

## Peer-to-Peer RV Renting Includes Host of Legal Issues

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What are your customers doing with their RVs when they're not using them? Some may be enticed to "monetize" the RV when it's not being used by renting their RV out to someone else. Peer-to-Peer RV renting is entering the RV industry and, several companies are now becoming the AirBnB for RV owners. There are several companies in the marketplace with software platforms for this type of peer-to-peer renting.

We've also heard that some RV dealers may be persuading people to buy an RV and encouraging them to help defray the cost of the RV by renting out the RV during its downtime. These same RV dealers may have the consumer sign a Retail Installment Sales Contract (RISC) for the purchase and financing of the RV which states the RV is for personal use.

We've also heard that some dealers are adding their rental inventory into the platforms. Additionally, some of the platforms, we've heard, will list a RV rental company's inventory to their platform, without the RV rental company's permission, and then ask the RV rental company to pay for the lead.

As you might expect, there are a whole host of issues an RV dealer should consider before representing to a customer that he/she can defray the cost of the RV by renting it out when not in use. These issues should also be considered before you think about listing your rental inventory onto one or more of the platforms:

1. *The fact that the buyer/co-buyer/lessee intends to use and/or is actually renting out the RV* - how will you or the financing source know the buyer/co-buyer/lessee intends to lease out the RV? You might have a hint if the buyer's contract, lease, application, buyer's order or lessee's order showed business or commercial use, but there's no assurance that these documents will include those questions. Do you ask the buyer/co-buyer/lessee his/her proposed use of the RV? If the bank or finance source later learns of the commercial use of the RV, will it seek to assign the RISC back to you under its Dealer Agreement with you?
2. *What about those extra miles that may be put on the RV (since it'll be used, in part, for a commercial enterprise and not the typical personal, family or household purpose transaction)?* Do you or the financing source care about the extra mileage? We would think you or the financing source would care as more mileage may mean a lesser value for the RV in the event it should be repossessed and sold. Every "extra" mile means the collateral is worth less. For leases, extra miles will mean a big settlement at lease end - often a collection problem.
3. *Warranty voided* - RV Manufacturers claim that commercial use voids the RV warranty, and likely

any extended warranty.

4. *Increased chance of the RV being involved in an accident since, arguably it'll be on the road more - probably more than if it were used for a personal purpose.*
5. *As your customer probably represented to the you that the RV will be used for a personal, family or household purpose in the RISC or lease, does the customer's commercial use of the vehicle constitute a breach of the RISC or lease?* Depending on the terms of the RISC or lease, it could be considered a breach as the typical RISCs and leases state that the RV will not be used for "hire" or rent. This issue could get even trickier under state Retail Installment Sales Acts (RISAs) that limit the sorts of things that can constitute events of default under a RISC.
6. *If the bank or financing source learns of the rental use during its servicing and collection of the RISC or lease, will it declare the buyer in breach of the RISC or lease, or not?* See issue no. 5 above and the impact of state RISAs.
7. *Does the rental use result in a failure to qualify for benefits under various ancillary products sold in connection with the sale of the RV (e.g., GAP, VSCs, etc.)?*
8. *Is the RISC or lease required property insurance sufficient (since it was based on a personal, family or household purpose and not a commercial purpose) or should it be increased?* If it needs to be increased, does your RISC or lease terms give you or the financing source the authority to require the increase? And, if the software platforms are offering insurance, such as \$1 million coverage, is that nearly enough coverage?
9. *Does the RISC or lease required liability insurance cover "livery" or "for hire" use?* We think, but haven't independently confirmed it, that that RV liability insurance policies provide that they do not cover "livery" or "for hire" use. If that's correct, then if there's an accident, the driver will have no coverage, will incur the loss himself/herself and the credit risk increases. If there's no liability coverage for the driver, you can bet that an injured party will start looking for theories of liability (e.g., negligent entrustment) he/she can use to try to rope in the dealer/lessor/finance source.
10. *Vicarious liability issues?* Can liability be imputed to the owner of the RV who rents it out to a consumer? It could be argued that the driver of the RV is acting as the owner's agent. If someone is injured by the driver's negligence and sues the driver, the owner of the RV could be held vicariously liable for the driver's negligence.
11. *Income to the RV lessor - does your customer properly report the income he/she receives for renting out their RV to the state and federal taxing authorities?* If not, could that mean greater exposure to the taxing authorities and a reduction of your customer's ability to repay his/her obligation?
12. *Is this a case where you may just not want to know that the RV is being rented out to another driver (put your head in the sand)?*

These are just a few of the issues that immediately came to mind when we heard about the peer-to-peer RV renting programs. We're sure there are other issues that we haven't listed above. We're always making lists, so if you can think of any more issues that we should add to our list, let us hear from you.

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