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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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## **INTERNET ADVERTISING**

Dealers are reminded that you are responsible for all advertisements for your motor vehicles including all internet advertising. Internet advertisements including videos and YouTube postings must adhere to the same advertising guidelines as print or television. We urge all dealers that advertise on the internet to review these advertisements very carefully as we are finding many that are not in keeping with Virginia law and regulations.

We suggest that you periodically, "shop" websites so that you may see exactly how these third parties are advertising your vehicles. Our research indicates that some dealers are unaware of all of the websites that advertise for them!

We believe that some vendors you have relationships with may be providing other websites with your inventory information. We urge you to review all contracts that you have with vendors who have access to your inventory as well as all vendors where you submit advertisements to determine if your contracts allow these vendors to resell your inventory and advertisements to other parties.

In order to help you get started in monitoring websites, here is a partial list of some of the more popular websites that carry motor vehicle advertisements for dealers:

- [www.Autobytel.com](http://www.Autobytel.com)
- [www.autotrader.com](http://www.autotrader.com)
- [www.cars.com](http://www.cars.com)
- [www.yahoo.com](http://www.yahoo.com)
- [www.usedcars.com](http://www.usedcars.com)
- [www.carsforsale.com](http://www.carsforsale.com)
- [www.autos.aol.com/car-finder](http://www.autos.aol.com/car-finder)
- [www.autos.msn.com](http://www.autos.msn.com)



## Calendar of Events

### All Meetings held at DMV Headquarters

2300 W. Broad Street, Room  
702 Richmond, VA

Monday, July 9, 2012

Time: 9:00 a.m.

#### Dealer Practices Committee Meeting

Monday, July 9, 2012

Time: Immediately following Dealer  
Practices

#### Licensing Committee Meeting

Monday, July 9, 2012

Time: Immediately following Licensing

#### Advertising Committee Meeting

Monday, July 9, 2012

Time: Immediately following  
Advertising

#### Transaction Recovery Fund Committee Meeting

Monday, July 9, 2012

Time: 10:00 a.m.

#### Full Board Meeting

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

## NEW PRINT-ON-DEMAND TEMP. TAG PAPER

DMV is upgrading print-on-demand 30-day temporary tags with a durable paper that no longer requires a plastic sleeve to affix to the vehicle. The new weather-resistant tags will be issued exclusively through the Print-on-Demand (PoD) temporary tag program, beginning July 1, 2012. DMV will supply the paper at no charge and distribution will take place in mid-June. Over the course of the next year, bond paper with plastic sleeves and red cardboard tags will be phased out.

To use the new paper, you will need a laser printer. The printer must use toner, not ink cartridges. Toner fuses with the synthetic paper to make the finished product durable and resistant to water, chemicals, and grease. Ink applied from ink cartridges will not properly fuse to the paper, which may cause smudging, smearing, and run-off when wet. To ensure the quality of temporary tags, only PoD participants with the appropriate laser printer will be able to order this paper from DMV. If you do not have a laser printer you may continue to use the current PoD tags with plastic sleeves.

In preparation for the launch of this new product, a survey was recently sent by DMV to gather information from the dealer community. Dealers who completed the survey and indicated that they would like to begin using the new weather-resistant paper will automatically be sent an initial two-month supply of the product. The initial supply will be based on the dealer's prior year sales volume.

Starting June 15, 2012, orders for the new PoD paper will be accepted through the Dealer Services Work Center. To place an order, send an email to [podtemptag@dmv.virginia.gov](mailto:podtemptag@dmv.virginia.gov) with the following information: dealer name, dealer number, shipping address, order quantity, tag size(s) (standard/small), and printer make/model number. Approved order requests will be shipped at no charge within five business days. Standard tags will be issued in packs of 100 and small tags (motorcycle/trailer) in packs of 25.

For more information contact Jenna W. Westbrook at (804) 367-4323 or [jenna.westbrook@dmv.virginia.gov](mailto:jenna.westbrook@dmv.virginia.gov), or call the Print-on-Demand Help Desk at (804) 367-1474.

## HOLIDAY HOURS

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

**WEDNESDAY  
JULY 4, 2012  
IN OBSERVANCE OF  
THE 4<sup>TH</sup> OF JULY!**



## WATCH US ON THE WEB

The next Motor Vehicle Dealer Board meeting, which is scheduled for July 9 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](http://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 December 31, 2012.

## DEALERS REQUIRED TO PROVIDE COMPLETE DATA ON CAR LOAN TERMS

*On May 24, 2012, the Department of Justice released the following:*

WASHINGTON - A federal judge in Washington has ruled that automobile dealers who engage in certain three-party financing transactions must disclose certain information to consumers who take out car loans if they are offered less favorable terms, such as a higher interest rate, than the most favorable terms available to the majority of consumers. When a lender relies on a credit report in setting an unfavorable interest rate, a provision of the Fair Credit Reporting Act requires lenders to provide notice to the consumer and provide instructions on how the consumers can obtain a copy of their credit history report and, if necessary, dispute and correct any false or incomplete data. One of the purposes of the statute is to provide consumers with information that might be helpful in preventing identity theft.

Judge Ellen Huvelle upheld the Federal Trade Commission's (FTC) determination that auto dealers must comply with this provision even when they engage in "three-party" financing transactions, in which the dealer agrees to extend financing to a consumer and then immediately assigns the loan to a third party, such as a bank or finance company.

In the FTC rulemaking proceeding, the National Automobile Dealers Association (NADA) argued that auto dealers engaging in these transactions should be exempt from providing this notice. NADA argued that, when only this third party, and not the car dealer, actually obtains the credit report, then the car dealer should be exempt from providing any disclosures to the consumers. The FTC rejected this argument and concluded that the auto dealers actually use the credit report even if they do not physically obtain it, and so must provide the notice to consumers. NADA sued the FTC, challenging this interpretation. The court agreed with the FTC's position in its ruling.

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## **TRUECAR UPDATE**

At its January 9, 2012 meeting, the Virginia Motor Vehicle Dealer Board determined that dealers paying fees to TrueCar based on TrueCar's pricing model in effect at that time, are in violation of Virginia Law.

At its March 12, 2012 Meeting, the Board discussed and analyzed TrueCar's model that was effective after the January 9, 2012 meeting. The Board concluded this model pricing model was not consistent with Virginia Law and that dealers paying fees to TrueCar could be in violation of Virginia Code Section 46.2-1537.

At its May 14, 2012 Meeting, the Board discussed and analyzed TrueCar's model that was proposed after the March Board meeting. At the conclusion of this discussion, the Board adopted the following resolution:

*The Board has reviewed and considered the pricing/fee model proposed by TrueCar and has determined that the proposal is not consistent with Virginia law.*

It is our understanding that TrueCar dealers have not actually paid user fees to TrueCar under the proposal the Board considered at its May meeting. It is anticipated that TrueCar will offer another proposal at the July 9, 2012 meeting.

## **DEALERS REQUIRED TO PROVIDE COMPLETE DATA ON CAR LOAN TERMS**

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"This ruling will make it easier for consumers to learn about unfavorable information in their credit reports. Not only will this give them an opportunity to correct any inaccuracies, but it also provides a key tool needed to combat identity theft or fraud," said Stuart Delery, Acting Assistant Attorney General for the Civil Division. "The auto dealer is in the best position to provide this information because the dealer interacts directly with the consumer and establishes the credit terms in the agreement that it enters with the consumer."

Under NADA's interpretation, the consumer would never receive this disclosure – not from the dealer nor from the third-party finance company. In addition, all entities that extend credit to consumers could enter similar arrangements and thereby exempt themselves from giving consumers any disclosures relating to adverse information in consumer reports.

*It is believed that the NADA will appeal the ruling to the federal court of appeals in Washington.*

## **TEMPORARY SUPPLEMENTAL (OFF SITE) SALES LICENSE**

Dealers who wish to conduct a sale away from their licensed location must first obtain a Temporary Supplemental License from the MVDB. HB 235 was adopted by the General Assembly and signed by the Governor and is effective as of July, 1, 2012 does the following:

- Limits car/truck, motorcycle and recreational vehicle dealers to conducting no more than eight off-site sales in a year and no more than one sale consecutively in the same jurisdiction. Under current law there are no limitations as to the number of these types of sales a dealer may conduct.
- Currently, when a dealer conducts a sale outside their jurisdiction or in an adjacent jurisdiction, the dealer must notify all dealers in the jurisdiction in which the sale is to take place. This bill requires that the notification be made by certified mail and that the regulating agency (MVDB or DMV) receive a list of the dealers notified.

In order to conduct an off-site sale, a dealer must first apply for an off-site sales license by submitting a form MVDB-22 ([PDF](#)). This form has been revised to reflect the law change and is now posted on our WEB site.

Reminder: Legislation adopted by the 2011 General Assembly will require all dealers to have an internet connection and email address by July 1, 2013.

## **FTC CHARGES DEALER EXPOSED SENSITIVE INFORMATION ON PEER-TO-PEER FILE SHARING NETWORK**

*On June 7, 2012, the Federal Trade Commission released the following:*

In its ongoing efforts to safeguard consumers' private information, the FTC has charged a car dealer in Georgia with illegally exposing the sensitive personal information of consumers by allowing peer to peer (P2P) file-sharing software to be installed on their computer system.

Files shared to a P2P network are available for viewing or downloading by any computer user with access to the network. Generally, a file that has been shared cannot be permanently removed from the P2P network. In addition, files can be shared among computers long after they have been deleted from the original source computer.

The FTC charged that auto dealer Franklin's Budget Car Sales, Inc., also known as Franklin Toyota/Scion, of Statesboro, Georgia, compromised consumers' personal information by allowing P2P software to be installed on its network, which resulted in sensitive financial information being uploaded to a P2P network.

Franklin sells and leases cars and provides financing for its customers. According to the FTC, its privacy policy said, "We restrict access to nonpublic personal information about you to only those employees who need to know that information to provide products and services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard nonpublic personal information."

The FTC alleges that Franklin failed to implement reasonable security measures to protect consumers' personal information, and, as a result, information for 95,000 consumers was made available on the P2P network. The information included names, addresses, Social Security Numbers, dates of birth, and driver's license numbers.

The agency charged that Franklin failed to assess risks to the consumer information it collected and stored online and failed to adopt policies to prevent or limit unauthorized disclosure of information. It also allegedly failed to prevent, detect and investigate unauthorized access to personal information on its networks, failed to adequately train employees and failed to employ reasonable security measures to respond to unauthorized access to personal information. Because Franklin is a financial institution, the alleged security failures violated the Gramm-Leach-Bliley (GLB) Safeguards Rule as well as Section 5 of the FTC Act. Franklin also allegedly failed to provide annual privacy notices and provide a mechanism by which consumers could opt out of information sharing with third parties, in violation of the GLB Privacy Rule. This is the first FTC action against an auto dealer charging GLB violations.

## **FTC CHARGES DEALER EXPOSED SENSITIVE INFORMATION ON PEER-TO-PEER FILE SHARING NETWORK**

A settlement agreement was reached with Franklin that will bar misrepresentations about the privacy, security, confidentiality, and integrity of personal information collected from consumers. Under the settlement, Franklin Auto must also establish and maintain a comprehensive information security program, and undergo data security audits by independent auditors every other year for 20 years.

The agreement is subject to public comment through July 9, after which the Commission will decide whether to make the proposed consent order final. Interested parties can submit written comments electronically or in paper form.

Comments in electronic form should be submitted using the following link:

[Comment on Franklin's Budget Car Sales, Inc. or Franklin Toyota/Scion](#)

Comments in paper form should be mailed or delivered to Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

## BOARD ACTIONS

**Leon Martin Motor Company and Sandra Morgan.** A number of consumer complaints on this Virginia Beach dealer and a very deficient inspection caused the MVDB staff to convene an informal fact-finding conference. Based on the hearing officer's report, the Board levied a \$2,750 civil penalty and revoked all licenses and certificates issued by the Board to Ms Morgan. The dealership has gone out of business.

**Amherst Car & Truck Sales, Inc. and John S. Turner.** Inspections of this Amherst dealer revealed misuse of dealer tags; temporary transport tags and record keeping problems. Mr. Turner was offered the opportunity to pay a civil penalty. He decided that he preferred to participate in an informal fact finding conference which was held in April. Based on the hearing officer's report, the Board determined that Mr. Turner must enroll and successfully complete the Dealer-Operator Course by November 14, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses issued by the Board to Mr. Turner.

**Car Store and Elena Valeeva.** In January of 2012, this Virginia Beach dealership was assessed a \$500 civil penalty for misuse of dealer tags. (The Board staff received a photograph of a dealer plate assigned to this dealership attached to a tow truck. The law expressly states that d-tags may not be used on tow trucks.) Rather than pay the civil penalty, Ms. Valeeva requested an informal fact finding conference which was held in March. Based on the hearing officer's report, the Board determined that Ms. Valeeva must enroll and successfully complete the Dealer-Operator Course by November 14, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses issued by the Board to Ms. Valeeva and the assessment of a \$500 civil penalty.

**Shannon's Used Cars, Inc. and James Pucci.** A series of deficient inspections of this Newport News dealership caused the MVDB staff to convene an Informal Fact Finding Conference on April 18, 2012, to address numerous alleged violations including failure to provide proper disclosure; failure to maintain liability insurance; improper use of dealer plates; material misstatements; deceptive acts or practices, and leasing, renting, and allowing the use of dealer plates by persons not specifically authorized to do so. Based on the hearing officer's report, the Board determined that Mr. Pucci must enroll and successfully complete the Dealer-Operator Course by November 14, 2012 and pay a \$5,000 civil penalty. Failure to successfully complete the course by this date will result in a suspension of all licenses issued by the Board to Mr. Pucci.

**Mark T. Smoot, Auto Center.** Mark Smoot is the owner and dealer operator for this Front Royal dealership that opened in 2000. Mr. Smoot also owns a salvage business. In August of 2009, Mr. Smoot pled guilty and was convicted on six charges of being in possession of an "open title". On a subsequent renewal application he answered "yes" to the question of having been convicted of any crime related to the business of selling vehicles and "no" on another form. On February 28, 2012, an informal fact-finding conference was conducted to address the alleged violations for having made a material misstatement on an application and for having been convicted of any criminal act involving the business of selling vehicles. Based on the hearing officer's report, the Board determined that Mr. Smoot must enroll and successfully complete the Dealer-Operator Course by November 14, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses issued by the Board to Mr. Smoot.

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## BOARD ACTIONS

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**David L. Goad, David's Auto Sales.** In May of 2010 Mr. Goad, the owner of this Danville dealership was convicted of a misdemeanor for misuse of a dealer tag. Research indicated that Mr. Goad answered "no" to the question of having been convicted of any crime related to the business of selling vehicles. An informal fact-finding conference was conducted to address these alleged violations of Virginia Law. Based on the hearing officer's report, the Board decided that no action should be taken against Mr. Goad.

**Earnest W. Harrison and Auto World of Chester.** Mr. Harrison opened this Chester dealership in 1984. Prior to his last license renewal, Mr. Harrison was convicted of felony a felony not related to his dealership. Due to this new felony conviction, an informal fact-finding conference was convened. Based on the hearing officer's report, the Board voted to assess a civil penalty of \$500 and to revoke Mr. Harrison's dealer-operator certificate of qualification and permit him to retain his Salesperson's License.

**Oliver C. Lawrence and Chamberlayne Auto Sales & Repairs, Inc.** Mr. Lawrence is the dealer-operator of this Richmond dealership which is owned by his wife. In December of 2011, Mr. Lawrence was convicted of two misdemeanors related to the business of selling motor vehicles. On March 26, 2012, an informal fact-finding conference was conducted in reference to these convictions. The Board levied a \$1,000 civil penalty and determined that Mr. Lawrence must enroll and successfully complete the Dealer-Operator Course by October 14, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses issued by the Board to Mr. Smoot. In addition, the Board determined that the civil penalty would be reduced to \$500 if Both Mr. and Mrs. Lawrence completed the course by October 14, 2012.

**Gerald Kazembe, Salesperson.** In May of 2009, Mr. Kazembe was convicted of selling a vehicle without a title. On a subsequent application for a sales license he answered "no" to the question concerning having been convicted of any criminal act involving the business of selling motor vehicles. An informal fact finding conference was convened and at its November 2011 meeting, the Board revoked Mr. Kazembe's salesperson certificate of qualification. This decision was appealed. For the formal hearing the Board also presented evidence against Mr. Kazembe and his alleged involvement in consumer complaints and payments from the Transaction Recovery Fund when he was a licensed salesperson with Automix. (A now closed dealership.) Based on the information provided at the formal hearing, the Board voted to revoke all licenses and certificates issued by the Board to Mr. Kazembe and to levy a civil penalty of \$48,000.00.

## **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.

The Virginia Community College System and the Virginia Independent Automobile Dealers Association (VIADA) have teamed up to present two-day courses at Community College campuses throughout the state.

### **Course Schedule**

**2012**

**June 19 & 20 - Danville Community College, Danville**

Contact: Donna Agee; 434-797-6437; [www.dcc.vccs.edu/workforce](http://www.dcc.vccs.edu/workforce)

**July 10 & 11 - Northern Virginia Community College, Reston**

Contact: Claire Wynn; 703-450-2551; [www.nvcc.edu/loudoun/continuing](http://www.nvcc.edu/loudoun/continuing)

**August 7 & 8 - Virginia Western Community College, Daleville**

Contact: Registration; 540-966-3984; [www.virginiawestern.edu](http://www.virginiawestern.edu)

**August 21 & 22 - Piedmont Community College, Charlottesville**

Contact: Maggie Myers; 434-961-5495 or [mmyers@pvcc.edu](mailto:mmyers@pvcc.edu)

**September 11 & 12 - Tidewater Community College, Suffolk**

Contact: Registration; 757-822-1234; [www.tcc.edu/wd](http://www.tcc.edu/wd)

**September 25 & 26 - Lord Fairfax Community College, Warrenton**

Contact: Patricia Leister; 540-251-1524; [www.lfccworkforce.com](http://www.lfccworkforce.com)

**October 9 & 10 - 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](http://www.ccwa.vccs.edu)

**October 23 & 24 - Northern Virginia Community College, Reston**

Contact: Claire Wynn; 703-450-2551; [www.nvcc.edu/loudoun/continuing](http://www.nvcc.edu/loudoun/continuing)

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.