



Motor
Vehicle Sales Authority
of British Columbia

Previously known as The Motor Dealer Council of BC



MOTOR DEALER GUIDELINES

November 2005

Table of Contents

Introduction.....	3
Advertising.....	5
Presentation.....	6
What is a material fact?	6
The Motor Dealer Act and Regulations	6
Terminology	7
New.....	7
Demonstrator	8
Used.....	8
Other Terms	8
Use of Terminology – Examples	9
Prior History or Usage.....	9
Condition of Vehicle	9
Year of Vehicle.....	10
Repairs and Alterations	10
Delivery Dates, Price Increases, Deposits	11
The Closer.....	12
General	12
Pressure.....	12
Overpricing.....	13
Customer’s Ability to Pay	13
Contracts.....	15
Order Form, Offer to Purchase, Interim Agreements	15
Credit.....	15
Lease and Lease-Purchase Plans.....	16
Misleading Contract Clauses	16
"As is - where is"	16
Warranties.....	17
Deficiency Balances	17
Contracts and Consumer Legislation.....	18
Warranties.....	19
New Cars	19

Introduction

Motor Dealers are among the many business people who ask questions about the laws for which the Motor Vehicle Sales Authority of BC is responsible. In response to these questions and as a service to this industry, the Motor Vehicle Sales Authority of BC has prepared Motor Dealer Guidelines.

These Guidelines are not law. Any final interpretation of the legislation in a given case is for a court to decide. While the advice given is patterned on laws designed to protect consumers, we feel that if the advice is followed by all, business can benefit from consistent standards of conduct and fair competition among all dealers in the marketplace.

It's true that responsible dealers will benefit the most. They are the ones who have adopted high standards of conduct voluntarily. For them laws such as the Trade Practice Act, the Consumer Protection Act and the Motor Dealer Act pose few problems. In fact, consumer laws protect these reputable businesses from firms that would be willing to use unfair business practices were it not for the presence of regulations.

The Guidelines are organized to approximate the natural sequence of events in the sale of a motor vehicle - **advertising, presentation, the closer, contracts and warranty**. However, under the Trade Practice Act, a deceptive act can include any type of representation made before, during or after the transaction.

While, for example, the Guidelines discuss Advertising (in print or broadcast media) separately from The Presentation (oral statements by a salesman) there is no such distinction made by the *Trade Practice Act* which says that a deceptive act or practice can include any oral, written, visual, descriptive or other representation, including a failure to disclose.

Finally, here are some of the **important terms** used in these guidelines:

Consumer, customer - The Guidelines use these two terms synonymously to mean a "consumer" as defined in the Trade Practice Act. A consumer is an individual who participates in a consumer transaction for purposes that are mainly personal, family or household. A person who buys a car or pick-up truck for use in their business is **not** a consumer. Consumer legislation does not therefore apply to this form of transaction.

Consumer transaction - the provision of goods or services by a dealer, and includes the extension of credit to be referenced to "as defined in the Trade Practice Act".

Dealer - a dealer as defined in the Motor Dealer Act. A dealer or a sales person employed by a dealer is also a "supplier" to be referenced to "as defined in the Trade Practice Act".

Supplier - someone who, in the course of business, provides goods or services to a consumer, and includes those who solicit, offer, advertise, or promote the supply of goods or services or

otherwise participates in a consumer transaction.

Non-legal questions about these Guidelines in particular, or consumer legislation in general, can be directed to the Motor Vehicle Sales Authority of BC.

Suite 150-6400 Roberts Street
Burnaby, BC
V5G 4C9

Phone: 604 294-9889
Fax: 604 294-9313

www.vehiclesalesauthority.com



Advertising

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.



Presentation

Under the Trade Practice Act, what a salesman does not say about a car may in some cases be as important as what he does say.

Under section 3(3)(r) of the Act it may be deceptive or misleading to either;

- use exaggeration, innuendo, or ambiguity as to a material fact, or
- fail to state a material fact.

What is a material fact?

As with any other point of law, the final decision is a matter for the courts. "A material fact" is something which might have an important effect on a consumer's "buying decision". Buying decision includes the expected operating condition of a vehicle.

The Motor Dealer Act and Regulations

New cars sometime incur body damage in transit and are repaired by the distributor or dealer.

Under the Trade Practice Act, this might be a "material fact"; although under section 23 of the Motor Dealer Act Regulations (under which all B.C. dealers are registered), a motor dealer shall disclose, to the best of his knowledge and belief:

1. whether the vehicle has previously been used as a taxi, police or emergency vehicle or in organized racing;
2. whether the vehicle has:
 - in the case of a new vehicle, sustained damage requiring repairs costing more than twenty percent of the asking price of the vehicle, or
 - in the case of a used vehicle sustained damages requiring repairs costing more than \$2,000;
3. whether the vehicle has been used as a lease or rental vehicle;
4. whether the vehicle has been brought into the province for the purpose of resale; and,
5. whether the odometer of the vehicle accurately records the true distance traveled by the motor vehicle.

Nonetheless, a failure to disclose, for example, damage to a used vehicle **under** \$2,000 may create an offense under section 3 of the Trade Practice Act, if that damage impacts the expected operating condition of the vehicle.

Section 24 of the Regulations prohibit dealers from referring in an advertisement or other representation to a motor vehicle as being a company car, an executive car, a demonstrator or any similar description, unless the vehicle was used by the manufacturer or dealer in the course of his normal business operation and had been acquired by him as a new automobile.

Section 25 states that where it is necessary for a motor dealer to exchange or repair the odometer of the vehicle or any part of a vehicle that is directly related to the odometer, and the repair/replacement results in the odometer reading being changed, he shall record the reading that was on the odometer before the exchange or repair and the reading at the time of the sale on the sales order or purchase agreement as well as in his permanent written records.

Section 26 of the Regulations require that a motor dealer exhibiting or offering for sale a new vehicle shall affix to it in a clear and legible manner, the following information:

- the serial number or vehicle identification number, make and model;
- the price at which it is offered for sale inclusive of accessories and items of optional equipment that are physically attached to it, transportation charges for its delivery to the dealer and any pre-delivery and inspection service charged by the dealer;
- an itemized list describing each accessory and item of optional equipment that is physically attached to it.

Section 27 of the Motor Dealer Act Regulations require that a motor dealer exhibiting or offering for sale a used motor vehicle shall affix, in a clear and legible manner, information as follows:

- the price at which it is offered for sale;
- where it is a vehicle that is not suitable for transportation, the statement "Not Suitable for Transportation,"

Terminology

New

A "new" motor vehicle is one which has not been sold or used for purposes other than may be incidental to testing or delivery.

"Sold" means a completed transaction between a dealer and a purchaser, but does not necessarily mean that the registration process has been completed.

"Sold" also includes a leasing agreement.

When a vehicle is not "new", it should be clearly identified as either "used" or "demonstrator". This is especially important for vehicles which may otherwise appear "new" to a potential purchaser.

Customers buying a new car normally expect the odometer reading to be very low if not negligible. Any appreciable number of kilometres should be brought to the attention of the buyer.

Demonstrator

A "demonstrator" is a vehicle which has been delivered new to a dealer, and used primarily for demonstration to the public by the dealer, and his salesmen.

Used

A "used" motor vehicle is one that is not a "demonstrator," and that has previously been driven on a public highway for purposes other than may be incidental to testing or delivery to a retail seller.

Any vehicle used by the dealer and his staff primarily for purposes other than demonstration are simply "used" vehicles and cannot be described as "demonstrators." This would include parts, trucks, courtesy cars, lease cars, etc.

Other Terms

1. Company Car, Executive Driven

"Company car" and executive driven" should only be used to describe cars used by executives or employees of auto manufacturers, distributors or dealers, and not used for demonstration purposes.

In our view, consumers may still not have a clear understanding of these terms. We recommend that when these terms are used, they be amplified to make it clear why this information is useful to the potential buyer. Such an amplification might be "executive driven - by our president". Another simplified example is "driven by our sales manager".

2. Rebuilt

This term has specific meaning within the automotive industry.

A "rebuilt" engine is one which has been disassembled and reconstructed with new or remanufactured parts. Assembly clearances are to the original manufacturer's specifications for that year and model.

3. Reconditioned

A "reconditioned" engine is one which has been disassembled and reconstructed with repairs, or rebuilt parts installed where necessary. Such an engine is not a complete rebuild and must not be described as such.

4. Repaired

Any other partial motor repair whether using new, reconditioned or used parts must only be described as "repaired".

Use of Terminology – Examples

A car might be sold to a customer and returned for some reason within a few days. Though the car has been driven very little - perhaps less than 100 kilometers - it has been "sold and used" and should not be represented as "new".

- A car might be sold to a customer on paper all the registration forms completed, etc.
- But, if the contract is cancelled before the customer takes delivery, the car has not been "sold and used" and is still "new" by this definition.
- Another situation might occur where a car is driven 300 kilometres in delivery to a dealer in a remote location. Since the reading on the odometer occurred in delivery to the dealer, the dealer could sell the car as "new" as long as the odometer reading was pointed out to the potential buyer.
- "Demonstrator" is defined as a car that has been used primarily for demonstration to the public. A car that has been used for a period by any person primarily for their personal use must not be sold as a "demonstrator". This means, for example, that the service manager's personal car may not be sold as a "demonstrator" but should be described as a "company car".

Prior History or Usage

It is deceptive under the Trade Practice Act to claim that a vehicle has had a particular prior history if it has not. In addition, what you don't say may sometimes be misleading. For example, if a vehicle has been used as a police cruiser, that prior usage would probably be a material fact. It would be misleading not to disclose this fact to a potential buyer.

Again, a dealer might offer an ex-rental car for sale. While the customer can examine the vehicle, its general condition and the odometer reading, the fact that the vehicle was used as a rental unit may not be evident from a physical examination. In this case, the prior history of the vehicle might well have an effect on the buyer's decision and the price he would be willing to pay.

In the absence of any statements to the contrary the consumer might assume that the car was privately owned. Thus, even though no deliberately misleading statements were made, non-disclosure of important facts concerning the vehicle's prior usage would have the capability of deceiving a buyer.

Some other examples of prior history of usage that should always be disclosed include: police cruiser, taxi, racing car, lease or out-of-province.

Condition of Vehicle

With respect to condition of a vehicle offered for sale, the Trade Practice Act requires a dealer to accurately disclose all "material facts" that exist at the time of the sale.

Dealers and sales personnel should be accurate and truthful when talking about a car's condition.

An example of a problem that has occurred in this area is as follows: In an advertisement and in a presentation, a dealer incorrectly represented an automobile to be in excellent condition when in fact the condition of the car was either unknown or known to be defective.

Again, it is difficult to predetermine exactly what a court of law might consider to be a "material fact". In line with the answer suggested in General Section, Presentation, a defect that had a significant effect on the operating characteristics, safety or useful life of the car (and, as a consequence, on the customer's purchasing decision) might be considered to be a "material fact". Such material defects (facts) and their disclosure should be considered with regard to the age of the vehicle.

Any defect that is serious enough to affect a used vehicle's operating characteristics, safety or useful life should be disclosed prior to the sale.

An example might be a car which for some reason needed major repairs such as a valve grind and new rings even though it was only two years old and had 30,000 kilometres on it.

A repair of this nature might not normally be needed until 60,000 kilometres; under these circumstances, the car's useful life (with regard to its age) would be restricted. Such a defect should be disclosed prior to the sale.

A car that is very old and/or has a very high odometer reading would already have its useful life restricted. Assuming such a car is functional and safe, the test for a "material defect" in such a car would probably be more lenient than the one applied to a new vehicle.

Note that "**as is - where is**" should not be used routinely in used car sales. See Contract Section.

Year of Vehicle

A dealer is required by law to specify the model year of a motor vehicle being sold. Under the Trade Practice Act a dealer is responsible for the accuracy of the stated model year.

The dealer is usually the expert in such matters, and quite often a consumer may rely on what the dealer says. In our opinion, use of a disclaimer clause such as "the seller does not guarantee the year of the vehicle" does not relieve the dealer of his responsibility to accurately determine and disclose the car's model year.

Repairs and Alterations

When a dealer makes repairs to a vehicle before offering it for sale, such repairs should not be of a temporary nature, but should be to acceptable industry standards and the car should be in reasonable condition having regard for its age and price.

Some repairs, such as replacement of the odometer, may not always be evident to the buyer of the car, and since they may be construed as "material facts", should be disclosed by the dealer.

When a contract for the sale of a vehicle is drawn up conditional upon repairs or alterations being completed:

- all repairs or alterations should be written into the contract (and a copy of the contract given to the customer);
- procedures should be set up within the dealership to ensure that any such conditions are agreed to by a person authorized to make such promises.

No alterations should be made to a vehicle after the sale is completed without the written consent of the purchaser.

Delivery Dates, Price Increases, Deposits

Customers are naturally disappointed when a car they have ordered has been delayed, or if there has been an unexpected change in price between the date the car was ordered and the date it is finally delivered,

Dealers can avoid such problems by carefully defining delivery dates and the provisions for an adjustment in prices for vehicles not yet delivered. When the dealer has some doubt about these facts, this uncertainty should be made explicit to the customer. Dealers and salesmen should avoid making promises that may not be kept.

When a deposit is taken in a vehicle transaction, the contract should state whether the deposit is refundable and under what conditions.

When a dealer cannot deliver a car as promised, good business practice suggests that the full deposit should be returned to the customer. In such cases, the dealer should always offer to return the customer's deposit before suggesting that an alternative vehicle be purchased.

The Closer

The "Closer" is a term that loosely describes the activities that finalize the transaction - the car has been advertised, the salesman has given his presentation, and the customer has decided to buy.

This Section provides a brief look at some potential problems that might occur as the deal is being closed.

General

At this point, the salesman may have spent some time and effort to sell the car to the customer. Eager to close the deal, the salesman may naturally be tempted to apply some persuasion. The customer may still be unsure that this is the car he wants and whether he can afford it.

This combination of eagerness and uncertainty may be aggravated where for some reason the customer is not fully able to protect his own interests in a bargaining situation.

For example, a customer who is a new Canadian may not be able to understand the contract provisions. The same may be the case where the customer is very old, very young, ignorant or illiterate.

Section 4 of the Trade Practice Act outlines in general several "unconscionable practices." If a court declared a specific transaction unconscionable, the dealer could not enforce the transaction.

For these reasons, salesmen should take care that their customer understands the transaction and the deal is a fair one.

Pressure

The use of "undue pressure" is also unconscionable according to the Trade Practice Act.

An example of "undue pressure" might be where attempts are made to trade a customer "up" to a costlier car when a first car sold to him proves to be a "lemon" or unsuitable for the purpose for which the consumer bought it.

In such a case, the customer may have no choice but to ask for a refund of the original purchase price or a replacement car.

If the dealer only offers to provide the customer with a credit for the purchase of a costlier car, the customer would be under undue pressure to accept the offer and spend more money than he originally planned.

Overpricing

"Gross overpricing" may often occur where there is some other factor which limits the customer's ability to strike a fair bargain.

For example, a customer from a rural area may come to the city to buy a car. Since he is only in town for the weekend, he may have only one Saturday in which to find the car he wants and close the deal.

In most cases, the customer's freedom to move about in the marketplace is adequate protection against overpricing. However, in this isolated example the customer may be so pressed for time that he may not be able to check going market prices for each car that he is interested in.

A salesman may be able to sell such a customer a car at a price well in excess of the going market price range for a car of that model, age and condition.

Had the customer known the going market prices better, he quite likely would not have signed the deal. In this case, the salesman may not only have taken advantage of the customer's ignorance of market prices, but also sold the car at a price which grossly exceeded the going market price.

Customer's Ability to Pay

Dealers should avoid situations where the customer will be unable to keep up his payments and may be unable to make full payment of the price.

Aside from the ability to pay, the dealer must attempt to consider other circumstances which are part of the terms of the transaction. The harshness or unfairness of the contract to which the consumer is bound is the guiding factor. If a court were to determine that the terms of the transaction "are so harsh or adverse to the consumer as to be inequitable," then that transaction would be unenforceable.

For example, it may be unwise to arrange 100% financing for a car if there is any doubt that the customer can carry the total monthly payments.

The bank or credit company involved in such deals is bound by the dealer's conduct. If a court ruled that an unconscionable practice had occurred, then the transaction, depending upon the type of credit arrangement, could be unenforceable.

These general comments apply to all contracts that may be used in motor vehicle transaction. Certain contracts conditional sales agreements, for example have other specific requirements prescribed by law. Some of these requirements are discussed in the sections that follow.

Dealers and salesmen should ensure that documents are described properly and that the following steps are observed:

1. The dealer should describe the effect of documents as accurately as possible before they are signed. It may be deceptive to fail to state an important aspect of a document.
2. The dealer or salesman should take care that the consumer has the mental ability and command of the language to comprehend the meaning and effect of the document he is signing. When there is any question regarding the capabilities of the consumer, the dealer should only proceed with caution.

For example, if a consumer has an extremely limited knowledge of English, it would be a good idea to have an interpreter present.

3. To minimize misunderstandings all representations or promises should be written into the contract.
4. A customer should never be asked to sign a blank or partially completed contract.
5. A contract should always contain at least the following relevant information:
 - names and addresses of both seller and buyer;
 - serial number and description of the car;
 - year of car and odometer reading at time of sale;
 - the total price of the car, net cost to the customer, and a statement of the terms of payment;
 - statement of warranty conditions;
 - where credit is extended, the Consumer Protection Act should be checked for other specific requirements;
 - documentation charges (if any).
6. The customer should be given a copy of any document at the time it is signed. Under contract law, the failure to provide a copy to a purchaser at the time they sign may void the agreement.

Contracts

Order Form, Offer to Purchase, Interim Agreements

The first piece of documentation that is usually filled out in the course of a transaction is something which amounts to an offer to purchase. Two points should be made quite clear.

1. The consumer has the right to retract his offer at any time prior to the time the offer is formally accepted by the dealership. However, consumers should be advised that an offer to purchase is binding once it is accepted by the dealer.
2. Almost all car purchases involve optional extras and trade-ins. Consequently, there are always some additions to, and subtractions from the basic asking price before the full price difference is arrived at. This "full price difference" -including sales tax - should be filled in on the offer to purchase form before the consumer is asked to sign.

Credit

When the sale of a vehicle involves credit, the dealer should be familiar with the requirements of the Consumer Protection Act. Section II of the Act requires that the lender (which includes a seller) furnish the buyer before extending credit, a clear statement in writing showing.

- the base price of the vehicle
- any sum to be paid by the buyer for official fees
- any sum to be paid by the buyer for the cost of insurance
- the down payment or trade-in allowance
- the difference between the total amount borrowed and the down payment or trade-in allowance
- the cost of borrowing expressed in dollar terms
- the percentage that the cost of borrowing bears to the principal sum (expressed as an annual percentage rate calculated in the manner described by regulation).
- the basis upon which additional charges are to be made in the event of default.

When credit is extended, the dealer should avoid over-committing the customer - this part is discussed in **The Closer** ("Customer's Ability to Pay").

Lease and Lease-Purchase Plans

The following points should be disclosed to the customer and be written into the contract.

- The minimum required term.
- The down payment or deposit required if any.
- The rights and obligations of the parties at the end of the term should be clearly disclosed - including the total balance owing if there is a purchase option.
- Responsibilities of both the dealer and the consumer with respect to servicing, repairs, licensing, registration, insurance and taxes.

All applicants for such plans should be informed of any restrictions which could cause their applications to be denied.

Misleading Contract Clauses

Contracts should present the details of the transaction in an accurate **manner**. Care should be taken to ensure that the standard form contract does not mislead the consumer or attempt to take away a right that already exists.

Three common examples of misleading contract clauses are as follows:

"As is - where is"

"As is - where is" was originally designed to protect the seller from contractual and warranty obligations in respect to quality of goods sold. It was used to make it clear that there were no specific representations in writing regarding characteristics or quality of the product and also to avoid any implied warranties which might be imposed by the Sale of Goods Act.

However, under the Trade Practice Act, nondisclosure of a material fact is a deceptive act. The Act imposes a specific responsibility on the dealer to disclose any material defects which existed at the time of the transaction.

"As is - where is" should not be part of a standard form sales contract because, in our view, a consumer cannot agree (by signing a contract containing the phrase "as is - where is") to waive his rights, or the supplier's obligations to disclose material defects.

It follows that when a vehicle is sold, usually for a relatively low price, without any representations as to quality or condition, this fact should be specifically and explicitly drawn to the attention of the customer. Adequate notice might be given, for example, by wording to this effect placed in a prominent position on the sales contract, in large letters (and/or letters printed in a different colour that clearly stands out from the rest of the agreement) and with a space for the customer to sign indicating that he has read and understood this disclosure notice.

Such a notice is suggested as a way of giving adequate disclosure to customers where a car is sold with no representations as to quality or condition, but would not absolve the dealer from responsibility where there were other deceptive representations.

The Supreme Court holds that the consumers are entitled to recovery on the common law principle of "fundamental breach", that is, the seller's fundamental obligation to deliver an article reasonably fit for the buyer's disclosed purposes.

"As is - where is" and other exclusionary clauses used in a written contract are not effective to preclude recovery through the civil courts.

A recent reason for Judgment has affirmed four important principles:

1. The Trade Practice Act gives rights to consumers that are independent of any contract that may purport to take these rights away.
2. The "as is - where is" and other exclusionary clauses contained in the contract do not "cure" any deceptive representations or bar relief under the Act.
3. Evidence regarding the verbal representations made by the supplier is admissible in court proceedings even where the terms of the contract purport to exclude such representations.
4. Intention to deceive is not necessary. A supplier can breach the Act even in cases where he honestly believes that misleading statements made by him are true. The test is whether the conduct of the supplier had the capability, tendency or effect of misleading, not whether it was intentionally designed to mislead.

Warranties

The Sale of Goods Act provides the consumer with an "implied warranty" with the purchase of any new goods. Any clause which attempts to limit the consumer's rights may not only be void under the Sale of Goods Act, but may also be a deceptive practice within the meaning of the Trade Practice Act.

A contract might state that the manufacturer's new car warranty represents the entire liability of the manufacturer or seller to the purchaser. But, in law the purchaser also has the benefit of the implied warranties under the Sale of Goods Act and a representation that fails to recognize this fact may be deceptive under the terms of the Trade Practice act.

Deficiency Balances

Under the *Personal Property Security Act*, if the buyer defaults on his payments, the creditor may either sue for the balance owing or repossess the goods (provided not more than two-thirds of the price has been paid, in which case a court order is needed) **but not both**.

This means that, except in certain special circumstances where the vehicle has been intentionally damaged, if a deficiency balance remains after an auto is seized and sold, the debtor is not

responsible for payment. **A contract that tries to hold the purchaser responsible for such deficiency balances is misleading and can not be used.**

Contracts and Consumer Legislation

There are four steps that a dealer might take to ensure that the contracts used meet all present legal requirements:

1. Review the contracts with a view to the comments in the Guidelines.
2. Check with the ARA, BCADA or RVDA of BC. These associations supply their members with standard form contracts.
3. If the dealer does not belong to an association, or if he has a specific legal question, he should refer it to his lawyer.
4. VSA staff will attempt to deal with any specific enquiries on this subject **on the understanding they are not providing legal advice.**

Warranties

Where a warranty exists, full details should be disclosed making it clear whether responsibility is assumed by the dealer or the manufacturer, and which items remain the responsibility of the buyer. The following details should be provided to the buyer:

- the identity of the warrantor
- parts and/ or labor covered
- time or distance limits
- obligations of the buyer and the seller including conditions and restrictions
- warranty claims procedures.

The buyer must receive his copy of the warranty.

New Cars

Every new car carries an implied warranty provided by the Sale of Goods Act which cannot be disclaimed. It is misleading to tell new car purchasers that their only rights with respect to warranties are those provided by the manufacturer.

The Sale of Goods Act requires that for a reasonable time goods shall be reasonably fit for the purposes for which they are purchased. This means that a dealer cannot expect to avoid the responsibility for replacing minor components when they are defective simply because they are not covered by the manufacturer's warranty.

In our opinion, the dealer's responsibility also extends to such other defects as water leaks around windows or trunk, malfunctioning power windows, and poor quality exterior or interior finish.

Demonstrator and late model used vehicles may carry the balance of the original new car warranty provided by the manufacturer, or may in the case of demonstrators, have the new car warranty extended beyond the normal period. In such cases, the dealer should accurately disclose before the sale, the specific time period and odometer reading which defines the limit of warranty coverage for that vehicle.

If a warranty is non-transferable, this fact must be disclosed to the buyer.