



Motor Dealer Directives

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Motor Dealer Registration

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We have used plain language to help you more easily understand some of the requirements affecting Motor Dealer Registration in British Columbia. **Wherever words or expressions used in this insert differ from the wording of the legislation, the legislation shall prevail.**

Directive 1

Legislation Applicable to Motor Dealers

As a motor dealer, you are required to obtain and understand the following pieces of legislation:

- Motor Dealer Act
- Motor Dealer Act Regulation
- Motor Dealer Act Leasing Regulation – REPEALED July 1, 2006
- Motor Dealer Consignment Sales Regulation
- Motor Dealer Customer Compensation Fund Regulation
- Salesperson Licensing Regulation
- Business Practices and Consumer Protection Act

Unofficial copies of these documents can be obtained through the Motor Vehicle Sales Authority (VSA) web site www.vehiclesalesauthority.com or the government website www.gov.bc.ca.

Official versions may be obtained from:
Crown Publications Inc.
521 Fort Street
Victoria, B.C. V8W 1E7

Telephone (250) 386-4636
Fax (250) 386-0221

Failure to observe the conditions of the applicable Acts will be recorded on the dealer's file and taken into consideration when placing conditions on a dealer's registration.

Directive 2

Requirements for Off-Site Sales

- Motor dealers must conduct business solely on the licensed business premises **unless** the Registrar has approved an off-site sale. [s. 3(1)(b) of the *Motor Dealer Act* & s. 6 of the Motor Dealer Act Regulations]
- Authorization from the Registrar must be requested approximately **three weeks in advance of the sale**. This will allow time to confirm that all participants are registered and in good standing, that there are no outstanding tickets or complaints and that the site is acceptable.
- The event organizer, or each dealer, must pay a prescribed fee for each participating dealer in the off-site sale.
- **Dealers are restricted to two off-site sales in a six-month period.**
- Off-site sales must last **no longer than six days**.

Off-Site Sales as a Result of Advertising in Another Location are Prohibited

- A motor dealer must apply for registration for each location at which they carry out business. [s. 4(2)]
- The dealer must have correctly zoned business premises, a display area, a registered business name, a sign in the name of the registered motor dealer on the premises, and a motor vehicle repair facility or a service contract with a company licensed to do motor vehicle repairs.
- The sale transaction must be negotiated and completed at the registered location. Sales contracts cannot be concluded by facsimile or mail. The purchaser must attend the dealer's lot in person. Negotiations and the consequent contracts for the sale of motor vehicles must be completed on the business premises unless the Registrar has authorized an Off-site sale (see requirements for an Off-site sale). [s.3(1)(b) MDA]

Directive 3

Disclosure of Damage Greater Than \$2,000 for Used Vehicle Sales

- A dealer **must** disclose to consumers damage requiring repairs costing more than \$2,000 resulting from a single occurrence and excluding taxes. [s. 23 MDA Reg.]
- In calculating whether or not damage exceeds \$2,000, any amount paid by the owner as a “deductible” should be added to the amount paid by an insurer.
- Motor dealers should obtain a vehicle claims history report from a reliable source to confirm information available regarding any past damage reported on a particular vehicle. The VSA recommends CarProof BC Verified as the most comprehensive North American search available, a report that includes ICBC information. ICBC is a good source when it is certain a vehicle has always been in B.C. Service records, if available, provide similar information and should be utilized.
- A breach of this Regulation may be based on either actual or constructive knowledge. A dealer may have **actual knowledge** of damage requiring repair and fail to disclose it. A dealer with actual knowledge of damage requiring repair over \$2,000 must disclose this information. **Constructive knowledge** is when the dealer “**ought to have known**” given the availability of information from ICBC, CarProof, other reliable sources and or dealer/manufacturer records, or through visible condition or a comprehensive inspection of the vehicle.
- Under the *Business Practices and Consumer Protection Act*, a failure to state a **material fact** is a deceptive act or practice if the outcome is deceptive or misleading. A material fact, defined by the VSA as information that may have a significant effect on a consumer's decision whether or not to buy a vehicle, would include any defects that have a significant effect on the operating characteristics, safety, or useful life of the vehicle being sold and, as a consequence, would affect the consumer's decision to buy the vehicle or the amount they are willing to pay. It should be noted that **neither** actual nor even constructive knowledge is required for something to be deceptive or misleading under the *Business Practices and Consumer Protection Act*. A consumer may have a civil remedy if it is determined that the consumer was not informed of substantial damage (for example if there were five hits on a vehicle at \$1,900 each), and this lack of disclosure detrimentally misled the consumer. [s. 3(3)(r)]
- Motor dealers must disclose “**to the best of his knowledge and belief**” Enforcement action would be taken against dealers who do not exercise **reasonable care and due diligence** in checking vehicle histories. It is to protect consumers against deceptive and incompetent practices. [s.23 MDA Reg.]

Directive 4

Motor Vehicle Advertising Requirements

The requirements for motor dealer advertising are contained in the Motor Dealer Advertising Guidelines. Motor dealers must adhere to the Advertising Guidelines when advertising their products or services.

Directive 5

Motor Dealer Leasing Regulation and Disclosures

The Motor Dealer Leasing Regulation was repealed on July 1, 2006.

In addition to requirements set out under the Motor Dealer Act and Regulations, including new sections 29 – 31, all motor dealers engaged in retail motor vehicle leasing must comply with Part 5 of the Business Practices and Consumer Protection Act which was proclaimed on July 1, 2006 replacing the repealed Motor Dealer Leasing Regulation.

The Registrar of Motor Dealers is also “Director” within the meaning of the Business Practices and Consumer Protection Act, as it relates to licensed motor dealers, and has the authority to exercise the powers imbedded within the legislation.

Directive 6

Motor Dealer Consignment Sales Regulation

All motor dealers handling consignment sales may be required to provide a **Letter of Credit** as evidence of financial responsibility.” A “consignment” is any arrangement by which a motor vehicle is entrusted to a motor dealer:

- for sale by the motor dealer,
- under a conditional sale to the motor dealer for the purpose of resale, or
- to display by the motor dealer for sale.

Should any of these situations exist, the motor dealer **must** prepare a **consignment agreement** and provide the vehicle owner with a copy. The dealer **must** open a designated **first party trust account** with a savings institution located in British Columbia. This account must also be identifiable as part of the Motor Dealer’s records and will be subject to audit.

The consignment agreement **must** contain **all** of the following information:

- A complete description of the motor vehicle being consigned.
- The minimum price the consignor will accept for the sale of the vehicle.
- The amount payable to the motor dealer, for services provided by the motor dealer, expressed as:
 - a fixed amount payable only if the motor vehicle is sold, **or** any one or combination of the following:
 - a fixed amount payable whether or not the motor vehicle is sold;
 - a percentage of the actual selling price of the vehicle, payable only if the vehicle is sold;
 - an amount that exceeds the agreed upon minimum selling price of the vehicle, payable only if the vehicle is sold.
- The duration of the consignment agreement.
- A statement that any cheque, bank draft or money order of the purchaser must be made payable to the motor dealer in trust.
- A statement that the consignor must not sign over vehicle ownership registration forms in blank to the motor dealer.
- A declaration of title from the consignor, including any outstanding liens, which must be discharged at the time of sale.
- A description of any warranty or guarantee assignable to the consignor.
- A statement of the responsibilities of both the consignor and the motor dealer with respect to **insurance** coverage on the motor vehicle during the period of the

consignment agreement.

- A statement of the responsibilities of both the consignor and the motor dealer when the motor vehicle is sold by the motor dealer, **including** a statement that:
 - The motor dealer must send or deliver to the consignor notification of the sale of the consigned vehicle **within one day** after the sale of the consigned vehicle; and
 - Disbursement of the consigned proceeds must take place **within 14 days** after the sale of the consigned vehicle unless the consignor specifically waives this right, in writing, after the sale.

If a consigned vehicle is purchased, the motor dealer **must** prepare a **purchase agreement** and provide the purchaser with a copy. As well as the information required per s. 21, 22 and 23 of the Motor Dealer Act Regulations, the purchase agreement **must** contain all of the following information:

- A complete description of the motor vehicle being purchased.
- The total price, including, as applicable, the down payment, the value of any trade-in and any administration fees or other fees.
- A statement that the motor vehicle is on consignment.
- A statement that any cheque, bank draft or money order received from the purchaser in payment for the consigned motor vehicle **must** be made payable to the trust account of the motor dealer by identifying the trust account in the manner that the trust account is identified in the records of the savings institution.

The Motor Dealer Consignment Sales Regulation stipulates that every consignment agreement and purchase agreement **must** be written in plain language, in not less than **8 point type**, and in a manner which is easily understood by a reasonable person. [s.5]

Directive 7

Requirement for Legitimate Declarations

Information on all purchase/sales agreements and on the APV9T transfer document must reflect vehicle information “to the best of the dealer’s knowledge”. Dealerships must not make blanket declarations with respect to whether or not vehicles have previously:

- Been registered outside of B.C.;
- Sustained damage over \$2,000.00; or
- Been used as a lease or rental vehicle

on purchase/sales agreements, as well as on the APV9T transfer documents, for all used vehicles sold even though this information may not be true and/or the dealer has no reason to believe it is true.

False declarations on these documents can cause problems for subsequent purchasers, including dealers. Many dealers who inadvertently purchase vehicles with false declarations are spending inordinate amounts of time and effort tracking down accurate information to provide to purchasers. Other dealers are concerned with the calls that they are receiving from consumers who are not pleased when they find out that the information is inaccurate or false.

The validity of any declaration becomes suspect and virtually destroys the rationale for having regulations in place that require specific declarations. The use of a blanket declaration is not in the public interest and, therefore, is not an acceptable business practice.

Directive 8

Requirement for Criminal Record Searches

Any individual applying for a new Motor Dealer Registration, or who is being included as a new principal, officer, director and/or shareholder of an existing Motor Dealer Registration, or who is applying for a salesperson licence is required to provide a satisfactory Criminal Record Check to the Registrar of Motor Dealers. Criminal record checks are obtained through the local police detachment or other reliable source and must be forwarded directly to the Registrar by the police detachment.

Directive 9

Change of Name, Address or Dealer Principal

Motor Dealers must complete a Notice of Change (Form 3) to notify the Registrar **within 14 days** of any change in the motor dealers registered name or address and of any change in officers, directors, partnerships and/or shareholders.

As per Directive #8, any new principal, officer, director and/or shareholder of an existing Motor Dealer Registration is required to submit a satisfactory Criminal Record Check. A financial credit check will also be conducted on each new principal, officer, director and/or shareholder.

Directive 10

Customer Compensation Fund Fee Waiver

Motor dealers must pay \$ 300 annually into the Motor Dealer Customer Compensation Fund. The Registrar may waive this requirement after a dealer has paid for three consecutive years to the fund if there are no concerns with regards to the sufficiency of the fund.

A dealer may not receive a waiver of the annual contribution to the fund if:

- the dealer has been responsible for consumer claims awarded by the Fund;
- the Registrar has concerns regarding financial viability of the dealer;
- the dealer is not in good standing with the Motor Dealer Council; or
- the dealer is not in good standing with the Registrar of Companies.

Directive 11

Tied Selling – Sickness, Accident and Life Insurance

The *Business Practices and Consumer Protection Act* makes it an offence to represent that vehicle financing is conditional on the purchase of sickness, accident and life insurance, when it is not.

Directive 12

Salesperson Licensing

The Salesperson Licensing Regulation, which came into effect on June 1, 2004, states that all persons involved in retail vehicle sales within a licensed motor dealership must hold a valid salesperson licence as issued by the Motor Vehicle Sales Authority of BC (VSA).

The positions that are required to hold a salesperson licence include, but are not limited to:

- Used and New Vehicle Sales
 - Sales Managers
 - Business Office Staff
 - Lease Office Staff
 - Internet Sales
 - General Managers
 - Dealer Principals
- A motor dealer must not employ a person in any of the positions requiring a salesperson licence unless that person holds a valid salesperson licence.
 - A person new to the industry must apply for and receive a conditional salesperson licence from the VSA prior to beginning work at a licensed dealership within any of the positions requiring a licence.
 - A person shall not work at a dealership different than the named dealership on their salesperson licence. A salesperson may hold more than one licence permit in order to work at multiple dealership locations.
 - A motor dealer must, upon request from the VSA, provide an up-to-date list of all employees working in the positions that are required to hold a salesperson licence and/or any other information deemed by the Registrar to be appropriate or necessary in assessing compliance with this regulation [s.7 MDA].
 - A motor dealer must, at the time of terminating the employment of a licensed salesperson, notify the VSA of the termination and ensure that the salesperson's licence is returned to the VSA office.
 - A licensed salesperson who has met all requirements for licensing but is not employed by a licensed motor dealer will be designated as "inactive" and will continue to be responsible for paying annual renewal fees as assessed by the VSA.
 - A licensed salesperson is responsible for ensuring that the VSA receives all updates to contact information to ensure effective communications including receipt of renewal notices.
 - Motor dealer licences are conditional upon the dealer complying with the terms of this Directive. Pursuant to Section 5 of the Motor Dealer Act, the Registrar may cancel or suspend the licence of a motor dealer who does not comply with this directive.

Directive 13

Deposits

The taking of a deposit is often part of an agreement to purchase a vehicle or is a separate agreement generally (i) to hold a vehicle; (ii) to locate a vehicle; (iii) to bring in a vehicle; and/or (iv) to arrange financing for a vehicle – an agreement for services. If there is a written purchase agreement, the Motor Dealer Act Regulation requires motor dealers to detail the terms and conditions under which a deposit is refundable.

Under the Business Practices and Consumer Protection Act, the taking of a deposit is a consumer transaction and must therefore meet the requirements of that Act. The terms and conditions of the giving and the taking of a deposit must therefore be clear and unambiguous regarding the material facts and all material facts must be stated to the consumer. Failing to do so is a deceptive act or practice under the Business Practices and Consumer Protection Act.

A blanket statement that a deposit is “non-refundable” is ambiguous and misleading, contrary to the Business Practices and Consumer Protection Act. There are situations in which a deposit will be refundable; such as when a dealer cannot deliver on its promise.

If money is taken as a deposit, or if nothing is said about the purpose of taking the money, and the motor dealer later claims it was for a partial or down payment, this is a deceptive act or practice under the Business Practices and Consumer Protection Act. This may also be an unconscionable act or practice under that same Act.

British Columbia law states that where a consumer alleges a deceptive or unconscionable act or practice, the onus is on the motor dealer to prove that their conduct was not deceptive or unconscionable: the Business Practices and Consumer Protection Act. It is therefore in the interest of the consumer and the motor dealer to properly document any agreement regarding a deposit. If there is no documentation; there is little evidence for the motor dealer to meet its burden of proof if a challenge arises.

Therefore, at a minimum, the taking of a deposit requires a motor dealer to set out in writing:

- Clearly distinguishing a deposit from a partial or down payment;
- Clearly stating the purpose for which the deposit is taken;
- Clearly stating the amount of the deposit;
- Clearly stating when the deposit will or will not be refundable;

- Clearly stating any other agreed to terms such as whether a deposit will be credited towards the purchase of a vehicle; and
- Provide the consumer with a copy of the deposit agreement.

Note: The enforceability of an agreement is determined by a review of the whole agreement. Complying with the above points does not necessarily create an enforceable agreement.