



DEALER TALK

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NOTE: We make every effort to ensure information in *Dealer Talk* is accurate, but it is not a substitute for legal advice.

Motor Vehicle Dealer Board Mission Statement

The Motor Vehicle Dealer Board will administer sections of the Commonwealth's Motor Vehicle Dealer Laws and regulations as charged; while providing a high level of customer service for the automotive consumer and dealer community.

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BOARD SUSPENDS RECOVERY FUND FEE REQUIREMENTS

At its March 11, 2008 meeting, the Motor Vehicle Dealer Board voted to suspend the \$10 Transaction Recovery Fund Fee assessed to salespersons for the first three years they are licensed:

Virginia Law states that dealers shall pay an annual Transaction Recovery Fund fee of \$100, and every salesperson shall pay an annual Fund fee of \$10.

Further, the Code states "Applicants for an original motor vehicle dealer's license shall pay an annual Fund fee of \$250 each year for three consecutive years. During this period, the \$250 Fund fee will take the place of the annual \$100 Fund fee."

The Law also gives the Board the authority to suspend or reinstate collection of Fund fees.

For at least the past 10 years, the Board has voted to suspend collection of the \$100 annual Dealer Fund Fee as the Fund could and has maintained adequate balances without this annual fee.

Up until March 13, 2008, the \$10 fee was assessed on salespersons for three years. **On March 11, 2008 the Motor Vehicle Dealer Board voted to:**

- **Continue to suspend the \$100 Dealer Annual Fee and;**
- **Immediately suspend collection of the \$10 fee assessed against salespersons.**

As a result of this change, the total annual fees for all salespersons will be \$25. Previous to this change, Dealers paid a total of \$35 for salespersons who had been licensed for three years or less.

If you are hiring a new salesperson and the Motor Vehicle Dealer Board will be running a criminal history check on that individual, the total fees for this initial application will be \$35. (\$25 licensing fee and \$10 for the criminal history check.)

SALESPERSONS MUST BE EMPLOYEES

The Code of Virginia defines a salesperson as follows:

“ .. (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.”

Please be sure that anyone who performs any of the functions listed in the above definition is properly licensed. In addition, anyone licensed as a salesperson must be an employee of the dealership. Licensed salespersons may not be “independent contractors” and paid via IRS form “1099”.

IRS form K-1 is used by members of an LLC to report their share of a Corporation’s earnings (or loss). If a member of an LLC is also a licensed salesperson, then by definition, they are also an employee of the LLC and the LLC must issue that employee an IRS Form W-2 at the end of the tax year. Therefore, a member of an LLC who is also a licensed salesperson will receive both a “K-1” and a “W-2” at the end of the tax year and must complete a W-4 when their employment begins.

GOVERNOR KAINE SIGNS BILL TO RETURN NVTA TAXES AND FEES

~ Measure sets up process for return of taxes and fees consistent with NVTA resolution ~

RICHMOND - Governor Timothy M. Kaine recently signed House Bill 1578 which establishes procedures to return taxes and fees collected by the Northern Virginia Transportation Authority. The Virginia Supreme Court ruled that the imposition of regional taxes and fees by the Northern Virginia Transportation Authority was unconstitutional.

“This bill creates an open, public process for the return of taxes and fees paid by individuals to the Northern Virginia Transportation Authority” Governor Kaine said.

The taxes and fees of interest to motor vehicle dealers will be returned as follows:

- The Department of Motor Vehicles (DMV) will return the **1% initial vehicle registration fee** and the **\$10 regional registration fee** by mail beginning in early April. DMV will publish guidelines for the return of the fees by April 1 on www.dmvNOW.com. Individuals who paid these fees are encouraged to ensure that DMV has their correct mailing address to allow for quick and convenient return of the fees. Call DMV Direct at 1-866-DMV-LINE (1-866-368-5463) to update your address or for additional information.

- The **2% vehicle rental tax, \$10 safety inspection fee and the 5% sales tax on motor vehicle repair** will be sent to the Unclaimed Property Division of the Department of the Treasury. Citizens may request refunds from the Unclaimed Property Division. The department is working to finalize guidelines for refunding money. Go to the Department of Treasury at <http://www.trsvirginia.gov/> for additional information, or, after April 1, call 804-278-0187. The Department of Taxation has issued a special bulletin concerning the tax on motor vehicle repairs:



NVTA Refund Tax Bulletin.pdf

The bill also directs all collection agents to cease collection of the taxes and fees. Additional information on the return of taxes and fees collected can be found at www.hb3202.virginia.gov and www.thenovaauthority.org.

HOLIDAYS HOURS

In observance of the upcoming holidays, all state agencies, including the Dealer Board, will be closed on the following date:

**Monday
May 26, 2008
FOR MEMORIAL DAY!**

Calendar of Events

**All Meetings held at DMV
Headquarters
2300 W. Broad Street, Room
702 Richmond, VA**

Monday, May 12, 2008
Time: 8:30 a.m.
Dealer Practices Committee Meeting

Monday, May 12, 2008
Time: Immediately following
Dealer Practices
Licensing Committee Meeting

Monday, May 12, 2008
Time: 9:30 a.m.
Advertising Committee Meeting

Monday, May 12, 2008
Time: Immediately following
Advertising
Transaction Recovery Fund
Committee Meeting

Monday, May 12, 2008
Time: 10:00 a.m.
Full Board Meeting

NOTE: Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate.

Board Actions

Fredericksburg Dealer: This dealership opened in September of 2006. A Board field representative attempted to visit the dealership on November 28 of that same year only to find it closed. An educational/warning letter was sent to the owner. A second attempt to visit the dealership in February, found the dealer again closed. The Board's executive director levied a \$250 civil penalty on the dealer. The dealer neither paid the penalty nor requested an informal fact-finding conference, therefore a field representative attempted to serve an order of suspension. The field representative attempted to serve the order on May 14, 2007, only to find the dealership closed. On May 15, the civil penalty was paid and the suspension was lifted.

Attempts were made to inspect the dealership on May 29, June 5 and September 11, 2007. On each occasion the field representative found the dealership closed during its posted business hours. As a result of this pattern, a \$1,000 civil penalty was assessed. Based on the information provided at the conference, the hearing officer recommended, and the Board agreed that a \$1,000 civil penalty should be assessed.

Salesperson Application: The applicant, Mr. Nassiri is the former owner and dealer-operator of Export car Connection in Haymarket. Beginning in 2000, this dealership received a number of unsatisfactory inspections, culminating in an informal fact finding conference in May of 2002. The Board voted to impose a civil penalty and a suspension. These decisions were appealed to a formal hearing and in February of 2003, Mr. Nassiri paid a \$1,500 civil penalty that was assessed by the Board.

Beginning in April of 2005, Mr. Nassiri's dealership again was cited a number of times for various alleged Code violations. This new series of problems lead to another informal fact finding conference in July of 2005 and ultimately a \$3,000 civil penalty and license revocation. Mr. Nassiri appealed this decision and a formal hearing was convened with the same result as the informal. This decision by the Board was appealed to the circuit court who upheld the Board's decision. In February of 2007 the dealership was closed.

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DEALER PLATES

Section §46.2-1550 of the Code addresses the use of Dealer Plates. Below is an abbreviated version of the Law.

Dealer's license plates may be used on vehicles in the inventory of licensed Virginia motor vehicle dealers when operated on the highways of Virginia by dealers or dealer-operators, their spouses, or employees (Includes salespersons) of dealers. (Note: the spouses of salespersons and employees may NOT use dealer plates.)

A dealer may also permit his license plates to be used in the operation of a motor vehicle:

1. By any person whom the dealer reasonably believes to be a bona fide prospective purchaser who is either accompanied by a licensed salesperson or has the written permission of the dealer;

2. When the plates are being used by a customer on a vehicle owned by the dealer in whose repair shop the customer's vehicle is being repaired; (See Form DSD 27 for details and conditions.) or

3. By a person authorized by the dealer on a vehicle that is being driven to or from (i) a point of sale, (ii) an auction, (iii) a repair facility for the purpose of mechanical repairs, painting, or installation of parts or accessories, or (iv) a dealer exchange. (See Form DSD 27 for details and conditions.)

Generally, it is unlawful for any dealer to cause or permit: (i) use of dealer's license plates on vehicles other than those held in inventory for sale or resale; (ii) dealer's license plates to be lent, leased, rented, or placed at the disposal of any persons other than those permitted by listed.

Also, it is unlawful for any dealer to cause or permit dealer's license plates to be used on:

1. Motor vehicles such as tow trucks, wrecking cranes, or other service motor vehicles;

2. Vehicles used to deliver or transport (i) other vehicles; (ii) portions of vehicles; (iii) vehicle components, parts, or accessories; or (iv) fuel;

3. Courtesy vehicles; or

4. Vehicles used in conjunction with any other business.

Board Actions

(Continued from page 3)

Mr. Nassiri applied for a salesperson's license in June of 2007 and his application was denied as he had not paid the civil penalty. The penalty was paid on August 3, 2007. However, his application was still denied based on his past record. This decision by the executive director was appealed and the hearing officer recommended denial of the application. The executive director once again denied the license. This decision was appealed and a formal hearing was held on December 28, 2007 to address the alleged violations of VA Code Section 46.2-1575(2) (failure to comply subsequent to receipt of a written warning by the Board or any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner or the Board under this chapter) and 46.2-1507 (failing or refusing to pay civil penalties imposed by the Board). Based on the information provided at the conference, the hearing officer recommended that Mr. Nassiri be denied a salesperson's license.

After much discussion and review of the situation, the Board voted to approve the license application.

Motor Vehicle Transaction Recovery Fund: At the March Board meeting, the Transaction Recovery Fund Committee and the Board considered and approved the following claim:

On January 14, 2006, the General District Court for the City of Norfolk determined that Uptown Auto Sales, a dealership owned and operated by Mr. Milton E. Gue, willfully violated the Virginia Consumer Protection Act and committed fraud during the course of a sale to a consumer. The court awarded the consumer a judgment against Uptown Auto Sales in the amount of \$10,113.00 (Breakdown of Judgment: \$2,500 actual damages, \$5,000 for willful violations, \$113 court costs and \$2,500 attorney fees). As the dealer had a bond at the time of the transaction, the bond company paid "actual damages" (\$3,656.00) to the consumer.

The consumer filed a claim with the Board to pay attorney fees (\$2,500) from the transaction recovery Fund. Based on staff and the hearing officer's recommendation, the Board voted to approve payment of the attorney fees.

Dealer-Operator Course

The Virginia Community College System and the Virginia Independent Automobile Dealers Association (VIADA) have teamed up to present a two-day Dealer-Operator course. The following is a list of up-coming classes. The list is regularly updated on our WEB site at <http://www.mvdb.virginia.gov/licensingprocess.htm>.

2008

May 6 & 7 - Thomas Nelson Community College, Newport News

Contact: Registration; 757-825-2937 or 2935; www.tncc.edu

May 13 & 14 Southwest Virginia Community College, Richlands

Contact: Edna Sizemore; 276-964-7369; www.sw.edu

May 20 & 21 - Danville Community College, Danville

Contact: Melissa Cross; 434-797-6437; www.dcc.vccs.edu/workforce

June 3 & 4 - Germanna Community College, Fredericksburg

Contact: Susan Brown; 540-891-3012; www.gcc.vccs.edu/workforce

June 10 & 11 - Rappahannock Community College, Glens

Contact: Susan Lawson; 804-758-6750; www.rcc.vccs.edu

June 17 & 18 - Community College Workforce Alliance at J. Sargeant Reynolds - Community College, North Run Campus, Henrico, County

Contact: Sandy Jones; 804-523-2292

www.ccwa.vccs.edu

July 8 & 9 - Tidewater Community College, Norfolk

Contact: Registration; 757-822-1234; www.tcc.edu/wd

July 22 & 23 - Lord Fairfax Community College, Middletown

Contact: Registration; 540-868-7021; www.lfccworkforce.com

August 5 & 6 - Virginia Western Community College, Roanoke

Contact: Anne Koon; 540-767-6131; www.virginiawestern.edu

August 19 & 20 - Northern Virginia Community College, Reston

Contact: Claire Wynn; 703-450-2551 or 2552; www.nvcc.edu

September 9 & 10 - Patrick Henry Community College, Martinsville Campus

Contact: Donna Craighead; 276-656-0354; www.ph.vccs.edu

September 23 & 24 - Blue Ridge Community College, Weyers Cave

Contact: Lisa or Sandy; 540-453-2215; www.brcc.edu