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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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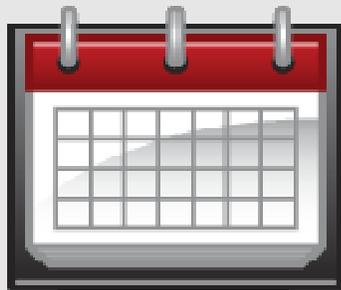
SPOT DELIVERY

In 2009, the General Assembly passed a bill that requires all dealers to change the "spot delivery" notice that must be printed on the buyer's order. This notice must be printed in bold type no less than 10-point on all buyer's orders where the sale is contingent upon the dealer arranging for financing for the customer. Dealers have had a year to make this change. Please double check to be sure you have made this update to your buyer's order.

"IF YOU ARE FINANCING THIS VEHICLE PLEASE READ THIS NOTICE: YOU ARE PROPOSING TO ENTER INTO A RETAIL INSTALLMENT SALES CONTRACT WITH THE DEALER. PART OF YOUR CONTRACT INVOLVES FINANCING THE PURCHASE OF YOUR VEHICLE. IF YOU ARE FINANCING THIS VEHICLE AND THE DEALER INTENDS TO TRANSFER YOUR FINANCING TO A FINANCE PROVIDER SUCH AS A BANK, CREDIT UNION OR OTHER LENDER, YOUR VEHICLE PURCHASE DEPENDS ON THE FINANCE PROVIDER'S APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES CONTRACT. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED THE DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER THE VIRGINIA CONSUMER PROTECTION ACT."

[Note: The above notice is printed in "10-point" uppercase bold type (Arial)]

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Calendar of Events

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

Monday, July 12, 2010

Time: 9:00 a.m.

**Dealer Practices Committee
Meeting**

Monday, July 12, 2010

Time: Immediately following Dealer
Practices

Licensing Committee Meeting

Monday, July 12, 2010

Time: Immediately following
Licensing

Advertising Committee Meeting

Monday, July 12, 2010

Time: Immediately following
Advertising

**Transaction Recovery Fund
Committee Meeting**

Monday, July 12, 2010

Time: 10:00 a.m.

Full Board Meeting

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

SPOT DELIVERY

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Please be aware that the notice requires the dealer to return the down payment and trade-in to the customer provided the customer returns the vehicle to you within 24 hours of you notifying them that you were not able to obtain financing. The customer must return the vehicle to you in the same condition it was when they took possession, except for normal wear and tear.

If the customer meets the conditions as set-out in this notice, you must also meet the conditions required of you. You may not withhold any of the down payment and must return any trade-in. You may not ask or require the customer to sign a separate agreement that changes the responsibilities outlined in the notice. For example, you may not charge any “rental” or other fees for use of the vehicle; you must return the actual vehicle traded-in and not a substitute or money.

EMPLOYEE OR INDEPENDENT CONTRACTOR?

Businesses of all types have been increasingly classifying personnel as independent contractors instead of full time employees. To the maximum extent possible, the IRS wants people who work for employers to be full-time employees. They want employers to withhold taxes, make social security and Medicare payments, and issue W-2s at the end of the year.

A recent report by the U.S. Government Accountability Office finds that many of those listed as independent contractors are misclassified, and it has issued an estimate that this misclassification will cost the Treasury Department \$7 billion in lost payroll tax revenue over the next ten years. The U.S. Department of Labor has listed “misclassification” as one of its top priorities for the next fiscal year. Its 2011 budget request includes an additional \$25 million for a “misclassification initiative” that includes 100 additional Department of Labor personnel.

A dealership that classifies personnel as independent contractors and not employees should be sure that the classification is appropriate.

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HOLIDAYS HOURS

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

**MONDAY
JULY 5, 2010**



FOR INDEPENDENCE DAY!

AND

**MONDAY
SEPTEMBER 6, 2010**



FOR LABOR DAY!

EMPLOYEE OR INDEPENDENT CONTRACTOR?

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Clean-up Personnel

Personnel that dealers sometimes consider to be independent contractors are people who do vehicle clean-up. Rather than pay them salaries or hourly, dealers pay an amount per vehicle cleaned. As a result, they consider these workers to be independent contractors and not employees. However, where such personnel work solely or mostly for the dealership, their supplies are provided by the dealership, and they are told what cars to clean and when, their classification as independent contractors is questionable.

Occasional Drivers

Does your dealership use occasional drivers - those folks who drive vehicles to and from auctions or to pick up and deliver DXs - and classify them as independent contractors?

The IRS bases the determination of a driver's status on numerous issues that differentiate whether the business has the right to control only the result of the work (for example, that the vehicle get to where it has to go with no control over how that is accomplished, indicating an independent contractor) or whether the business can also control how the work will be done, what will be done, or the method of accomplishing the result (indicating that the driver is an employee). The IRS and the courts are generally inclined to stringently apply tests designed to determine whether someone is an independent contractor and are apt to find that drivers are employees rather than independent contractors.

Here are some questions to ask yourself about your occasional drivers:

- Does the driver drive just for your dealership?
- Is the driver bound to pick up and deliver vehicles at times that the dealership sets?
- Is the dealership providing the transportation to take the driver to the point where the cars are picked up or to return them from the place where the cars are delivered?
- Does the dealership expect drivers to follow certain routes?
- Does the dealership pay for meals and expenses?
- Does the dealership state time deadlines for delivering or picking up vehicles?
- Does the dealership set time parameters on the driving, requiring the drive to be made with limited stops and controlling the independence of the drivers?

If the answer to any of these questions is yes, a dealership that is treating its occasional drivers as independent contractors should carefully consider its position.

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DEMONSTRATOR

The 2010 General Assembly added a definition of a “demonstrator” to the Code of Virginia. Under current law, a “demonstrator” is considered to be a “used” motor vehicle. The new definition makes a “demonstrator” a new motor vehicle under specific conditions and notification to the purchaser.

Under the new law effective July 1, 2010, a demonstrator is defined as a vehicle:

- *That was not previously titled.*
- *Has a gross vehicle weight rating of less than 16,000 pounds.*
- *Has more than 750 miles (but less than 7,500 miles) accumulated on its odometer and has only been driven by dealer personnel or by prospective purchasers during the course of selling, displaying, demonstrating, showing, or exhibiting the motor vehicle.*
- *The dealer provides the following disclosure in writing on the buyer's order in type no smaller than 10 point or in a separate document containing only the disclosure in type no smaller than 14 point: "Notice: This new motor vehicle has accumulated mileage in excess of 750 miles as the result of use as a demonstrator and/or as the result of delivery to a prior prospective purchaser who never took title to it and who returned it." When delivered as a separate document, this disclosure shall also contain the actual odometer reading for the vehicle and shall be signed by the purchaser*

The bill adding the definition of a demonstrator, also changed the definition of a "New motor vehicle" to “. . . any vehicle—that is in the possession of the manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued by the Department of Motor Vehicles of the Commonwealth or by the issuing agency of any other state and has less than 7,500 miles accumulated on its odometer.”

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EMPLOYEE OR INDEPENDENT CONTRACTOR?

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Salespersons

Salespersons may never be independent contractors. All salespersons, including temporary salespersons working at your dealership in conjunction with an outside marketing firm are employees and must be issued a W-2 at the end of the year.

IRS Guidelines

The IRS has issued multi-factor guidelines for a business to determine whether a worker is an employee or an independent contractor. If you have independent contractors doing work for you, you should review those guidelines, and you would be wise to discuss the issues with your accountant.

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DID YOU WATCH US ON THE WEB?

Were you one of the over 100 individuals that were part of the historic Webcast of the Motor Vehicle Dealer Board's May 10 meeting? One of Governor McDonnell's priorities is to make government more transparent by providing easy access to government proceedings. With the help of DMV, the May 10, 2010 MVDB Board meeting was the first Commonwealth of Virginia Board or Commission meeting to be broadcast live over the WEB.

If you missed the broadcast, you can still view the meeting “on-demand” by clicking [HERE](#). The link is also on the MVDB Home page (www.mvdb.virginia.gov)

The next Motor Vehicle Dealer Board meeting, which is scheduled for July 12 at 9:00 am, will be 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!

DEMONSTRATOR

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In summary, beginning July 1, 2010, a vehicle with less than 7,500 miles on the odometer is a new vehicle unless it has been titled. (In which case it is a used vehicle) A new vehicle (Has not been titled) with less than 7,500 miles but more than 750 miles on its odometer may be sold as new (Except for vehicles with a GVW of over 16,000 pounds.) provided the notice as quoted above is provided to the customer. Vehicles that have not been titled and have under 750 miles on their odometer do not require the notice and are considered "new".

DMV'S SPRINGFIELD MALL OFFICE RELOCATING TO LORTON

To better serve Department of Motor Vehicles (DMV) customers and reduce costs, the Springfield Mall Customer Service Center (CSC) is moving to Lorton. Service will be available at Springfield Mall until 6:30 p.m. on June 17. The new Lorton CSC will open on June 21 at 7714 Richmond Highway in Gunston Plaza.

Customers needing service on June 18 or 19, can conduct transactions online at www.dmvNOW.com or visit the Franconia CSC located at 6306 Grovedale Drive or the Alexandria CSC located at 2681 Mill Road.

The Lorton location is approximately 1,800 square feet larger than the Springfield Mall CSC and was designed to create an efficient customer flow, minimize customer wait times and provide space to include the newest technologies available for our customer service operation. In addition, decreases in annual rent and utilities are expected to save DMV approximately \$100,000 a year.

BOARD ACTIONS

Vikhen Motors and Henry Squire (Informal Fact Finding Conference). Mr. Thomas Schaaf opened this dealership in May of 2002. Prior to May of 2006, Henry Squire and Kennedy Abby became part owners. On September 17, 2009 Mr. Schaaf resigned and transferred all of his stock/ownership to Mr. Squire and Mr. Abby. This dealer had unsatisfactory inspections in April of 2006 and June of 2008. From August of 2008 through November 2009, MVDB field representative Winderweedle attempted to inspect this dealer at least four times. Each time finding the dealership closed. The dealer received at least three educational/warning letters from the Board. On March 17, 2010, an informal fact-finding conference was conducted to address a number of alleged violations including violations related to record keeping; failing to maintain business hours; and failure to comply subsequent to receipt of a written warning/willful failure to comply with the dealer laws. Based on the information provided at the conference, the Board voted to assess civil penalties totaling \$900. The Board also voted to require that Mr. Squire and Mr. Abby successfully complete the dealer-operator course by July 9, 2010. Failure to do so will result in the immediate suspension of all licenses and certificates issued by the Board for this dealership.

Lynchburg Import, Inc and Joseph J. Wilson. (Informal Fact Finding Conference). The Board staff had received five serious complaints concerning purchases made at this dealership to include issuing multiple sets of 30 day tags; not securing titles for customers - even after the customer paid the titling and registration fees and selling a motor vehicle without first inspecting it which resulted in a misdemeanor conviction. On February 9, 2010, an informal fact-finding conference was conducted to address the allegations that the dealer did not inspect the vehicle as required; for having been convicted of any criminal act involving the business of selling vehicles; failure to comply subsequent to receipt of a written warning/willful failure to comply with the dealer laws; and failure to submit to DMV, within thirty days from the date of sale, any application tax, or fee collected for DMV on behalf of a buyer. Based on the information provided at the conference, the Board voted to assess civil penalties totaling \$5,000. The Board also voted to require that Mr. Wilson must successfully complete the dealer-operator course by July 9, 2010. Failure to do so will result in the immediate suspension of all licenses and certificates issued by the Board to Mr. Wilson.

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HELPFUL TIPS AND REMINDERS

“On a Spot Delivery” where you are not able to obtain financing for your customer as outlined in the proposed Retail Installment Contract (RISC) and the customer returns the vehicle to you as required, you must return to the customer their down payment and trade-in.

You may not withhold any of the down payment and must return any trade-in. You may not ask or require the customer to sign a separate agreement that changes the responsibilities as outlined in the notice that is printed on the buyer’s order. For example, you may not charge any “rental” or other fees for use of the vehicle; you must return the actual vehicle traded-in and not a substitute or money.

If financing is approved contingent upon installation on the vehicle, a device that allows the vehicle to be disabled for non payment, and that condition was not on the proposed RISC, the customer may return the vehicle to you as if you were not able to obtain financing. The proposed RISC must include installation of the device as one of the conditions of obtaining financing.

Title Established Date. DMV is now printing a title established date on titles. This date is printed just above “Year” and “Make” of the vehicle. The “Established Date” is done when the title was established in the name of the owner listed on the title.

Registration Fee. The 2010 General Assembly passed a bill to support Emergency Medical Services: Beginning July 1, 2010, Virginians will pay an additional \$2 when registering a vehicle.

BOARD ACTIONS

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Stafford Auto Sales, LLC and Babor Bakhtary. (Informal Fact Finding Conference) MVDB and DMV conducted a joint inspection of this dealership. Among other issues, it was found that the dealer did not have adequate records on the issuance of temporary tags. A follow-up inspection found improvements in some areas and additional problems. In January of this year Mr. Bakhtary pled guilty to the charge of failing to maintain temporary tag records. This conviction and the failed inspections resulted in convening an informal fact-finding conference to address a number of alleged violations including violations related to record keeping; use of temporary transport tags; maintaining automobile liability insurance; having used deceptive acts or practices; and having been convicted of any fraudulent act/criminal act in connection with the business of selling vehicles. Based on the information provided at the conference, the Board voted to assess civil penalties totaling \$300. The Board also voted to require that Mr. Bakhtary successfully complete the dealer-operator course by July 9, 2010 and that his dealership have a satisfactory inspection by this same date. Failure to complete the course and have a good inspection will result in the immediate suspension of all licenses and certificates issued by the Board to Mr. Bakhtary.

S & W Auto Sales and Shah Wali. (Informal Fact Finding Conference) In 2006, this dealer paid a \$1,500 civil penalty and Mr. Wali was required to attend the dealer-operator course. In 2008 the dealership had a satisfactory inspection. In 2009 the record keeping problems surfaced once again and there were failed inspections. On March 4, 2010, an informal fact-finding conference was conducted to address alleged violations related to record keeping; failing to maintain business hours; and failure to comply subsequent to receipt of a written warning/willful failure to comply with the dealer laws. Based on the information provided at the conference, the Board voted to assess civil penalties totaling \$2,000. The Board also voted to require that Mr. and Mrs. Wali successfully complete the dealer-operator course. Lastly, the dealership must have a satisfactory inspection by July 9, 2010. Failure to complete the course and have a good inspection will result in the immediate suspension of all licenses and certificates issued by the Board.

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>.

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.

Course Schedule

2010

June 8 & 9 - Danville Community College, Danville

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

June 22 & 23 – Northern Virginia Community College, Reston

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

July 6 & 7 - Patrick Henry Community College, Martinsville Campus

Contact: Registration; 276-656-0260; www.ph.vccs.edu

July 20 & 21 - Lord Fairfax Community College, Middletown

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

August 3 & 4 - Virginia Western Community College, Roanoke

Contact: Tina Trudeau; 540-767-6131; www.virginiawestern.edu

August 17 & 18 - Blue Ridge Community College, Weyers Cave

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

September 7 & 8 - Germanna Community College, Fredericksburg

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

October 5 & 6 - 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

October 19 & 20 – Northern Virginia Community College, Reston

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

November 9 & 10 - Piedmont Community College, Charlottesville

Contact: Maggie Myers; 434-961-5495 or mmmyers@pvcc.edu; www.pvcc.edu

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. The fee is \$375 after that date.