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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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LEAD PROVIDERS AND BIRD DOGS

Virginia law prohibits dealers and salespersons from compensating anyone in connection with the sale of a motor vehicle who is not either licensed as a motor vehicle dealer or a salesperson. Virginia Code Section 46.2-1537 states:

It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, [Dealer Laws] directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in § 46.2-1500 unless that person is licensed as required by this chapter.

The term “bird dog” is used in a number of industries to mean an individual who refers prospective customers to an entity that sells a product. In the motor vehicle dealer industry, a bird dog is an individual who refers prospective customers to a particular dealership or salesperson for a fee (compensation). A prospective customer is a sales lead. So anyone who provides leads (prospective customers) to a dealer is playing the role of a “bird dog”.

We all clearly recognize that paying a fee to a soldier to send his fellow soldiers to a dealership is paying a bird dog. We all recognize that giving a gift to a customer for referring their friends and neighbors to a dealership is in fact compensating a bird dog. How about when an internet company sends you a sales lead and you pay the internet company for the lead? Is this any different from the previous two scenarios? We don't think so.

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Calendar of Events

**All Meetings held at DMV
Headquarters**

**2300 W. Broad Street, Room
702 Richmond, VA**

Monday, March 12, 2012

Time: 9:00 a.m.

Dealer Practices Committee Meeting

Monday, March 12, 2012

Time: Immediately following Dealer
Practices

Licensing Committee Meeting

Monday, March 12, 2012

Time: Immediately following Licensing

Advertising Committee Meeting

Monday, March 12, 2012

Time: Immediately following
Advertising

**Transaction Recovery Fund
Committee Meeting**

Monday, March 12, 2012

Time: 10:00 a.m.

Full Board Meeting

NOTE: Meetings may begin later,
but not earlier than
scheduled.

LEAD PROVIDERS AND BIRD DOGS

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One variation on paying a bird dog a fee is that the payment is contingent on a sale being made: The bird dog only gets paid for leads that result in a sale. This variation clearly violates the Virginia Law prohibiting compensating an individual who is not a licensed salesperson.

The second variation of paying a bird dog is payment on a per lead basis regardless if the lead results in a sale. In this variation, any lead that does result in a sale is a violation of Virginia law as there is a direct tie between the bird dog providing a lead and the dealership compensating the bird dog.

The MVDB has always interpreted Virginia Code Section 46.2-1537 to prohibit unlicensed individuals from receiving payment for leads on a per lead basis since any lead that results in a sale is compensating an unlicensed individual in connection with the sale of a motor vehicle.

In 2000, a taskforce that included Dealer Board members; trade association representatives; manufacturers; consumers; the Department of Motor Vehicles; newspapers; third party internet companies; and the Office of the Attorney General concluded in a report dated January 9, 2001 that “. . . licensed motor vehicle dealers may only compensate an unlicensed third-party vendor by a flat payment structure (e.g., per month) rather than per sale, per referral or any other transactional basis. “

Dealers who pay third party services for leads must be careful to not run afoul of the law. The Board has consistently stated and provided guidance to dealers and third parties that unlicensed entities can only be paid a flat fee for advertising and for providing leads. **Dealers may not pay a third party on a per sale or per lead basis** including any variation where a “flat fee” is adjusted periodically for past performance by the dealer or the lead generator related to sales or leads.

Dealers must carefully scrutinize contracts with third party services as it is the dealer who is in jeopardy when compensating unlicensed individuals. If you are compensating any unlicensed individuals or companies on a per lead basis or for leads that result in a sale or any variation where a “flat fee” is adjusted periodically for past performance by the dealer or the lead generator, you should discontinue this practice.

HOLIDAYS HOURS

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

Monday
February 20, 2012
PRESIDENTS DAY!



WATCH US ON THE WEB

The next Motor Vehicle Dealer Board meeting, which is scheduled for March 12 at 9:00 am, will broadcast live on the WEB once again. A hot link will be posted on the MVDB Home Page (www.mvdb.virginia.gov) for a quick and easy connection to the broadcast. Mark your calendars now!



Time to Recertify?

Dealer-Operators of independent dealerships must recertify every three years by either taking a class on-line or in a classroom or by passing a test. Click [HERE](#) for more information and [HERE](#) to determine if you must recertify between now and October 31.

GOVERNOR MCDONNELL ANNOUNCES AUTOMOTIVE RELATED MANUFACTURER EXPANSION

Governor Bob McDonnell announced in December that IMS:GEAR Virginia, Inc., one of the largest manufacturers of gear assemblies for the North American automotive market, will invest \$35.5 million to expand its operation in the City of Virginia Beach. The company, which manufactures metal and plastic gear assemblies used in automatic automotive seats, will create 80 new jobs. Virginia successfully competed against Georgia for the project.

Speaking about the announcement, Governor McDonnell said, "IMS:GEAR Virginia has thrived in Virginia Beach since its establishment there in 2000. This significant investment will allow for a larger facility and an additional manufacturing line to support a growing customer base of Tier 1 automotive suppliers throughout North America. The company continues to be a strong corporate partner to the Commonwealth and a key component of the automotive industry niche that is present in Virginia."

"IMS:GEAR Virginia chose to expand its operation in Virginia Beach due to the quality of the workforce and the positive business environment that is prevalent across the Commonwealth," said Jim Cheng, Virginia Secretary of Commerce and Trade. "IMS is an impressive, worldwide company and we are proud that it has served North American automotive suppliers from Virginia for more than a decade. This expansion will enable the company to further expand its customer base and global footprint in the industry."

IMS:GEAR Virginia, Inc., is a subsidiary of IMS:GEAR GmbH, headquartered in Donaueschingen, Germany, with U.S. headquarters in Gainesville, Georgia. IMS:GEAR GmbH employs over 1,500 worldwide, and its Virginia operation reported sales of over \$19.8 million in 2010. IMS:GEAR offers a wide range of products such as geared shafts, clamp-type pinions, cup-type pinions, bushings, motor flanges and output flanges.

"IMS:GEAR is proud to call Virginia Beach home of the production facility for horizontal drive mechanism for car seats," said Guenter Weissenseel, President IMS:GEAR Virginia, Inc. "We have been producing parts here for the last 11 years with the support of the people, City and the Commonwealth of Virginia. We are looking forward to growing as a company to provide work and prosperity to the local community."

"IMS:GEAR is one of the leading manufacturers of automotive gear assemblies in the world," said Will Sessoms, Virginia Beach Mayor. "The company had a very attractive opportunity to take this expansion out of Virginia, but because of the quality of our local work force and the overall positive business environment that exists in Virginia Beach, the City was able to provide a viable option for them. Of course, the help of Governor McDonnell and his team was critical to keeping these jobs in Virginia."

BOARD ACTIONS

Mr. R's Cars, LLC and Antonio L. Randolph. Between August 6, 2007 and October 4, 2011 MVDB field representatives made six attempts to conduct a random inspection of this Henrico County dealer. On each attempt – the dealership was closed. On the last attempt – the dealership appeared to have been abandoned. In March of 2011 Mr. Randolph paid a \$250 civil penalty for not maintaining business hours. A \$500 civil penalty was assessed in July of 2011 and Mr. Randolph appealed this determination and on November 29, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning from the Department or the Board). Based on the information provided at the conference and the hearing officer's report, the Board assessed a \$2,000 civil penalty on Mr. Randolph.

Lee's Auto and John J. Lee. In November of 2005, the Board assessed a \$5,500 civil penalty on this Newport News dealer for on-going record keeping problems to include accounting for temporary tags. The dealer paid the civil penalty. Inspections conducted in 2008, 2010 and 2011 revealed continued record keeping problems including accounting for temporary tags; also noted were questionable safety inspections and at the last inspection of this series, the field representative observed that two dealer plates attached to vehicles, displayed up-to-date year stickers that were issued to passenger vehicles. (Dealer tags are issued a different color "year" sticker)

On June 29, 2011, an informal fact-finding conference was conducted to address the allegations that Mr. Lee had failed to properly maintain dealer records; had misused dealer plates and had made material misstatements and had failed to comply subsequent to receipt of a written warning from the Board). At the September 12, 2011 Committee and Full Board meeting, the members passed a resolution stating that a civil penalty of \$8,000 be assessed and all licenses and certificates issued by the Board to Mr. Lee should be suspended for 90 days and they also mandated that a Motor Vehicle Dealer Board field representative re-inspect Mr. Lee's dealership within 90 days and if the inspection is not satisfactory the 90 day suspension would continue until such time as he had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. Lastly, the Board required that Mr. Lee successfully complete the two-day dealer-operator course within 90 days.

Mr. Lee appealed the Board's decision and requested a formal hearing. On November 29, 2011, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the hearing, including a more recent inspection of the dealership and the hearing officer's report, the Board voted to impose a \$6,000 civil penalty. Mr. Lee did successfully pass the Dealer-Operator course between the time of the informal conference was held and the formal hearing.

Mr. Rudolph's Auto Group, Inc. and Jevon K. Rudolph. Field Representative Mack-Nelson attempted to conduct a random inspection of this Hampton dealership on July 25 and September 20 of 2011. On both occasions the dealership was not opened. The first unsuccessful attempt resulted in an educational/warning letter and the second attempt resulted in the assessment of a \$250 civil penalty. Mr. Rudolph appealed this decision. On November 29, 2011, an informal fact-finding conference was conducted. Based on the information provided at the conference and the hearing officer's report the Board determined that Mr. Rudolph should pay a \$250 civil penalty for not maintaining his posted business hours.

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BOARD ACTIONS

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Najib U. Ahmad. In March of 2011 it came to the attention of the Board that Mr. Ahmad had been convicted of two counts of “money laundering”. On May 17, 2011, an informal fact-finding conference was conducted to determine if the Board should take action against Mr. Ahmad. Per the authority given to the executive director by the Board to make decisions in these types of cases, the executive director concluded that all licenses issued to Mr. Ahmad should be revoked. On August 12, 2011, Mr. Hugo Blankingship, III, attorney for Mr. Ahmad, appealed and requested a formal hearing. On November 14, 2011, a formal hearing was conducted and based on the information provided at the hearing and the hearing officer’s recommendation, the Board voted to not take any further action against Mr. Ahmad.

Paul Pruitt and Pruitt Automotive Wholesale, LLC. In June and August of 2010, MVDB Field representative Mack-Nelson attempted to conduct a random inspection of this Hayes, Virginia dealership. As the dealership was closed on both attempts, an educational/warning letter was sent to Mr. Pruitt. A third attempt to inspect this dealership on November 22 showed that the dealership was once again closed. As a result a \$250 civil penalty was levied. Mr. Pruitt paid this penalty. On May 10, another attempt was made to inspect this dealership only to find it closed. A \$500 civil penalty was assessed and Mr. Pruitt appealed this penalty and requested an informal fact finding conference.

On July 26, 2011, an informal fact-finding conference was conducted. At the September 12, 2011 Committee and Full Board meeting, the members passed a resolution stating that Mr. Pruitt pay a \$500 civil penalty and to suspend all his licenses for 15 days. On October 14, 2011, the Dealer Board received Mr. Pruitt’s request for a formal hearing. Based on the information provided at the formal hearing and the hearing officer’s recommendation, the Board assessed a \$350 civil penalty.

TrueCar. This California based company provides a number of services related to the motor vehicle sales industry. One service they offer is generating leads for dealers. These leads come from TrueCar’s WEB site (Formally ZAG.com) or from the WEB sites of insurance companies, clubs, associations, etc that use TrueCar’s system as a portal for their members to secure special pricing on motor vehicles.

Dealers paid TrueCar for leads based on a number of criteria and including contingent on the sale of a motor vehicle and on a per lead basis regardless if the lead results in a sale. (See the article entitled “Lead Providers and Bird Dogs” on page 1 & 2.) At the conclusion of the discussion and presentation made by TrueCar, the Board adopted the following resolution:

Whereas the Board has reviewed and considered the pricing/fee model currently being utilized by motor vehicle dealers in the Commonwealth of Virginia with respect to payments to TrueCar. These payments are in violation of Virginia Code Section 45.2-1537, and the Board directs the MVDB Executive Director to notify motor vehicle dealers in the Commonwealth of Virginia of this decision, and begin enforcement action immediately.

TrueCar has since modified its pricing model to a flat fee structure. It is expected that representatives of TrueCar will attend the March Board meeting.

COURSE SCHEDULE

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 upcoming classes. The list is regularly updated on our WEB site at <http://www.mvdb.virginia.gov/licensingprocess.htm>.

IMPORTANT NOTICE TO ALL PROSPECTIVE DEALERS

The dealer-operator of any new independent motor vehicle dealership is required to successfully complete a course of study before they will be allowed to take the independent dealer-operator qualification test at any DMV Customer Service Center. "Grandfathered" dealer-operators, title clerks, and salespersons are encouraged to take the course as well.

2012

February 21 & 22 - Virginia Western Community College, Daleville

Contact: Registration; 540-966-3984; www.virginiawestern.edu

March 6 & 7 - Northern Virginia Community College, Reston

Contact: Claire Wynn; 703-450-2551; www.nvcc.edu/loudoun/continuing

March 20 & 21 - New River Community College, Dublin

Contact: Patty Ryan; 540-674-3613; www.nr.edu/workforce/

April 3 & 4 - Lord Fairfax Community College, Middletown

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

April 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

May 1 & 2 - Thomas Nelson Community College, Hampton

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

May 15 & 16 - Blue Ridge Community College, Weyers Cave

Contact: Registration; 540-453-2215; www.brcc.edu

June 5 & 6 - Germanna Community College, Fredericksburg

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

Registration materials and information are available from each of the Community Colleges' WEB site or by calling the individual college. The cost is \$325 if you register at least two weeks prior to the date of the course and \$375 if you register within two weeks of the first day of the course.