



## Two Dealer Transactions

Recent consumer complaints are prompting a reminder about second-party dealer financing. This scenario is when a dealer (A) is selling a vehicle to a consumer, and asks another dealer (B) to finance the deal. Often, the financing dealer (B) wants to appear on the paperwork (purchase agreement and APV9T), but asks the consumer to sign a document saying they agree that the dealer (B) is not the selling dealer.

Typically, the goal for two-dealer financing transactions is for the financing dealer to:

- Avoid liability under the *Motor Dealer Act (MDA)* for required declarations and the minimum safety requirements of the *Motor Vehicle Act*
- Avoid breaches of the *MDA* related to off-site sales, and
- Create a security interest in the vehicle.

If these are the goals, it is best to use recognized financing practices such as:

- Finance the sale and file a security agreement in the Personal Property Registry against the vehicle just like a bank, or
- Make arrangements with the first dealer to take an assignment of the contract, with the buyers consent.

Why?

- If a dealer takes title to a vehicle and then passes it along to the buyer, an acknowledgment by the buyer that only financing is being provided will not be binding.
- A term that says a dealer is not selling a car to a buyer, when that dealer is on the title and the purchase agreement as the seller, will not stand.
- Dealers cannot avoid the responsibility under the *MDA* for making declarations and selling a safe vehicle simply with conditions in a contract.
- The documented consumer sales transaction remains in place and the side agreement cannot create a legal fiction.

Once title to the vehicle has been taken, and then transferred to a consumer, a dealer is:

- Liable to the consumer under the *Motor Dealer Act (MDA)*, *Motor Vehicle Act* and etc., including all required declarations and disclosures
- Potentially in breach of the *MDA* by conducting an off-site sale without a permit, if the transaction is processed at another location.

A consumer complaint about a transaction of this type will be directed to the dealer on the sale and transfer documents. Any resulting administrative penalties or required consumer restitution will remain with the final dealer in the chain of transfer. Recovery of any losses due to errors made by the first dealer will not be the responsibility of the VSA. However, to speed the processing of consumer complaints, both dealers in the transaction will be notified of the complaint.

## Compensation Fund Board Welcomes Ian Moore

Following the departure of Gary Peden from the Compensation Fund Board, Ian Moore has been appointed as the representative of the Recreation Vehicle industry. Ian Moore is the proud Owner/ Dealer Principal of Big Boy's Toys Ltd., an RV sales and service facility located in Nanoose Bay that has served Vancouver Island for over 35 years. Ian served on the RVDA (Recreation Vehicle Dealer Association) of B.C.'s board for a number of years before acting as Director, Treasurer, Vice-Chair and Chairman for the RVDA of Canada. Ian's enthusiasm for the industry has not gone unnoticed. In 2013, Ian was awarded the prestigious RVDA of Canada's RV Dealer of the Year Award.

The Compensation Fund Board would like to thank and acknowledge Gary Peden for his commitment to the board throughout his years of service.

Learn more about the Compensation Fund Board of Directors on the VSA website here: <http://mvsabc.com/about-the-vsa/compensation-fund/>