



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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ON-LINE LEAD PROVIDERS

In July the MVDB issued a "Guidance Memorandum to all Dealers". The memorandum included several items. One item stated that the on-line lead provider, Dealix (UsedCars.com) may be charging Virginia dealers on a per-lead basis. This warning was based on statements on the Dealix website and solicitations Virginia dealers received directly from Dealix.

Officials from Dealix explained that their website and marketing materials were not tailored to the specific requirements of Virginia and they have assured us that they do not charge Virginia dealers on a per-lead basis but rather a flat fee.

As a reminder, Virginia law prohibits dealers from paying a third party on a per-lead basis. So long as a third party such as Dealix continues to charge dealers on a flat fee basis its fee structure would comply with the Virginia requirements.

Also, it is your responsibility to ensure that advertisements posted by third party internet companies comply with all advertising regulations. For example, many third party internet companies include universal disclosure statements concerning additional fees. Oftentimes the language of these disclosure statements are contrary to Virginia's advertising laws and regulations. In particular, these disclosures do not include the amount the dealer charges as a processing fee. Virginia Dealers who charge a processing fee must disclose that fee. We encourage you to use the tools available to you from these third party internet companies to ensure that your advertisements are compliant.

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Calendar of Events

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

Monday, November 5, 2012

Time: 9:00 a.m.

Dealer Practices Committee Meeting

Monday, November 5, 2012

Time: Immediately following Dealer
Practices

Licensing Committee Meeting

Monday, November 5, 2012

Time: Immediately following Licensing

Advertising Committee Meeting

Monday, November 5, 2012

Time: Immediately following
Advertising

**Transaction Recovery Fund
Committee Meeting**

Monday, November 5, 2012

Time: 10:00 a.m.

Full Board Meeting

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

ON-LINE LEAD PROVIDERS

(Continued from Page 1)

Below is the regulation. See in particular the language in bold.

Terms, conditions, and disclaimers.

*1. When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. **An asterisk [*] or other reference symbol may be used to point to a disclaimer or other information; but, the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement.** In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements 15 USC §§ 1601 et seq., 12 CFR 226 (Regulation Z) or the Federal Trade Commission Truth in Leasing Act Requirements, as applicable.*

*2. In all printed media, where terms, conditions or disclaimers are used, they shall be clearly and conspicuously visible and printed in not less than 8-point type print or printed in 6-point upper case type print. **If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be clearly and conspicuously disclosed** in not less than eight-point boldface type or not smaller than the largest typeface within the advertisement. If the processing fee is not included in the advertised price, the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than eight-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk [*] or other such notation to refer the reader to the listing of the fees. When billboards, portable signs, posters, etc., are used, all terms, conditions or disclaimers need to be displayed and phrased in a manner which is clear and conspicuous.*

3. In radio advertisements, where terms, conditions or disclaimers are used, they shall be clearly announced during the advertisement. They must be explained clearly and at an understandable speed and volume level.

HOLIDAY HOURS

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

**MONDAY
OCTOBER 8, 2012
FOR COLUMBUS DAY!**



**MONDAY
NOVEMBER 12, 2012
FOR VETERANS DAY!**



**THURSDAY & FRIDAY
NOVEMBER 22 & 23, 2012
FOR THANKSGIVING**



WATCH US ON THE WEB

The next Motor Vehicle Dealer Board meeting, which is scheduled for November 5 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!

POWER OF ATTORNEY FORM

The Virginia Department of Motor Vehicles (DMV) has issued clarification regarding the proper usage of the Power of Attorney (POA) form VAD70A by the motor vehicle dealer community. (See also the August 2012 issue of *Dealer Talk*.) Federal law requires that mileage disclosure be recorded on a secure POA when ownership is transferred. The VAD70A is a secure POA with limited usage, which allows the dealer to sign for the titled owner and disclose mileage when the subsequent owner receives the title. The VAD70A can only be used when the customer's title is physically held by a lien holder or when the owner has lost the title.

All printed materials, policies and procedures will be updated to reflect the proper VAD70A usage requirements. Effective October 1, 2012, dealers will be required to use the VAD70A as their POA. Customer Service Centers and DMV Select offices will be notified of the changes in POA requirements for dealers. DMV hopes that this change will simplify and will clear up any confusion you may be experiencing.

The Power of Attorney (Form VAD 70A) can only be used by auto dealers. They can be purchased from VIADA or VADA. They are sold in lots of 50 and are printed with a control number assigned to your dealership. They are printed in a secure fashion to comply with federal regulations.

SELLING A VEHICLE OVER THE INTERNET

If you sell vehicles over the Internet, all of the paperwork, disclosures, etc. that are required for selling a vehicle are the same as the requirements for a more "traditional" sale. All documents must be signed and completed in full. Once that is done, the buyer has the option of visiting your dealership to drive-off with his/her purchase or you may deliver or arrange to deliver the vehicle to the buyer.

FADING INSPECTION STICKERS

The Virginia State Police Motor Vehicle Inspection Program has received numerous calls in reference to the "RED" 2013-year insert on the current State Safety Inspection Sticker. It has been determined that the decal is fading when it receives direct sunlight for extended periods of the day, resulting in the background turning white. The Department has contacted the manufacturer in reference to the decal and it will be corrected in the near future.

The inspection sticker **is valid** as long as the operator has one of the two official inspection receipts available for the law enforcement officer's review. One is the small pink receipt and the other is an 8½" x 11" Official Inspection Certification on white paper which will have the vehicle information listed.

Safety Division troopers will replace the state inspection sticker that has faded on the windshield on the motor vehicle without conducting an inspection of the safety components of the vehicle. Such replacement of inspection stickers will be made only at a State Police Safety Division Office (Go to www.vsp.state.va.us to locate Safety Division Offices) or by a Safety Division trooper. Inspection Stations are not able to replace the stickers.

ADVERTISING SOMETHING FOR "FREE"

Dealers may not advertise that something is free if the customer must make a purchase to receive the "free" item. The applicable regulation states:

"Free," "at no extra cost" terms. No equipment, accessory, other merchandise or service shall be described using any term that implies that such equipment, accessory, other merchandise or service is free if a purchase is required in order to receive the "free" offer. Examples of prohibited terms include: Free; Complimentary; At no extra cost; At no extra charge; At no extra fee; At no extra price; At no additional cost; At no additional charge; At no additional fee; At no additional price; Present; Gift; On the house; Gratis; and Courtesy.

TRUTH IN LENDING

If one of the following "Trigger Terms" is stated in an advertisement:

- Amount or percentage of down payment ("Zero Down" or "No Money Down" is not considered a trigger term)
- Amount of payment
- Number of payments
- Period of repayment
- Amount of finance charge (in dollars)

Then the following required disclosures are needed:

- Amount or percentage of down payment
- Terms of repayment (e.g. number amount and timing of payments)
- APR
- The above disclosures can be stated as follows:
(amount or % down) , (# of months) payments at (\$) per (month, week, etc.) at (%) APR.

Notes: APR by itself is not considered a trigger term but is a requirement in the disclosure. All Disclosures must be clear and conspicuous.

BOARD ACTIONS

Carz Unlimited, LLC and Krystal Niles-Smith. In the course of conducting a relocation inspection, field representative Garrett reported that several licensed salespersons were not on the payroll and that they were issued dealer tags. In addition it appeared that the dealer had misused transport tags; did not safety inspect vehicles prior to selling at retail and were not using a proper buyers order. On June 22, 2012, an informal fact-finding conference was conducted to address the alleged violations of the dealer laws. The Board adopted a resolution at its September meeting to assess a civil penalty of \$5,000 and to revoke the dealer-operator certificate of qualification issued to Ms. Niles-Smith.

Sharp Cars, Ltd. and Paul L. Ozaluk. Mr. Ozaluk was convicted of five misdemeanors for misusing dealer tags and temporary transport plates; failing to keep records on the use of dealer plates and for being in possession of an open title. In addition, Mr. Ozaluk answered “no” to the question on applications of having been convicted in any criminal act involving the dealer business. On July 17, 2012, an informal fact-finding conference was conducted to address these alleged violations. The Board adopted a resolution at its September meeting to assess a civil penalty of \$652.00 against Mr. Ozaluk and Sharp Cars, Ltd.

Marshall Auto Broker and Marshall E. Dowell, Jr. Over the course of about three years field representative Winderweedle attempted to inspect this dealership six times. Because the dealership was either closed or the individual at the dealership was not knowledgeable on where records were filed, he could only complete one inspection. This one inspection revealed a number of problems. As a result, on August 1, 2012, an informal fact-finding conference was conducted. Based on the evidence and the hearing officer’s report, at its September meeting, the Board voted to assess a \$1,000 civil penalty and suspended Mr. Dowell’s salesperson license pending a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

Autoloox and Khashayar Zargham. Field representative Smith visited this dealership in March and found 13 buyer’s orders signed by an unlicensed individual. The individual was no longer working for the dealership. Mr. Zargham was given the option to pay a \$500 civil penalty or participate in an Informal Fact-Finding Conference. He chose the latter. On June 18, 2012, an informal fact-finding conference was conducted. The Board adopted a resolution at its September meeting to assess a civil penalty of \$1,500 and also required that Mr. Zargham successfully complete and pass the dealer-operator two-day study course.

RETAIL AUCTIONS

There are two ways a dealer may “display” and offer a vehicle for sale from a location other than their licensed location: By obtaining a temporary off-site sales license or by consigning the vehicle to another dealer.

When a dealer brings a vehicle to an auction he/she is displaying and offering that vehicle for sale at a location other than his/her licensed location. In this instance, the dealer is essentially consigning that vehicle to the auction (who is also a licensed dealer) to sell on behalf of the dealer.

If the vehicle is offered for sale at a retail auction, the vehicle must be safety inspected by the selling dealer and the vehicle must pass the safety inspection. It may not be sold at a retail auction with a “rejection” sticker or no sticker at all. (VA Code Section § 46.2-1539 states that dealers must conduct a safety inspection between the time they acquired the vehicle and the time it is offered for sale at retail. VA Code Section § 46.2-1531 states that a consignment agreement must include “A requirement that the motor vehicle pass a safety inspection prior to sale.”)

As noted above, an auction merely facilitates a sale *for* a dealer. The auction is not the seller – the dealer bringing the vehicle to the auction is the seller. The buyers’ order must be clear that the dealer is the seller and not the auction. In addition, a buyer’s guide must be completed for retail sales and if the vehicle is sold “AS IS” the “AS IS” disclosure must be executed on both the buyers order and buyers guide.

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 March 31, 2013 or contact Ann Majors at ann.majors@mvdv.virginia.gov, 804-367-1100 ex: 3016.

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

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

October 23 & 24 - Northern Virginia Community College, Reston
Contact: Claire Wynn; 703-450-2551; www.nvcc.edu/loudoun/continuing

November 13 & 14 - Blue Ridge Community College, Weyers Cave
Contact: Registration; 540-453-2215; www.brcc.edu

November 27 & 28 - Germanna Community College, Fredericksburg
Contact: Susan Brown; 540-891-3012; www.germannna.edu/workforce

December 11 & 12 - Lord Fairfax Community College, Middletown
Contact: Registration; 540-868-7021; www.lfccworkforce.com

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.