

CLIENT ALERT

## Florida Enacts Commercial Financing Disclosure Law Requiring Consumer-Style Disclosures for Certain Commercial Financing Transactions

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On June 26, 2023, Florida Governor Ron DeSantis signed House Bill No. 1353 (Bill), enacting the Florida Commercial Financing Disclosure Law (FCFDL). The Bill creates part XIII of Chapter 559 of the Florida Statutes to govern commercial loan disclosures. Florida joined several states that have already imposed – or are planning to impose – disclosure requirements for certain commercial financing transactions under threshold amounts, which vary from state to state. California and New York have enacted similar laws with stringent disclosure requirements subject to certain exceptions. In comparison, the FCFDL disclosure requirements appear to be more straightforward. The FCFDL requires that providers of commercial financing provide written consumer-like disclosures for the terms of certain commercial financing transactions. Additionally, the FCFDL prohibits specific acts by brokers of commercial financing transactions, including the collection of advance fees.

### COVERED COMMERCIAL FINANCING TRANSACTIONS AND EXEMPTIONS

Commercial financing transactions that fall within the scope of the FCFDL are commercial loans, accounts receivable purchase transactions, and certain commercial open-end credit plans. However, the FCFDL exempts any commercial financing transaction that is: (i) more than \$500,000; (ii) secured by real property; (iii) a lease; (iv) a purchase money obligation; or (v) a floor plan financing transaction with a motor vehicle dealer or rental company. Additionally, the FCFDL exempts certain providers of commercial financing, including federally insured depository institutions and any affiliate or holding company, licensed money transmitters, and providers that consummate no more than five commercial financing transactions in Florida in a 12-month period.

### DISCLOSURE REQUIREMENTS

For covered transactions that are not otherwise exempt, providers are required to make only one disclosure in writing at or before consummation of each commercial financing transaction. There is no obligation for providers to update disclosures as a result of a change to a consummated commercial financing transaction. Each written disclosure must generally include:

- a. The total amount of funds provided under the terms of the agreement, and if different from the total amount of funds provided, the disbursement amount after any itemized deductions or withholdings;
- b. The total amount to be paid to the provider under the terms of the agreement;

- c. The total dollar cost under the terms of the agreement (a. minus b. above);
- d. The manner, frequency, and amount of each payment; and
- e. A statement of whether there are any costs or discounts associated with prepayment (and a reference to the relevant prepayment provision in the agreement).

## ENFORCEMENT

There is no private right of action under the FCFDL. The Attorney General has exclusive authority to enforce the FCFDL through administrative or judicial proceedings, actions designed to obtain voluntary compliance, and acting on complaints. The Attorney General can also impose fines up to \$20,000 for all aggregated violations, or up to \$50,000 for all aggregated violations that continue after receiving written notice of a violation from the Attorney General.

The FCFDL became effective on July 1, 2023, and it applies to commercial financing transactions consummated on or after January 1, 2024.

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