



# CAMBRIDGE

## PROPERTY & CASUALTY

### SPECIAL REPORT

## ISSUES ON OWNING, LEASING OR TITLING A VEHICLE IN YOUR TEENAGE CHILD'S NAME

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Under Michigan's Owner Liability Statute<sup>1</sup> (the "ownership statute"), the owner of a motor vehicle is automatically liable for any injury caused by the negligent operation of that motor vehicle. For parents who own vehicles driven by teenage drivers, this statute imposes a substantial liability exposure.

Generally, parents are more collectible and have accumulated more assets than their children. In order to protect those assets and avoid liability under the ownership statute, parents can title those vehicles driven by their teenage children in the teenager's name. If executed properly, this could insulate parents from tort claims brought under the ownership statute. However, the effectiveness of this strategy largely depends on how the vehicle is leased, financed, purchased, titled, and/or registered.

Regardless of the type of sale, both dealers and private sellers are required to obtain parental consent to sell a vehicle to a minor. Section 750.421c of the Michigan Penal Code states, "*No person shall knowingly sell a motor vehicle to an unemancipated minor under age 18 without the written consent of 1 of the minor's parents or his guardian on a form approved by the secretary of state. The seller under this section shall retain the*

*required form for a period of 3 years from the date of sale. Any violation of this section constitutes a misdemeanor.*" Although parental consent does not change the contractual liability exposure with respect to the sale of a motor vehicle to a minor, it is questionable whether such consent could constitute a claim for negligent entrustment of a motor vehicle.

### **Can my teenage driver lease a vehicle in their own name?**

While there is no minimum age requirement in Michigan to lease a vehicle, contract law essentially precludes any individual under age 18 from entering into a lease agreement without joining a co-lessee. In short, for a valid contract to exist, both parties must have contractual capacity. Generally, a minor does not have contractual capacity therefore any contracts with a minor are partially voidable. In the context of a lease agreement, a minor would have the option to repudiate the lease at any time while the lessor would remain contractually bound. For this reason, leasing companies are unlikely to enter into any lease agreement with an individual under the age of 18.

Some lease agreements include a co-lessee option. This is commonly referred to as co-signing a lease. If the primary lessee is

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<sup>1</sup> MCL 257.401

ineligible based on age or creditworthiness, a co-signor can essentially guarantee the lease would incur the exact same liability as the primary lessee. As respects the ownership statute, a co-lessee is treated as an owner and remains liable for any injury caused by the negligent operation of the vehicle.

From the lessor's standpoint, the standard lease agreement requires that the lessee and the co-lessee "*protect (the lessor) from all losses, damage, injuries, claims, demands, and expenses arising out of the condition, maintenance, use, or operation of the vehicle. You agree to indemnify and hold harmless, the (lessor) and (its) assigns from all such losses, damage, injuries, claims, and expenses.*" This provision allows the lessor to pursue contractual indemnification from either the lessee or the co-lessee.

In most cases, the names of both the lessee and the co-lessee will appear on the certificate of title and registration documents. This further emphasizes the fact that both individuals are equally liable for damages.

To avoid contractual, tort and statutory liability, an individual should never co-sign a vehicle lease unless they are willing to assume all risk of loss and insure the vehicle as their own.

### **Can my teenage driver purchase a vehicle in their own name?**

Many of the contractual capacity issues discussed above also apply to private sales contracts and vehicle purchase agreements. Notwithstanding the parental consent requirement referenced above, it is much more likely that a teenager would own an older used vehicle as opposed to a new lease.

Similar to leases, there is no minimum age required to register a vehicle with the Michigan Secretary of State. As long as the minor-registrant can prove ownership, a registration certificate will be issued.

In the ideal situation, the teenage driver would pay cash for a vehicle, obtain clear title, and register that vehicle solely in his or her name. In doing so, the teenage driver effectively becomes the sole owner and the only individual liable under the ownership statute.

In order for parents to avoid liability under the ownership statute, they must ensure that their name does not appear on the vehicle's title, registration, finance documents or purchase agreement.

### **What if my teenage driver finances the vehicle purchase through a bank loan?**

The effect of financing a vehicle purchase is no different than the lease scenario discussed above. As long as the teenage-owner is approved for financing without a parent co-signor or the parent's personal guarantee, the teenager would be the only individual liable under ownership statute. On the other hand, so much as co-signing a loan would cause the signing party to qualify as an owner and thus incur full liability for any injury caused by the negligent operation of that motor vehicle.

### **CONCLUSION**

In summary, parents can avoid liability for those vehicles driven by their teenage children simply by titling those vehicles in the children's name. However, in order to be effective the parents' names must not appear on any financing document, certificate of title, lease agreement, vehicle registration or purchase agreement for any of those vehicles. If it does they must be willing to assume all risk of loss and insure that vehicle as if it were in their own name.