



# HIADA LOCAL CHAPTER NEWS

February 2024, Volume 7, Issue 6

## President's Message



Dear Fellow HIADA Members,

So, once upon a time or maybe very recently you decided to get into the car business. You likely worked in a dealership, had friends and family in this business or had a passion for cars and saw the potential of becoming a dealer. Whatever the draw, you opened your doors for business. You probably did a lot of planning on your company name, your location & gathering sufficient funds to initially open your doors. A simple business: buy a car and sell it for more than you bought it—or so it seems. However, it quickly becomes more about how to efficiently buy and recondition enough vehicles to replace those that you sold. Sooner or later funds almost always become an issue: There is an old saying that there are two ways to go broke in the car business:

- 1) Not selling enough cars.
- 2) Selling too many cars.

Cash is king, and it is easy to go through all you have initially invested. The focus then becomes how to raise more capital. Do you sell your notes? or take payment stream deals? Do you qualify for a line of credit and borrow

more money? Immersed in these issues that threaten your very survival, you may awaken to the compliance issues that were never addressed. New dealers sometimes or more experienced dealers may not be aware of all that has changed, or even which agencies have new laser-focused enforcement of existing laws. We often become aware of the many compliance issues once we receive the dreaded audit notice from the Texas Comptroller's Office, the OCCC, TxDMV, the IRS, and more. Some of these agencies are required to visit you every few years. How can you possibly keep a handle on it all? Where do you go for information?

The best way to keep yourself up to date with the whirlwind of change in the automobile industry is to join your association. HIADA is part of a tri-party agreement, where your membership with the Texas Independent Automobile Dealer's Association (TIADA) includes membership in the HIADA and the National Association (NIADA). There are many benefits to each.

Here are some upcoming events in which you should strongly consider enrolling:

TIADA Conference & Expo is around the corner, **July 21-23** at the JW Marriott in San Antonio. This dealer-driven conference is a truly can't-miss event and registration will open soon, so stay tuned for more information!

TIADA's revamped compliance seminar is set for **Monday, March 4th**. The seminar, now the **BPHH Compliance Summit**, has some major updates.

## Diamond Sponsors



In addition to Mike Dunagan presenting, the event will also feature representatives from the TxDMV, the OCCC, and the Comptroller of Public Accounts.

The HIADA March Meeting is on **Tuesday, March 12th** at the Saltgrass Steakhouse, and will feature Ignite Consulting hosting a compliance overview.

Sincerely,  
Rob Edenfield

## Platinum Sponsors:



# »» LEFTLANE

»» Inventory    »» Contracting    »» Collections    »» Accounting

“LeftLane has saved each of my employees two and a half hours per day. Switching from my old system of 20 years is the best thing I’ve done.”

Griffin Plagens, Owner Driven Auto  
(HIADA Member)

“LeftLane converted every piece of data from our accounts. The onboarding and training was a seamless process. I was terrified to switch, but they made it easy.”

Albert Garcia, Owner Garcia Auto Sales

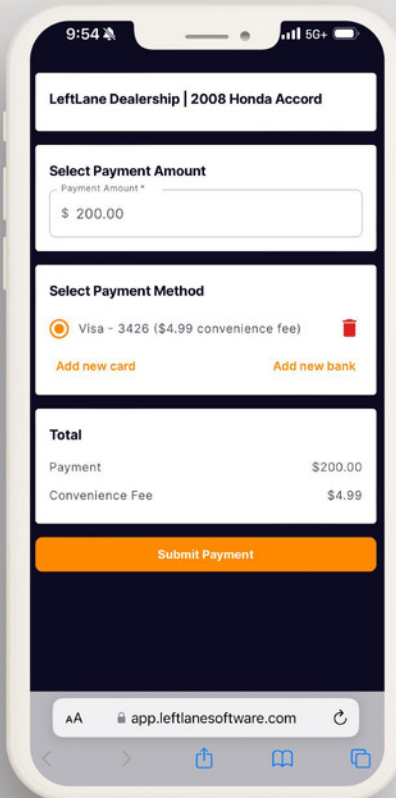
## Payment Reminders

LeftLane Auto Sales - 2008 Honda Accord - you have a payment due today of \$190.00.

You can make a payment at:  
<https://app.leftlanesoftware.com/pay>

LeftLane Auto Sales - 2008 Honda Accord - your account is \$200.00 and 16 day past due.

You can make a payment at:  
<https://app.leftlanesoftware.com/pay>



## Payment Receipts

Thank you for your payment of \$200.00 to LeftLane Auto Sales made on 1/02/2024.

Your account is current.

Application of Payment:

- Late Fees: \$10.00
- Primary Loan: \$190.00

Remaining Balances:

- Primary Loan: \$8214.43

## Compliance Corner

### OCCC Proposes Raising the Motor Vehicle Documentary Fee

The OCCC has proposed to raise the motor vehicle documentary fee from \$150 to \$225. The last time this fee was changed came in 2016. The agency has received numerous submissions from dealers ahead of the proposed rule change, which was explained in a webinar the agency held on January 30, 2024. A proposed timeline for the rule amendments indicates the rule will become effective in May of 2024.

"The doc fee is intended to compensate the dealer for costs incurred in complying with the dealer's legal responsibilities in handling and processing documents related to the sale of a vehicle," said OCCC General Counsel Matthew Nance during the webinar. "Most sellers can demonstrate costs related to documentary services of at least \$225."

#### SUMMARY OF RULE AMENDMENTS (FROM THE OCCC WEBSITE)

The precomment draft includes the following rule amendments to 7 Tex. Admin. Code § 84.205, which governs documentary fees for motor vehicle retail installment transactions under Chapter 348 of the Texas Finance Code:

- Amendments throughout Section 84.205 would adjust the reasonable amount of the documentary fee to \$225. The Finance Commission is authorized to establish a reasonable documentary fee amount under Section 348.006(f) of the Texas Finance Code. The Finance Commission previously set the reasonable amount to \$150 in 2016, and the amount has not been changed since 2016. Costs for dealerships have increased since 2016. The \$225 amount is within a range of documentary fees approved for a group of dealerships following a contested case before the State Office of Administrative Hearings (SOAH).
- An amendment would clarify that documentary fee costs must be determined both in accordance with generally accepted accounting principles and in accordance with Section 84.205.

- An amendment would clarify that the documentary fee may include costs of obtaining a credit report if the cost is incurred uniformly in cash and credit transactions, but may not include the cost of obtaining a credit report in unconsummated transactions.
- Amendments would replace references to the USA PATRIOT Act with references to regulations of the Office of Foreign Assets Control, in order to provide a clearer reference to federal laws that prohibit transactions with certain consumers.
- Amendments would specify that the documentary fee may include the cost of only one written contract for the sale of the motor vehicle (because only one contract is legally required).
- An amendment would remove a reference to the statement of the county of title issuance (form VTR-136). The OCCC understands that the Texas Department of Motor Vehicles (TxDMV) has stopped using this form following the passage of SB 876 (2021).
- Amendments would specify that the documentary fee may not include costs incurred while the seller's facilities are closed, and may not include costs of maintaining areas that are not involved in the processing of documents.
- Other amendments would make technical corrections and update citations.

#### YOU CAN WATCH THE OCCC WEBINAR HERE

HIADA and TIADA will keep you updated as things progress with the implementation of the rule amendments.

**Welcome Our Newest HIADA Member**

**CRU Automotive**

*Gold Sponsor:*



## HIADA Board Members

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Mi Pueblo BRP

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Your Car Store

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## For Advertising

### Opportunities Contact:

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## Coming Up

- **BPHH Compliance Summit (March 4)**
- **HIADA February Meeting (March 12)**

## Legal Alternatives to Credit Card Surcharging in Texas

### By LeftLane Software

There is confusion as to what constitutes a legal convenience fee on a Retail Installment Contract in Texas. The OCCC published a bulletin, the Attorney General published an opinion, and TIADA published a blog here. There are still frequently asked questions.

### Can the dealer charge a convenience fee to the customer?

- The dealer may not charge a convenience fee or receive any direct or indirect benefit from the convenience fee
- The dealer may use a payment processor who can charge a convenience fee to the customer, so long as 100% of the proceeds are remitted to the processor and the dealer does not earn revenue from the fee

### What is the difference between a convenience fee and a surcharge?

- A surcharge is when the seller charges a fee to the buyer for using a card. Surcharges are assessed as a percentage
- A convenience fee is when the seller charges a fee to the buyer for paying outside the usual channel (paying online). Convenience fees are assessed as a flat amount

### Why not use a surcharge?

- Surcharges are not allowed on debit card transactions
- A majority of BPHH customers pay with debit cards
- Visa and Mastercard prohibit surcharges

### How does this work with payments over the phone?

- Convenience fees should be limited to online channels
- The convenience fee needs to be disclosed as a separate line item and should be limited to online payments

In summary, the fee must be entirely between the payment processor and the customer. The dealer may not have a business relationship with the payment processor. The dealer cannot receive a direct or indirect benefit from the fee. The customer must have another payment method available. The fee must be flat and not a percentage of the price. The fee should be disclosed as a separate line item before payment.