicle leases be rebated to the lessee upon prepayment of the obligation in full, as well as upon acceleration of maturity resulting from the lessee's default. Such rebates must be computed based upon at least ninety percent of the Rule of 78's. A twenty-five dollar prepayment penalty may be deducted from the original amount of the time-price charge capitalized into the lease, prior to calculation of the rebate, provided that the maturity of the lease is accelerated or the lease is paid in full within the first half of its term.

Section 958(C) of the MVSFA also limits the rate of post-maturity interest which may be assessed following acceleration of maturity and the filing of suit on a financed motor vehicle lease. As interest must be con-
TRACTED FOR IN LOUISIANA IN ORDER TO BE RECOVERED, APPROPRIATE INTEREST AFTER MATURITY LANGUAGE SHOULD BE INCLUDED IN THE LEASE AGREEMENT, FURTHER STIPULATING THE RATE OF POST-MATURITY INTEREST TO BE CHARGED.269

IN ADDITION, FINANCED MOTOR VEHICLE LESSORS MAY NOT REQUIRE THE LESSEE TO PURCHASE MANDATORY INSURANCE ON THE LEASED VEHICLE EITHER FROM THE LESSOR ITSELF OR FROM AN AFFILIATED ENTITY. THIS PRACTICE VIOLATES SECTION 956(F) OF THE MVSFA,270 WHICH PROVIDES THAT THE LESSEE HAS THE RIGHT TO PURCHASE REQUIRED PROPERTY INSURANCE THROUGH ANY AGENT OR BROKER OF HIS CHOICE.271

IN ADDITION, MOTOR VEHICLE LESSORS/SELLERS MUST OBTAIN A LICENSE UNDER THE MVSFA IN ORDER TO ENGAGE IN THE MAKING OF CONSUMER PURPOSE FINANCED MOTOR VEHICLE LEASES IN LOUISIANA. SUCH LICENSING REQUIREMENTS ARE CONTAINED IN SECTIONS 952 THROUGH 955.272

MANY EQUIPMENT LEASING COMPANIES OPERATING IN LOUISIANA ARE NOT AWARE OF THE APPLICABILITY OF THE MVSFA TO FINANCED MOTOR VEHICLE LEASES. LESSORS COMMONLY VIOLATE THE MVSFA BY USING STANDARDIZED LEASE FORMS IN CONNECTION WITH FULL PAYMENT MOTOR VEHICLE LEASES WHERE THE LESSEE IS GRANTED AN OPTION TO PURCHASE THE LEASED VEHICLE AT THE CONCLUSION OF THE LEASE TERM. WHEN THE LESSEE IS AN INDIVIDUAL LEASING THE VEHICLE FOR PRIMARILY PERSONAL, AS COMPARED TO BUSINESS OR AGRICULTURAL, PURPOSES, THE LEASE IS SUBJECT TO THE MVSFA.

AN EQUIPMENT LESSOR MAY NOT USE STANDARDIZED LEASE AGREEMENTS IN CONNECTION WITH SUCH FINANCED MOTOR VEHICLE LEASES. ONLY LEASE FORMS THAT ARE SPECIFICALLY DESIGNED TO COMPLY WITH THE MVSFA MAY BE USED. IN ADDITION, TIME-PRICE DIFFERENTIAL CHARGES CAPITALIZED INTO THE LEASE MAY NOT

269. Cf. La. R.S. 9:3522 (1983) (limits post-maturity interest to a maximum of 18% per annum after the first anniversary date following the date on which the final payment under the customer's financed lease would have otherwise been due). See supra note 242 and accompanying text.


271. Cf. La. R.S. 9:3546; supra text accompanying note 133.

272. Banks and other financial institutions authorized to do business in Louisiana are, however, exempt from the licensing requirements of the MVSFA as a result of La. R.S. 6:952(B).

273. Equipment lessors are commonly confused by what constitutes a "consumer" purpose motor vehicle lease as opposed to an equipment lease, which is entered into primarily for a "business or commercial" purpose. For example, the lease of an automobile to an individual, which the individual uses to travel to and from work, is generally considered to be a consumer purpose lease rather than a business purpose lease.

Consumer purpose financed equipment leases are considered to be a type of credit sale for federal Truth in Lending Act purposes; therefore, appropriate credit sales disclosures, discussed supra note 215, are required. The appropriate place to look for guidance is comment 3(a)-2 of subpart A of the Federal Reserve Board Official Staff Commentary to Regulation Z, 46 Fed. Reg. 50,288, 50,297 (1981), which lists five separate factors for creditors to consider when attempting to distinguish between consumer purpose transactions and business or commercial transactions to individual customers.
exceed the rate limitations of section 957(A) of the MVSFA. Furthermore, the lessor may not assess late charges under the lease in excess of five percent of the delinquent installment, or fifteen dollars, whichever is less. The lessor may not collect lease-related fees, such as excess mileage charges, which are not specifically sanctioned under the MVSFA.\textsuperscript{274} In addition, the lessor may not cancel the lease following the lessee’s default and insist upon the return of the leased vehicle. The only remedy available to the lessor is to file an ordinary collection action against the lessee for accelerated rental/purchase payments, after granting the lessee an appropriate rebate of unearned time-price charges.\textsuperscript{275}

In the event that a motor vehicle lessor fails to comply with any of the requirements of the MVSFA applicable to financed motor vehicle leases, including the licensing requirements, the lessor may be exposed to potential civil and criminal penalties under section 960.\textsuperscript{276}

**Agricultural Purpose Financed Leases to Ordinary Business Partnerships**

Agricultural purpose financed equipment leases to ordinary business partnerships arguably are not exempt from Louisiana interest or time-price differential rate limitations.\textsuperscript{277} Such financed leases, including agricultural purpose motor vehicle leases, remain subject to Louisiana rate limitations, and more specifically, are subject to the general rate provisions of Civil Code article 2924.

As financed equipment leases arguably constitute a form of “precomputed credit” transactions, agricultural purpose financed leases to ordinary business partnerships arguably qualify under the so-called “capitalized interest” exception to article 2924.\textsuperscript{278} This exception permits the lessor to capitalize time-price differential charges into the lease at any rate and in any amount which the lessee will agree to pay.\textsuperscript{279} The lessor is, however,
totally prohibited from assessing late charges on delinquent financed lease payments\textsuperscript{280} and is limited to post-maturity interest at the rate of twelve percent per annum following the lessee’s default and the filing of suit.\textsuperscript{281}

\textit{Common Interest-Related Violations by Business and Commercial Financed Equipment Lessors}

While business and commercial financed equipment leases, as well as financed leases to corporations and limited partnerships, are exempt from Louisiana conventional interest rate limitations as a result of Louisiana Revised Statutes 9:3509 and 12:703, such transactions are not exempt from Louisiana public policy considerations affecting the manner and method under which interest or time-price differential charges may be assessed.\textsuperscript{282} Equipment lessors commonly violate certain interest-related public policy prohibitions when entering into otherwise exempt financed personal property leases in Louisiana.

The most common interest or time-price related violation by business and commercial financed equipment lessors involves assessment of late charges on delinquent financed lease payments. Late charges have been held to constitute a form of “interest” as defined in Civil Code article 1935.\textsuperscript{83} Accordingly, assessment of late charges on delinquent installment payments, which include elements of precomputed interest or time-price


\textsuperscript{281} Post-maturity interest is limited to the 12\% legal interest rate permitted under article 2924, assessed from the date on which suit is filed against the lessee/purchaser.

\textsuperscript{282} LA. R.S. 9:3509 and LA. R.S. 12:703 only exempt business and commercial financed equipment leases, as well as financed equipment leases to corporations, limited partnerships, and partnerships in commendam from applicable Louisiana usury limitations. These Louisiana statutes do not, however, have the effect of exempting such financed equipment leases from other Louisiana public policy considerations governing the manner and method under which interest may be assessed, including, specifically, the interest on interest prohibitions contained in Civil Code article 1939, discussed \textit{infra} text accompanying notes 283-88, as well as the requirement that unearned time-price charges be rebated following prepayment of the lease obligation in full or acceleration of its maturity as a result of the lessee’s default. \textit{See infra} text accompanying notes 289-92.

charges, results in a form of "interest on interest" which is prohibited by Civil Code article 1939.284

Interest on interest is prohibited by article 1939 as a matter of public policy,285 and such prohibitions are not affected by Louisiana Revised Statutes 9:3509 and 12:703.286 While both the LCCL and the MVSFA permit the assessment of five percent or fifteen dollar late charges on delinquent financed lease payments,287 section 3525(A) of the LCCL and section 956(G) of the MVSFA constitute special statutory exceptions to the interest on interest prohibitions of article 1939.288 There are, however, no special exceptions which permit assessment of late charges on delinquent business or commercial financed lease payments.

Business and commercial equipment lessors commonly violate Louisiana public policy considerations by failing to grant appropriate rebates...
on unearned time-price differential charges which are capitalized into financed lease payments. As previously discussed, both the LCCL and the MVSFA require that unearned time-price charges be rebated when the maturity of a financed lease is accelerated as a result of the lessee's default or when the lessee prepays the lease obligations in full prior to maturity. Lessors entering into business or commercial purpose financed equipment leases, however, commonly fail to realize that such leases are also subject to rebate under the same circumstances.

Business and commercial equipment lessors may not accelerate payment under the lease and file suit against the lessee for the entire balance remaining unpaid. The lessor must grant the lessee a rebate or credit for the unearned portion of the time-price differential charge capitalized into the lease which accrues after the customer's default and acceleration of maturity. Arguably, this is true in connection with all financed equipment lease transactions, including specifically business and commercial purpose financed leases and financed equipment leases to corporations and limited partnerships, which are otherwise exempt from conventional interest rate limitations as a result of Louisiana Revised Statutes 9:3509 and 12:703. Arguably, this is also true in connection with agricultural purpose equipment leases to ordinary business partnerships, which are subject to Louisiana conventional interest rate limitations under Civil Code article 2924.

It may also be argued that unless an equipment lessor includes appropriate contractual language in the financed lease agreement to the effect that unearned time-price differential charges will be rebated under the Rule of 78's, or unless the transaction is subject to the LCCL or the MVSFA, the lessor is required to rebate unearned time-price charges under an actuarial method of calculation, rather than under the Rule of 78's. Rebates under the Rule of 78's result in a premium to the lessor and a penalty to the lessee, which arguably must be contracted for or provided by statute in order to be recovered.

290. In Southern X-Ray, Inc. v. Hendler, 302 So. 2d 330 (La. App. 4th Cir. 1975), the court held that the lessee, a physician, was entitled to a credit of the unearned portion of the five percent add-on interest charge capitalized into the plaintiff's financed lease of X-ray equipment, where the plaintiff prepaid the lease in full prior to maturity. In this connection, it is important to note that the Southern X-Ray case involved a commercial purpose financed lease of X-ray equipment. The MVSFA applies to business or commercial motor vehicle leases consummated prior to September 12, 1983. See supra note 219. Accordingly, unearned time-price differential charges capitalized into such leases must be rebated in accordance with La. R.S. 6:958. See supra note 266 and accompanying text.
292. Rebates under the Rule of 78's method will produce a lesser refund or credit to the lessee than that rebated under an actuarial method of computation.
Remedies Under Financed Personal Property Leases Following Lessee's Default

Financed personal property leases, other than those falling under the special exception of Act 208 of 1983, are not subject to the optional remedy provisions of the LMA. The LMA is applicable solely to true equipment leases and does not apply to financed leases, which are in actuality disguised conditional or credit sales transactions.²⁹³

Accordingly, the standard remedy convenants which are included in the vast majority of personal property lease forms used in Louisiana are totally inapplicable to financed equipment leases. When the lessee defaults under a financed lease, the lessor/seller does not have the right to cancel the lease and to insist upon the return of the leased property.²⁹⁴ The lessor/seller's exclusive remedy is to file an ordinary collection action against the lessee for accelerated rental/purchase payments, granting the lessee an appropriate rebate of unearned time-price differential charges.²⁹⁵ The seller/lessor may also seek to execute against the leased property under its vendor's privilege as provided under Civil Code article 3227.²⁹⁶

In order to insure adequate protection against the contingencies of non-payment, a financed equipment lessor should also require the lessee to execute a Louisiana chattel mortgage on the leased/purchased equipment.²⁹⁷ This security device will permit the lessor to foreclose against

²⁹³. Financed leases, which are in actuality disguised conditional or credit sales transactions, do not meet the definition of lease under L.A. R.S. 9:3271(1). See supra note 19.
²⁹⁴. The lessor/seller additionally would not have the right to rescind the lease/sale and to recover possession of the leased/sold equipment as a result of non-payment of the rental/purchase price. See L.A. Civ. CODE art. 3229 (provides that rescission is not available in connection with credit sales transactions).
²⁹⁵. See supra text accompanying notes 289-92.
²⁹⁶. L.A. Civ. CODE art. 3227. It is at times difficult for equipment lessors to distinguish between true equipment leases and financed equipment leases. See supra note 250. This distinction is most important where the lessor attempts to exercise remedies against the lessee following the lessee's default. For example, if an equipment lessor were to attempt to cancel a financed lease following the lessee's default and to take back possession of the leased equipment pursuant to the LMA, the lessor arguably would be guilty of wrongful repossession and would further be subject to a claim for damages sustained by the lessee. The lessor, however, may fail to realize that its lease is actually a financed lease until after it has commenced an appropriate action against the lessee under the LMA. By then, it may be too late.
²⁹⁷. It apparently is permissible for the lessor/seller to require the lessee/purchaser to grant a chattel mortgage on the leased/purchased equipment as a condition of entering into a financed equipment lease. As a financed lease would be construed in Louisiana as a completed credit sale, the lessee/purchaser would have the capacity to grant a chattel mortgage on the leased/purchased property at the time of the financed lease's execution. See L.A. Civ. CODE art. 3300. Since the lease agreement arguably contains the essential elements of a promissory note, see infra note 314, the lessee/purchaser's chattel mortgage should be paraphed "Ne Varietur" for identification with the lease agreement in order to comply with the requirements of article 2636(1) of the Code of Civil Procedure.
the leased/mortgaged property under Louisiana executory process procedures following the lessee's default. A chattel mortgage will also protect the lessor against the possibility that the lessee may sell the leased/purchased equipment to a third party, in which case the lessor/seller's vendor's privilege otherwise would be lost. When the lessee's payment obligations are also secured by a properly recorded Louisiana chattel mortgage, the lessor's security interest will continue to encumber the property after the leased equipment has been transferred to a third party.

Problems of Non-Louisiana Leasing Companies Entering into Financed Equipment Leases in Louisiana

Many non-Louisiana leasing companies are generally not aware that Louisiana does not recognize the validity of conditional sales transactions. Lessors unknowingly enter into financed equipment leases affecting property located in Louisiana under lease contracts adopting the laws of other states. The conditional sales aspects of these contracts are not enforceable in Louisiana as they are contrary to public policy, and the underlying transaction will be considered for purposes of Louisiana law as a completed credit sale, with legal and equitable ownership of the leased property immediately passing to the lessee.

Out-of-state leasing companies frequently do not foresee this possibility or anticipate the effects of Louisiana law on financed equipment leases. Such lease/purchase contracts are commonly drafted under the same general format as true lease agreements, containing appropriate lease remedies following the lessee's default and also containing provisions for self-help repossession. Such financed leases may further provide for certain penalties and late charges, which may not be permitted under Louisiana law. In addition, out-of-state lessors commonly fail to take an adequate Louisiana security interest in leased/purchased equipment, for example, by taking a Louisiana chattel mortgage in addition to a vendor's lien or purchase money security interest.

298. See generally LA. CODE Civ. P. arts. 2631-2644.
299. LA. CIV. CODE arts. 3227-3228.
300. A properly recorded Louisiana chattel mortgage will continue to encumber the mortgaged property after such property has been sold to a third-party purchaser. See LA. R.S. 9:5354 (1983).
301. See cases and authorities cited supra note 199.
302. See cases and authorities cited supra note 199; see also Comment, supra note 191; Comment, supra note 195; Note, supra note 195.
303. LA. CIV. CODE art. 2456.
304. See supra note 209 and accompanying text; see also General Motors Acceptance Corp. v. Stoma, 241 So. 2d 816 (La. App. 3d Cir. 1970); Comment, supra note 191.
305. See supra notes 228-37, 260-64, 280-81, 283-88 and accompanying text.
306. See supra text accompanying note 297.
Many non-Louisiana leasing companies, furthermore, are not aware of the applicability of the LCCL and the MVSFA to certain types of financed equipment leases, and generally do not recognize the necessity of obtaining a license under the MVSFA or the necessity of filing annual notifications with the Louisiana Commissioner of Financial Institutions under the LCCL.  

While it is clear that Louisiana public policy considerations will apply to all financed leases of equipment initially delivered for use in Louisiana, it is questionable whether the courts will apply Louisiana law to a financed personal property lease involving a non-Louisiana lessee when the leased equipment initially is delivered for use by the lessee in another state and then subsequently is relocated in Louisiana. While Louisiana courts have yet to consider this question, it is submitted that such a transaction should not be subjected to Louisiana law and the conditional sale aspect of the transaction should be recognized.

Securing Loans to Financed Equipment Lessors

As previously discussed, banks and other asset-based lenders are commonly confused as to the types of Louisiana security interests which are available in connection with secured loans to true personal property lessors. This confusion is even greater in connection with secured loans to financed equipment lessors.

Loans to financed equipment lessors arguably may not be secured by collateral assignments of financed leases as otherwise permitted under Louisiana Revised Statutes 9:4401. This statute is limited solely to collateral assignments of lease obligations and arguably does not extend to collateral assignments of financed leases, which are in actuality disguised

307. See supra notes 244-46, 272 and accompanying text.
308. The Louisiana Supreme Court held in General Talking Pictures Corp. v. Pine Tree Amusement Co., 180 La. 529, 156 So. 812 (1934), that a contract which is to have effect in Louisiana must be construed and governed by the laws of Louisiana. However, when the lessor and lessee enter into a financed lease in good faith with the intention that the leased/purchased equipment is to be used in another state and the lessee subsequently moves the leased equipment into Louisiana, the original intention of the parties that the transaction be considered a conditional sale governed under the laws of another state should prevail.
309. Cf. Overland Texarkana Co. v. Bickley, 152 La. 622, 94 So. 138 (1922); Universal C.I.T. Credit Corp. v. Victor Motor Co., 33 So. 2d 703 (La. App. 1st Cir. 1948); Finance Sec. Co. v. Mexic, 188 So. 657 (La. App. 4th Cir. 1939); American Slicing Mach. Co. v. Rothschild & Lyons, 12 La. App. 287, 125 So. 499 (2d Cir. 1929). Notwithstanding these Louisiana decisions, Louisiana courts have yet to rule on the validity of non-Louisiana financed lease transactions where the leased equipment is initially to be used in another state. Arguably, the conditional sales status of such non-Louisiana financed leases will be upheld as long as such transactions are not designed to circumvent Louisiana law. Finance Sec. Co. v. Mexic, 188 So. 657 (La. App. 4th Cir. 1939).
conditional or credit sales transactions. In addition, the Louisiana Assignment of Accounts Receivable Act arguably does not apply to collateral assignments of financed leases. Louisiana Revised Statutes 9:3101(1) provides that the Assignment of Accounts Receivable Act is not applicable to assignments of promissory notes or other negotiable instruments. As a financed lease is not a true lease, but is instead properly classified as a credit sale, the lease contract arguably may be construed as containing the essential elements of a promissory note. Thus, the Louisiana Assignment of Accounts Receivable Act is inapplicable.

Notwithstanding the foregoing, an equipment lessor may collaterally assign the lessee’s financed lease obligations under the “assignment of credits” provisions of the Civil Code. Such collateral assignments should be in writing and should also conform to the basic content requirements of Civil Code article 3158 applicable to written pledge agreements. The lessee additionally should be notified of the assignment of its lease as required under Civil Code article 2643.

An equipment lessor may also pledge the lessee’s financed lease obligations pursuant to the “pledge” articles of the Louisiana Civil Code. The lessor’s pledge agreement must comply with the requirements of article 3158, and an original signed copy of the lease arguably must be delivered to the creditor/pledgee or to its agent. The lessee should also be notified of the pledge in order to comply with the requirements of

---

311. See supra note 198 and accompanying text; see also Pastorek v. Lanier Sys. Co., 249 So. 2d 224 (La. App. 4th Cir. 1971); cf. C.I.T. Corp. v. J.B. Lee Tractor & Implement Co., 204 So. 2d 106 (La. App. 2d Cir. 1967), cert. denied, 251 La. 736, 206 So. 2d 91 (1968) (refused to recognize a collateral assignment of an equipment lease where the leased equipment had previously been sold).


313. The definition of accounts receivable in LA. R.S. 9:3101(1) does not include assignments of debt obligations evidenced by promissory notes.

314. A financed equipment lease arguably contains the essential elements of a promissory note since such lease agreements generally include an unconditional promise on the part of the lessee to pay lease payments in stated amounts over the stated lease term.

315. LA. CIV. CODE arts. 2642-2654.

316. See infra note 319; see also supra note 175.

317. Article 2643 requires that the debtor of an assigned credit obligation be notified of the assignment in writing in order for such an assignment to be complete as against third parties, including the debtor.

318. LA. CIV. CODE arts. 3133-3175.

319. Article 3158 requires that pledge agreements be in writing and that the pledged property, as well as the loan or loans for which the pledged property is being given as security, be specifically described.

320. Article 3158 arguably also requires that a signed original copy of a pledged lease agreement be actually delivered to the creditor. See supra note 175. Civil Code article 3162 further provides that the pledged lease may alternatively be delivered to the creditor’s third-party agent.
Civil Code article 3160,221 arguably applicable to pledges of non-negotiable promissory notes.222 When the lessee also takes a Louisiana chattel mortgage on the leased/purchased equipment,223 arguably it is necessary for the assignment or pledge of the lessee's financed lease obligations to be executed in authentic form before a notary and two witnesses, in order to preserve the secured creditor's rights to foreclose against the leased/mortgaged property under Louisiana executory process procedures following both the lessor's and the lessee's respective defaults.224

As an additional available security interest, an equipment lessor arguably may grant a Louisiana chattel mortgage on the leased equipment to its creditors, provided that such a chattel mortgage is executed and recorded prior to the time the equipment is leased to a lessee on a financed lease/purchase basis. At the time the property is leased, legal and equitable ownership of the leased equipment automatically passes to the lessee, and the lessor no longer has the capacity to grant a chattel mortgage on the property.225

**Suggested Legislation in Connection with Financed Equipment Leases**

The Louisiana Legislature should consider enacting a comprehensive statute addressing the problems which have arisen in connection with

---

221. LA. CIV. CODE art. 3160.
222. While a financed equipment lease agreement arguably may contain the essential elements of a promissory note, it is likely that such a lease will not be construed to constitute a "negotiable instrument" under LA. R.S. 10:3-104 since lease agreements are generally not "payable to order or to bearer" as required in LA. R.S. 10:3-104(1)(d). Accordingly, when a financed equipment lease is pledged by the lessor to a third-party creditor, the lessee arguably must be notified of such a pledge, as required in Civil Code article 3160. See also LA. R.S. 9:4321-4323 (1983).
223. See supra text accompanying notes 297-300.
224. Article 2639 of the Code of Civil Procedure requires that every link in the chain of ownership of a promissory note secured by a mortgage or chattel mortgage be in authentic form, i.e., executed before a notary and two witnesses, in order for a subsequent holder of the note to be permitted to foreclose under the mortgage pursuant to Louisiana executory process procedures. See Miller, Lyon & Co. v. Cappel, 36 La. Ann. 264 (1884). This authentic evidence rule is, however, applicable only where the note or other evidence of indebtedness constitutes an "order" instrument within the meaning of LA. R.S. 10:3-110. Where such a note or other evidence of indebtedness is payable to "bearer," and thereby constitutes a "bearer" instrument as defined in LA. R.S. 10:3-111, it is not necessary for such a transfer to be in authentic form in order for a subsequent holder of the note or evidence of indebtedness to be permitted to foreclose under the mortgage securing the note pursuant to Louisiana executory process procedures. See LA. CODE CIV. P. art. 2635, comment (d). It is, however, extremely questionable whether a financed motor vehicle lease agreement could possibly be construed as a "bearer" instrument. Accordingly, it is necessary that a pledge, assignment, or even a transfer, i.e., sale, of the lessee's financed lease agreement and chattel mortgage to a third party be executed in authentic form in order to comply with these requirements.
225. See LA. CIV. CODE art. 2452.
financed equipment leases. This statute should first define exactly what constitutes a financed equipment lease and specify the circumstances under which a lease of personal property will be considered to be a financed lease. 326

All financed equipment leases should be governed by this new statute. Act 208 of 1983 should be repealed, 327 and financed equipment leases should be excluded from coverage under both the LCCL and the MVSFA. 328 The statute should further provide time-price differential rate limitations in connection with consumer purpose financed leases, 329 with agricultural, business, and commercial purpose leases being totally exempt from such limitations. The statute should additionally permit assessment of late charges 330 and other types of lease-related fees 331 in connection with financed equipment leases and should further specify the method under which unearned time-price differential charges must be rebated to the lessee upon prepayment or acceleration of maturity. 332

As a radical departure from existing Louisiana law, this new statute should provide that a financed equipment lease will be treated in the same manner as a conditional sales transaction, with legal and equitable ownership of the leased equipment remaining in the lessor. 333 The statute should

326. It is at times extremely difficult for equipment lessors to distinguish between a true equipment lease and a financed equipment lease. The confusion is even greater in connection with financed motor vehicle leases subject to the MVSFA. See supra note 250. Since the rules governing financed equipment leases in Louisiana are jurisprudential in nature, it is suggested that the Louisiana Legislature codify these rules under a single statute in which financed lease is defined as a lease under which the lessee agrees to pay a sum substantially equal to or exceeding the value of the leased property, and under which the lessee has the option or obligation of purchasing the leased equipment at the conclusion of the lease term for no consideration or for nominal consideration. Nominal consideration should also be defined in order to avoid further uncertainties on the part of equipment lessors.

327. See supra text accompanying notes 200-03.

328. Financed equipment leases should be excluded from the scope of the LCCL and the MVSFA and made subject to this single comprehensive statute.

329. The statute should define consumer purpose, and, in establishing interest rate limitations, should further define whether the optional purchase price at the conclusion of the lease term must be included in computing the applicable interest rate under the transaction. See supra note 214.

330. See supra text accompanying notes 283-88.

331. This statute should delineate the types of additional lease-related charges which may be assessed in connection with financed leases, such as excess mileage charges and termination value adjustment charges, which may be payable where the lessee does not exercise its option to purchase the leased equipment at the end of the lease term. See supra note 274.

332. See supra text accompanying notes 289-92. The statute should further provide that the lessor is required to rebate unearned interest charges capitalized into the lease under the Rule of 78's following prepayment of the lease in full or acceleration of its maturity as a result of the lessee's default. See supra text accompanying notes 291-92.

333. At least two Louisiana statutes recognize the validity of conditional sales transactions, LA. R.S. 9:2941-2947, applicable to "bond for deed" real estate transactions, and
further authorize lessors under financed lease transactions to utilize the optional remedy provisions of the LMA following the lessee’s default and to make collateral assignments of such leases to third-party creditors under both Louisiana Revised Statutes 9:4401 and the Louisiana Assignment of Accounts Receivable Act.

This recommended statutory scheme is needed in order to make Louisiana law consistent with that of other states which recognize the validity of conditional sales transactions. Many non-Louisiana leasing companies are dissuaded from expanding their financed leasing operations into Louisiana as a result of differences in Louisiana law. This legislation will encourage expansion of financed leasing activities in Louisiana, and will, as a result, be beneficial to future business and industrial development.

La. R.S. 45:1241-1244, applicable to conditional sales of railroad and street railroad equipment.

334. The remedy provisions of the LMA should be extended to financed equipment leases, granting the lessor the option of either cancelling the lease and taking back the leased property following the lessee’s default or of accelerating future rental payments under the lease. For a discussion of problems presently faced by equipment lessors unable to distinguish between true equipment leases and financed equipment leases at the time of the lessee’s default, see supra note 296.

335. The collateral lease assignment provisions of La. R.S. 9:4401 and the Louisiana Assignment of Accounts Receivable Act arguably do not extend to assignments of financed lease obligations. See supra notes 311, 313 and accompanying text.
## APPENDIX

### SUMMARY OF LAWS APPLICABLE TO PERSONAL PROPERTY LEASES IN LOUISIANA

<table>
<thead>
<tr>
<th>Purpose of Transaction</th>
<th>Type of Lessee</th>
<th>Type of Lease</th>
<th>Applicable Louisiana Statutes</th>
<th>Mark-up or Profit Factors; Time-Price Differential Factors</th>
<th>Late Charges</th>
<th>Deferral Charges</th>
<th>Post-Maturity Interest</th>
<th>Required Rebate upon Prepayment or Acceleration</th>
<th>Federal Disclosure Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose of Transaction</td>
<td>Type of Lessee</td>
<td>Type of Lease</td>
<td>Type of Equipment</td>
<td>Applicable Louisiana Statutes</td>
<td>Mark-up or Profit Factors; Time-Price Differential Factors</td>
<td>Late Charges</td>
<td>Deferral Charges</td>
<td>Post-Maturity Interest</td>
<td>Required Rebate upon Prepayment or Acceleration</td>
</tr>
<tr>
<td>------------------------</td>
<td>---------------</td>
<td>--------------</td>
<td>------------------</td>
<td>-----------------------------</td>
<td>----------------------------------------------------------</td>
<td>-------------</td>
<td>-----------------</td>
<td>----------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Consumer (personal, family, household purposes)</td>
<td>Individual</td>
<td>“True” lease</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Subject to the Lease of Movable Act and the general provisions of the Louisiana Consumer Credit Law</td>
<td>No limit</td>
<td>1% per month on the delinquent amount (consistent with LA. CIV. CODE art. 2924)</td>
<td>12% per annum from date suit filed (consistent with “legal interest” rate limitations under LA. CIV. CODE art. 2924)</td>
<td>None</td>
<td>Subject to disclosure under the federal Consumer Leasing Act of 1976 and Federal Reserve Board Regulation M</td>
</tr>
</tbody>
</table>
PERSONAL PROPERTY LEASES

1984


Contract rate as permitted under La. R.S. 9:3526 (1983)

"5% or 15%" (consistent with the general limitations under La. R.S. 9:3525(A) (1983))

Subject to the general provisions of the Louisiana Credit Law, 39:1021-1050, and the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq., and Federal Reserve Board Regulation Z.

Motor vehicle lease (See La. R.S. 9:3561 (1989))

Individual or proprietorship

"True" lease

Other equipment (disguised as a conditional sale)

"Financed" lease

Individual (personal, household purposes)

Subject to the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq.

Motor vehicle


Subject to federal disclosure requirements under the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq., and Federal Reserve Board Regulation Z.

17% per annum (consistent with La. R.S. 9:3550 (1983))

No limit

Motor vehicle lease


"5% or 15%" (consistent with the general limitations under La. R.S. 9:3525(A) (1983))

Subject to the general provisions of the Louisiana Credit Law, 39:1021-1050, and the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq., and Federal Reserve Board Regulation Z.

Motor vehicle


17% per annum (consistent with La. R.S. 9:3550 (1983))

No limit

Motor vehicle lease


17% per annum (consistent with La. R.S. 9:3550 (1983))

No limit

Motor vehicle lease

<table>
<thead>
<tr>
<th>Purpose of Transaction</th>
<th>Type of Lessee</th>
<th>Type of Lease</th>
<th>Applicable Louisiana Statutes</th>
<th>Mark-up or Profit Factors; Time-Price Differential Factors</th>
<th>Late Charges</th>
<th>Deferral Charges</th>
<th>Post-Maturity Interest</th>
<th>Required Rebate upon Prepayment or Acceleration</th>
<th>Federal Disclosure Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural</td>
<td>Individual or proprietorship</td>
<td>&quot;True&quot; lease</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Subject to the Lease of Movables Act and the Louisiana Consumer Credit Law</td>
<td>No limit</td>
<td>1% per month on the delinquent amount (consistent with LA. CIV. CODE art. 2924)</td>
<td>12% per annum (consistent with LA. CIV. CODE art. 2924)</td>
<td>Not applicable</td>
<td>Exempt from disclosure under the federal Consumer Leasing Act of 1976 and Federal Reserve Board Regulation M</td>
</tr>
<tr>
<td>Agricultural</td>
<td>Individual or proprietorship</td>
<td>&quot;Financed&quot; lease (disguised conditional sale)</td>
<td>Motor vehicle</td>
<td>Subject to the Louisiana Consumer Credit Law; exempt from coverage under the Lease of Movables Act and the Motor Vehicle Sales Finance Act</td>
<td>&quot;5% or $15&quot; as permitted under LA. R.S. 9:3520 (1983)</td>
<td>Contract rate as permitted under LA. R.S. 9:3526 (1983)</td>
<td>Contract rate of interest until one year following contractual maturity date; 18% per annum thereafter (LA. R.S. 9:3522, 3527 (1983))</td>
<td>100% of the Rule of 78's as required under LA. R.S. 9:3527:3528 (1983)</td>
<td>Exempt from disclosure under the federal Truth in Lending Act and Federal Reserve Board Regulation Z</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>--------------------------------------------------------</td>
<td>-------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agricultural Individual or proprietorship lease (disguised conditional sale)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td>&quot;Financed&quot; Other equipment (non-motor vehicle)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ordinary business partnership lease Motor vehicle</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purpose of Transaction</td>
<td>Type of Lessee</td>
<td>Type of Lease</td>
<td>Type of Equipment</td>
<td>Applicable Louisiana Statutes</td>
<td>Mark-up or Profit Factors; Time-Price Differential Factors</td>
<td>Late Charges</td>
<td>Deferral Charges</td>
<td>Post-Maturity Interest</td>
<td>Required Rebate upon Prepayment or Acceleration</td>
</tr>
<tr>
<td>------------------------</td>
<td>----------------</td>
<td>--------------</td>
<td>------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------</td>
<td>------------------</td>
<td>---------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Agricultural</td>
<td>Ordinary business partnership</td>
<td>&quot;True&quot; lease</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Louisiana Consumer Credit Law</td>
<td>Not applicable</td>
<td>1% per month on the delinquent amount (consistent with La. Civ. Code art. 2924)</td>
<td>12% per annum (consistent with La. Civ. Code art. 2924)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under La. Civ. Code art. 2924)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Agricultural</td>
<td>Ordinary business partnership</td>
<td>&quot;Financed&quot; lease (disguised conditional sale)</td>
<td>Motor vehicle</td>
<td>Exempt from coverage under the Lease of Movables Act, the Motor Vehicle Sales Finance Act, and the Louisiana Consumer Credit Law</td>
<td>Unlimited as a result of the capitalized interest exception under La. Civ. Code art. 2924</td>
<td>Absolutely prohibited as a form of &quot;interest on interest&quot;</td>
<td>12% per annum (consistent with La. Civ. Code art. 2924)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under La. Civ. Code art. 2924)</td>
<td>Actuarial method (unless rebates contracted under the Rule of 78's)</td>
</tr>
<tr>
<td>Agricultural</td>
<td>Ordinary business partnership</td>
<td>&quot;Financed&quot; lease (disguised conditional sale)</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Exempt from coverage under the Lease of Movable Act and the Louisiana Consumer Credit Law</td>
<td>Unlimited as a result of the capitalized interest exception under L.A. Civ. Code art. 2924</td>
<td>Absolutely prohibited as a form of &quot;interest on interest&quot;</td>
<td>12% per annum (consistent with L.A. Civ. Code art. 2924)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under L.A. Civ. Code art. 2924)</td>
<td>Actuarial method (unless rebates contracted under the Rule of 78's)</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Agricultural</td>
<td>Corporations, &quot;True&quot; lease limited partnerships, and partnerships in commensurate</td>
<td>Motor vehicle</td>
<td>Subject to the Lease of Movable Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>No limit as a result of L.A. R.S. 12:703 (Supp. 1984)</td>
<td>No limit as a result of L.A. R.S. 12:703 (Supp. 1984)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under L.A. Civ. Code art. 2924, unless post-maturity interest contracted at higher rate)</td>
<td>Not applicable</td>
<td>--------------------------------</td>
<td>--------------------------------</td>
</tr>
</tbody>
</table>

**Personal Property Leases**
<table>
<thead>
<tr>
<th>Purpose of Transaction</th>
<th>Type of Lessee</th>
<th>Type of Lease</th>
<th>Type of Equipment</th>
<th>Applicable Louisiana Statutes</th>
<th>Mark-up or Profit Factors; Time-Price Differential Factors</th>
<th>Late Charges</th>
<th>Deferral Charges</th>
<th>Post-Maturity Interest</th>
<th>Required Rebate upon Prepayment or Acceleration</th>
<th>Federal Disclosure Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural</td>
<td>Corporations, &quot;True&quot; lease</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Louisiana Consumer Credit Law</td>
<td>No limit</td>
<td>No limit as a result of La. R.S. 12:703 (Supp. 1984)</td>
<td>No limit as a result of La. R.S. 12:703 (Supp. 1984)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under La. Civ. Code art. 2924, unless post-maturity interest contracted at higher rate)</td>
<td>Not applicable</td>
<td>Exempt from disclosure under the federal Consumer Lending Act of 1976 and Federal Reserve Board Regulation M</td>
<td></td>
</tr>
<tr>
<td>Agricultural Corporations, limited partnerships, and partnerships in commendam</td>
<td>&quot;Financed&quot; lease (disguised conditional sale)</td>
<td>Exempt from coverage under the Lease of Movables Act, the Motor Vehicle Sales Finance Act, and the Louisiana Consumer Credit Law</td>
<td>No limit as a result of L.A. R.S. 12:703 (Supp. 1984)</td>
<td>Absolutely prohibited as a form of &quot;interest on interest&quot;</td>
<td>Actuarial method (unless rebates contracted under the Rule of 78's)</td>
<td>Exempt from disclosure under the federal Truth in Lending Act and Federal Reserve Board Regulation Z</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agricultural Corporations, limited partnerships, and partnerships in commendam</td>
<td>&quot;Financed&quot; lease (non-motor vehicle)</td>
<td>Exempt from coverage under the Lease of Movables Act and the Louisiana Consumer Credit Law</td>
<td>No limit as a result of L.A. R.S. 12:703 (Supp. 1984)</td>
<td>Absolutely prohibited as a form of &quot;interest on interest&quot;</td>
<td>Actuarial method (unless rebates contracted under the Rule of 78's)</td>
<td>Exempt from disclosure under the federal Truth in Lending Act and Federal Reserve Board Regulation Z</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** The table above outlines provisions for personal property leases for agricultural corporations, limited partnerships, and partnerships in commendam. The table details exemptions and prohibitions based on legislation such as the Louisiana Revised Statutes and Consumer Credit Law. The actuarial method and disclosure requirements are also specified.
<table>
<thead>
<tr>
<th>Purpose of Transaction</th>
<th>Type of Lessee</th>
<th>Type of Lease</th>
<th>Type of Equipment</th>
<th>Applicable Louisiana Statutes</th>
<th>Mark-up or Profit Factors; Time-Price Differential Factors</th>
<th>Late Charges</th>
<th>Deferral Charges</th>
<th>Post-Maturity Interest</th>
<th>Required Rebate upon Prepayment or Acceleration</th>
<th>Federal Disclosure Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and commercial</td>
<td>Individual as well as all business entities</td>
<td>&quot;True&quot; lease</td>
<td>Motor vehicle</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Motor Vehicle Sales Finance Act and the Louisiana Consumer Credit Law</td>
<td>No limit</td>
<td>No limit as a result of L.A. R.S. 9:3509 (1983)</td>
<td>No limit as a result of L.A. R.S. 9:3509 (1983)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under L.A. Civ. Code art. 2924, unless post-maturity interest contracted at higher rate)</td>
<td>Not applicable</td>
<td>Exempt from disclosure under the federal Consumer Leasing Act of 1976 and Federal Reserve Board Regulation M</td>
</tr>
<tr>
<td>Business and commercial</td>
<td>Individual as well as all business entities</td>
<td>&quot;True&quot; lease</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Subject to the Lease of Movables Act; exempt from coverage under the Louisiana Consumer Credit Law</td>
<td>No limit</td>
<td>No limit as a result of LA. R.S. 9:3509 (1983)</td>
<td>No limit as a result of LA. R.S. 9:3509 (1983)</td>
<td>12% per annum from date suit filed (consistent with &quot;legal interest&quot; rate limitations under LA. CIV. CODE art. 2924, unless post-maturity interest contracted at higher rate)</td>
<td>Not applicable</td>
<td>Exempt from disclosure under the federal Consumer Leasing Act of 1976 and Federal Reserve Board Regulation M</td>
</tr>
<tr>
<td>-------------------------</td>
<td>------------------------------------------</td>
<td>-------------</td>
<td>------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>---------</td>
<td>----------------------------------</td>
<td>----------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Business and commercial</td>
<td>Individual as well as all business entities</td>
<td>&quot;Financed&quot; lease (disguised conditional sale)</td>
<td>Motor vehicle (prior to September 12, 1983)</td>
<td>Subject to the Motor Vehicle Sales Finance Act when entered into prior to September 12, 1983; exempt from coverage under the Lease of Movables Act</td>
<td>Limited to interest rate limitations under LA. R.S. 6:957 (Supp. 1984) (e.g., 18% per annum on leases of new motor vehicles)</td>
<td>&quot;4% or $15&quot; as limited under LA. R.S. 6:956(K)(2) (repealed by 1983 La. Acts, No. 244, § 2)</td>
<td>No limit as a result of LA. R.S. 9:3509 (1983)</td>
<td>Contract rate of interest as permitted under LA. R.S. 6:958(C) (Supp. 1984)</td>
<td>90% of the Rule of 78's as permitted under LA. R.S. 6:958(A) (Supp. 1984)</td>
<td>Exempt from disclosure under the federal Truth in Lending Act and Federal Reserve Board Regulation Z</td>
</tr>
<tr>
<td>Purpose of Transaction</td>
<td>Type of Lessee</td>
<td>Type of Lease</td>
<td>Type of Equipment</td>
<td>Applicable Louisiana Statutes</td>
<td>Mark-up or Profit Factors; Time-Price Differential Factors</td>
<td>Late Charges</td>
<td>Deferral Charges</td>
<td>Post-Maturity Interest</td>
<td>Required Rebate upon Prepayment or Acceleration</td>
<td>Federal Disclosure Laws</td>
</tr>
<tr>
<td>------------------------</td>
<td>--------------------------------</td>
<td>-------------------------------</td>
<td>-------------------</td>
<td>-------------------------------------------------------------------</td>
<td>------------------------------------------------------------</td>
<td>--------------</td>
<td>------------------</td>
<td>------------------------</td>
<td>-----------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Business and commercial</td>
<td>Individual as well as all business entities</td>
<td>“Financed” lease (disguised conditional sale)</td>
<td>Motor vehicle (after September 12, 1983)</td>
<td>Exempt from coverage under the Motor Vehicle Sales Finance Act when entered into on or after September 12, 1983; exempt from coverage under the Lease of Movables Act</td>
<td>No limit as a result of L.A. R.S. 9:3509 (1983)</td>
<td>Absolutely prohibited as a form of “interest on interest”</td>
<td>No limit as a result of L.A. R.S. 9:3509 (1983)</td>
<td>12% per annum from date suit filed (consistent with “legal interest” rate limitations under L.A. Civ. Code art. 2924, unless post-maturity interest contracted at higher rate)</td>
<td>Actuarial method (unless rebates contracted under the Rule of 78’s)</td>
<td>Exempt from disclosure under the federal Truth in Lending Act and Federal Reserve Board Regulation Z</td>
</tr>
<tr>
<td>Business as well as all business entities</td>
<td>“Financed” lease (disguised conditional sale)</td>
<td>Other equipment (non-motor vehicle)</td>
<td>Exempt from coverage under the Lease of Movables Act and the Louisiana Consumer Credit Law</td>
<td>No limit as a result of La. R.S. 9:3509 (1983)</td>
<td>Absolutely prohibited as a form of “interest on interest”</td>
<td>No limit as a result of La. R.S. 9:3509 (1983)</td>
<td>12% per annum from date suit filed (consistent with “legal interest” rate limitations under La. Civ. Code art. 2924, unless post-maturity interest contracted at higher rate)</td>
<td>Actuarial method (unless rebates contracted under the Rule of 78’s)</td>
<td>Exempt from disclosure under the federal Truth in Lending Act and Federal Reserve Board Regulation Z</td>
<td></td>
</tr>
</tbody>
</table>

**PERSONAL PROPERTY LEASES**