

GOVERNOR APPOINTS NEW BOARD MEMBERS

The terms of nine out of the seventeen appointed Board members expired this past summer. The following individuals were appointed by Governor Warner in August and each attended the September Board meeting:

E. Todd Hyman, independent dealer from Virginia Beach, President of Hyman Wholesale Corp.;

Hugh B. McCreight, independent dealer from Richmond, President, Car Finders Inc.;

James H. Mitchell, franchise dealer from Lynchburg, President of Jim Mitchell Auto Group;

William T. Patrick, franchise dealer from Mechanicsville, President of Patrick Auto Group;

Frank S. Pohanka, franchise dealer from Woodford, President of Pohanka Auto Center, Inc. and Pohanka Honda of Fredericksburg;

Theodore A. Robertson (reappointed), independent dealer representing the rental industry from Richmond, President of Autorent, Inc.;

Larry J. Shelor, franchise dealer from Christiansburg, President of Shelor Motor Mile;

Robert M. Woodall, Jr., franchise dealer from Danville, President of Woodall Chevrolet Cadillac Mazda Nissan, and Woodall Hyundai Mitsubishi.

At the November 10 Board meeting, former Board members Mr. Thomas Barton; Mr. Joel Lyles; Mr. Larry Matthews; Ms. Karen Radley; Mr. Bruce Farrell; Mr. Peter Iaricci; Mr. Michael Martin; and Mr. Alfred J. Lacy, Jr. will be recognized for their service to the Board (Mr. Lacy was not able to accept a reappointment as he is no longer eligible to serve on the Board. Governor Warner is expected to name a replacement soon.)

The staff of the Motor Vehicle Dealer Board would like to thank all of the former Board members for their hard work, dedication, and support. We note that Messrs. Barton, Lyles, Matthews, and Ms. Radley are all "charter" members of the Board, having been with us since the very first meeting of the Board in 1995.

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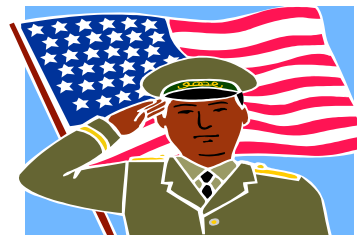
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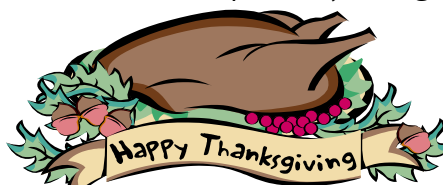
In observance of the upcoming holidays, all state agencies, including the Dealer Board, will be closed on the following dates

November 11, 2003



VETERAN'S DAY

November 27 & 28, 2003



THANKSGIVING

BOARD ACTIONS

Dealer Practices: The owner of a Bristol area dealership was assessed civil penalties totaling \$300 for paying sales commissions to an unlicensed salesperson. The dealer has since closed and has moved out-of-state.

It was brought to the Board's attention that a Danville area dealer had three misdemeanor convictions: Two for engaging in business without a business license and one for selling a motor vehicle without having it inspected. The Board convened an informal fact-finding conference, and based on the hearing officer's recommendation, the Board voted to assess a civil penalty on the dealer totaling \$300.

Licensing Committee: Based on an investigation by a DMV Special Agent, on March 15, 2002, Mr. Derrick L. Wayland of King George, was convicted of four misdemeanors involving the sale of an automobile. One conviction was for selling a vehicle for which he did not have a title and three convictions were for issuing temporary certificates of ownership ("temp tags") and misstating the sale date of the vehicle. Based on these convictions, the Board convened an informal conference in November of 2002. This conference led to Mr. Wayland's salespersons license being revoked. Mr. Wayland appealed this decision and a formal hearing was convened. After reviewing the evidence and the hearing officer's report, the Board voted at its' September meeting to revoke Mr. Wayland's salespersons license.

Motor Vehicle Transaction Recovery Fund: At the September Board meeting, the Transaction Recovery Fund Committee and the Board considered two claims filed against Diamond Kar Kare, formally located in Newport News. (The dealer is now closed). In this case, one consumer had purchased two vehicles from the same dealer. The dealer did not provide titles to the consumer. The purchaser obtained judgment against the dealer in the amount of \$84,527. (For the two vehicles and including attorney's fees, and court costs). Based on the maximum amount that can be paid from the fund and actual losses, the Board voted to approve a total payment from the fund of \$32,384 for both vehicles.

Advertising: The Advertising Committee provided the following guidance for staff to use when reviewing advertisements that mention rebates and advertisements that feature "balloon" payments:

- When advertising the price of a vehicle, and that price includes all rebates and incentives, the disclaimer cannot simply state something like "prices includes all rebates and incentives". Each rebate or incentive must be listed either in the body of the advertisement or in the disclaimer in such a way that the reader (consumer) can determine which rebates/incentives they are eligible to receive.
- Advertisements that state a monthly payment based on a "balloon" payment must state in the body of the advertisement (near the payment statement) that there is a balloon payment.

DEALER TALK

A Bi-monthly newsletter of The Virginia Motor Vehicle Dealer Board
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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.

Calendar of Events

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

Monday, November 10, 2003
Time: 8:30 a.m.
Dealer Practices Committee Meeting

Monday, November 10, 2003
Time: Immediately following Dealer Practices
Licensing Committee Meeting

Monday, November 10, 2003
Time: 9:30 a.m.
Advertising Committee Meeting

Monday, November 10, 2003
Time: Immediately following Advertising
Transaction Recovery Fund Committee Meeting

Monday, November 10, 2003
Time: 10:30 a.m.
Full Board Meeting

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

RISKS OF MISCLASSIFYING EMPLOYEES AS INDEPENDENT CONTRACTORS

By Dan Vitez, Certified Public Accountant

It is not uncommon for small employers to classify employees as independent contractors. It is generally done to avoid paying payroll taxes and fringe benefits, and to reduce paperwork. Dealers need to be aware of the pitfalls. If an employer UNINTENTIONALLY misclassifies an employee as an independent contractor, and issues a Form 1099, the employer's liability for the income taxes is 1.5% of the amount he should have withheld and 20% of the FICA and Medicare taxes he should have withheld plus related penalties and interest. If he does not file a Form 1099, those percentages double and he is liable for the employer's share of FICA and Medicare.

If the employer INTENTIONALLY misclassifies the employee, he becomes liable for 100% of the income tax, FICA and Medicare taxes that should have been withheld from the employee, the employer's matching share of FICA and Medicare taxes plus interest and penalties. These amounts may be offset by amounts actually collected from the employee. Clearly, if the IRS can successfully assert that a misclassification was intentional, the cost to the employer is much higher.

Car dealers need to remember that salespersons are always considered employees. [Emphasis added] I would not want to argue that classifying them as independent contractors was unintentional. The classification of lot attendants, drivers and detail people may depend on the individual circumstances. If you are in doubt, it is much safer to treat them as employees.

The IRS considers behavioral control, financial control and the general relationship of the parties when determining a classification. Behavioral control includes the right to determine how the task is performed including training, instructions, timing, and location. Financial control factors include whether the individual is paid hourly, weekly, or by the job, and whether he has an investment in the activity, and the opportunity for profit or loss.

The relationship of the parties involves facts regarding how the parties view the relationship. If the individual being classified is a detailer who travels from dealership to dealership on a daily basis, getting paid on a per vehicle basis, and providing his own tools and materials, there would be little doubt he is an independent contractor. A lot attendant being paid weekly who only works for one dealer would clearly be an employee. Other factors to consider are the existence of written contracts, employee benefits received and the regularity of the relationship.

RISKS OF MISCLASSIFYING EMPLOYEES AS INDEPENDENT CONTRACTORS

(continued)

Dealers should also be reminded that if they treat an individual as an independent contractor who does not understand the implications of the relationship, there will be repercussions when the individual can not pay his self-employment taxes and income taxes, or files for unemployment and discovers he was not classified as an employee. It is also wise to be consistent in classifying all individuals performing the same task the same way.

Dealers having questions about classification should first seek advice from their tax advisor. The IRS has a Form SS-8 for requesting the status of a particular individual when can also be used.

[To review IRS Publication 1779, "**Employee or Independent Contractor**", Go to the Dealer Board's Web site at www.mvdb.vipnet.org and then click on the "Special Reports" button.]

NOTE: *This article appeared in the September/October Issue of the "Virginia Independent News", a publication of the Virginia Independent Dealers Association (VIADA) and printed with the permission of VIADA.*



DEALER LOOK-UP

We are pleased to announce that we have added a "Dealer Look-Up" feature to our WEB site. There are three ways to search for a dealer on our database: 1). By dealer number; 2). By the name of the dealership; or 3). By the owner's name. If you perform the search by dealer number, you will need to know the correct number. A search by dealership name or owner's name can be done even if you do not know the full name. The more information you key into your search, the more precise your search will be.

To begin your look-up, go to the Board's WEB site at: <http://www.mvdb.vipnet.org/home.html> and "click" on the "Dealer Database Search" Button. Key-in the dealer number, or the dealership name, or the owner's name and click on the "Search for Dealer" button at the bottom of the page. You will instantly be given a list of dealers meeting the criteria of your search. Click" on any of the dealers included in the list and you will see the expiration date of the dealer's Motor Vehicle Dealer Board issued license, the full dealership name and address and the owner's full name. If your search is not successful, try keying-in less information.

The database is automatically updated every day at 1:00 a.m. with the previous day's recorded information, thereby maintaining the accuracy of the database.

On-Line Dealer Program

The 2003 General Assembly passed HB 2720 that affects motor vehicle dealers licensed under Virginia Code Title 46.2, Chapter 15. The bill requires such dealers who elect not to participate in the Department of Motor Vehicles (DMV) On-line Dealer Program, to pay a \$15 fee to the DMV for each transaction in excess of 10 transactions per month conducted at a DMV Customer Service Center.

The On-line Dealer Program provides an electronic link between DMV and the participating dealer. This interface provides a means for the dealership to transfer license plates and issue registration cards or issue metal license plates and decals and print a registration card, at the point of sale and electronically update DMV's vehicle files. Titles are printed at DMV and mailed after DMV receives the transaction.

This program provides benefits for the dealer, the vehicle purchaser and the DMV. If you would like additional information about the program, visit DMV's web site at www.dmvnow.com or contact JoAnn McKay, Assistant Division Manager, Title and Dealer Services at (804) 367-9155 or dmvjsm@dmv.state.va.us. If you would like to join the program you may do so by contacting a third party vendor who has been approved by DMV to provide software and hardware to facilitate the electronic interface with DMV's system. There are currently two authorized vendors of these services, CVR and triVIN. You may contact CVR at (847) 397-1700, extension 4107 or rkobat@cvrreg.com. triVIN may be reached at (800) 876-2312, extension 4645 or maudette@trivininc.com. After signing a contract with one of the vendors, you would then submit an application to DMV for a contract. Once the contract with DMV is signed, the vendor would be notified to schedule the installation of the program.

Following are key points regarding implementation of this new law.

- The \$15 transaction fee to be paid to DMV by dealers not participating in the On-Line Dealer Program is in addition to any fees charged by DMV for the processing of the application for a new title and registration of a vehicle.
- The \$15 fee will be implemented effective January 1, 2004.

On-Line Dealer Program

(Continued)

- The \$15 fee will be applied to the eleventh transaction and each subsequent transaction received from a dealer in a calendar month in any DMV Customer Service Center or Dealer Center.
- The law specifically prohibits dealers from passing the \$15 fee on to the purchaser of the vehicle. As such, the \$15 fee should not be included on the buyer's order.
- If the Department of Motor Vehicles has not authorized the type of transaction received to be processed through the On-line Dealer Program, the \$15 fee will not be charged.
- If a dealer has applied to join the On-line Dealer Program, the \$15 fee will not be charged during the time required to process the application and for the systems provider to complete systems installation and training.
- If a dealer has applied to join the On-line Dealer Program and has been denied approval, the dealer will not be charged the \$15 fee.
- On-line Dealer Program participants who elect to have a transaction processed at one of the DMV Customer Service Centers will not be charged the \$15 fee.
- The law requires that dealers participating in the On-line Dealer Program collect from the vehicle purchaser and remit to the on-line vendor any fees charged by the on-line vendor for the transaction. This on-line vendor transaction fee should not be confused with the \$15 fee noted above that cannot be passed along to the purchaser. This provision was effective July 1, 2003.
- The law requires that dealers participating in the On-line Dealer Program list separately on the buyer's order any fees charged for the transaction by the on-line vendor and that such fee be identified as "on-line systems filing fee." This provision was effective July 1, 2003.
- Dealers that hold multiple types of dealer licenses, please note that all the provisions of this new law apply solely to dealer operations regulated pursuant to Virginia Code Title 46.2, Chapter 15. (Car and truck dealers, but **not** motorcycle, recreational vehicle or trailer dealers.)

As always, DMV appreciates your assistance in complying with the new legislative requirements. Should you have any questions, please contact JoAnn at DMV as noted above.