



# Leasing Terms

## Review them & ensure proper protections are in place

by: Robert C. Goldberg, BTA General Counsel

Over the years, an issue occasionally arises that is so contrary to industry practices that it is important to share it with dealers. The channel is fortunate to have numerous leasing companies that partner with dealerships for their mutual benefit. Some leasing companies have also expanded beyond financing to assist dealers in other facets of their businesses. Leasing companies are an integral part of our channel's success and will continue to be.

The December issue of Office Technology included an interview with Larry Weiss, president of Atlantic Tomorrow's Office (Atlantic), headquartered in New York City. Atlantic is among the top five dealerships in the world. Weiss is well respected for his business acumen, philanthropic endeavors and leadership skills. In the article, he discussed certain leasing practices, including early returns, for which there is some controversy. Early returns involve the leasing companies' efforts to respect the originating dealership. Early returns is not the topic of this column; respect for the originating dealership is.

The issue is lease portfolio protection. In the December issue, Weiss states: "One of the things that has evolved over time is that leasing companies used to think that the lessee was their customer. That is incorrect. The lessee is our [the dealership's] customer and we are the customer of the leasing company."

He goes on to say: "Why would I want to do business with a leasing company that is going to freely give out my information to anybody without me being given an opportunity to address any problems?"

Recently, a dealer purchased the maintenance contracts and installed base of another dealership. The leasing company was notified of the transaction, but declined to provide the acquiring dealer with end-of-lease terms. Rather, the leasing company provided this information to a third party who had left the selling dealership months prior to the transaction.

When confronted with the situation, Bob Downey, general counsel for Macquarie Ltd., advised: "Again the end user signs a lease with Macquarie. (Dealer) is not a party to that lease and (Dealer) does not own that information and has no confidentiality expectations with respect to any of the terms of the Macquarie lease." This position raises two important issues.

First, Macquarie ignores the fact that the dealership is its customer and the end user is the dealership's customer.



If you lease an automobile, would you go to the leasing company for service? Of course not. The lessee's relationship is with the dealership and the finance company is merely the source of funds for the purchase. If the dealership had not brought the transaction to the leasing company, the leasing company would not have had the opportunity to finance the transaction.

The second point is the importance of the master lease agreement between the leasing company and the dealership. Here it is critical to spell out the end-of-lease terms and confidentiality. The Business Technology Association (BTA) has reviewed most leasing company master agreements and included the terms necessary to protect a dealership's portfolio.

Leasing companies recognize the value of a dealership's installed base and are more than willing to protect it from competitors. Occasionally, the fair, equitable and ethical practices established within the industry are ignored with adverse consequences. Take time to review your leasing terms and ensure the proper protections are in place. If not, seek revisions immediately. ■

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