



# PLAIN DEALING

A policy and administrative bulletin for licensed dealers  
from the WisDOT DMV Dealer and Agent Section

**October 2013**

**Volume 24 Issue 2**

## *Title to Lien Holder; Pushing DMV to Paperless*

DMV completed the year-plus project Title to Lien Holder in April. Overall, the project was a very successful. Achievement measurements include:

- Completing the goal of delivering titles to the primary lender on record.
- Signing more than 250 lenders to receive electronic titles.
- Facilitating the continued transfer of vehicles by using electronic records.

The attached chart (on **Page 2**) lays out the major changes for dealers. The chart displays the following information:

- The rules before Wisconsin changed the law to send title to lien holders.
- The adjustment period as we implemented multiple phases of the project.
- The final changes that were made in April of 2013 and are in place at present.

With this project complete, DMV looks forward to a future of electronic titling in the hopes that these changes will benefit all industry groups. Questions about the current practices should be directed to the [Agent Partnership Group](#) at 608-266-3566.

## *DAS Disciplinary Action Policies*

Have you ever seen a colleague's name in the "Enforcement Actions" section on the back page of *Plain Dealing* and wondered what a "special order" is? Find this answer and more in the following pages of this *Plain Dealing*. **Pages 3 through 6** will inform you all about the disciplinary action policy for all types of licenses issued by the Dealer and Agent Section.

Learn about the terms, the variety of possible disciplinary actions and how the seriousness of a violation relates to the level of disciplinary action.

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## *Title to Lien Holder Chart: Changes for Dealers*

The attached chart lays out the major changes for dealers.

- ◆ The left-hand column shows the rules before Wisconsin changed the law to send title to lien holders.
- ◆ The middle column reflects the adjustment period as we implemented multiple phases of the project.
- ◆ The right-hand column shows the final changes that were made in April 2013 and are currently in place.

<b>Before July 30, 2012</b>	<b>Title to Lien Holder Phase 1 (July 30, 2012)</b>	<b>Title to Lien Holder Phase 2 (April 7, 2013)</b>
Titles always delivered to the vehicle owner	Titles with liens delivered to lien holders	Titles with liens delivered to lien holders
All titles are paper	Titles delivered electronically to lenders who voluntarily sign up for e-title delivery	Titles delivered electronically may be converted to paper at the request of a lender
Upon lien release, customer must surrender a title to receive a new one	Upon lien release, title is automatically printed by DMV and sent to the owner	Upon lien release, title is automatically printed by DMV. Lender may input an address where the title will be delivered
Lien confirmations cards (T084) are delivered to lenders unless the lender processes their lien electronically	T084s are delivered to lenders in addition to the title	T084s are not delivered to lien holders when they receive the title
Secured Power of Attorney is legal to use when a title is held by a lien holder – only applies for out-of-state title transactions.	Secured Power of Attorney is legal to use when a title is held by a lien holder	Secured Power of Attorney is legal to use when a title is held by a lien holder
DMV's electronic record is the official title record – paper title needed for sale of a vehicle	Access to DMV's official record is allowed for trade-in Dealer may retail a vehicle with access to the electronic record and a properly signed secure POA	Access to DMV's official record is allowed for trade-in Dealer may retail a vehicle with access to the electronic record and a properly signed secure POA
DMV's electronic record is the official title record – paper title needed for sale of a vehicle	Access to DMV's official record is allowed for trade-in Paper title must be provided within 14 days of wholesale transaction	Access to DMV's official record is allowed for trade-in Paper title must be provided within 14 days of wholesale transaction

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## *Consequences of Breaking the Rules*

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**“Keeping dealers in business – doing business right,”** is the Dealer and Agent Section’s motto. Our licensing and enforcement policy is to teach and to help you comply with laws and rules. Our goal in any disciplinary action is to help you conduct your business in the right way.

Our enforcement policy is progressive. It starts with the mildest action and moves to the harshest action. Each case is considered on its own merits. The action taken depends on variables such as the seriousness of the violation, past track record, dealer cooperation, responsible party and number and resolution of complaints. We can take a range of possible enforcement actions:

- Verbal warning
- Inspection of dealership. Violations noted on inspection report. 15-day reply may be requested
- Advisory letter
- Warning letter requiring written responses
- Informal conference
- Corrective plan of action
- Special order
- Conditional license; may be in special order or in letter from Dealer Section
- Civil forfeiture: may be included with special order
- Suspension: may include civil forfeitures
- Revocation, denial or voluntary surrender of license

Actions taken from special order through revocation result in a press release and typically results in action by DOA’s Division and Hearings and Appeals (DOHA). Press releases normally follow the final order of DOHA. In extreme cases, a press release may be issued at the same time a complaint is filed in order to protect consumers.

Alternatives to enforcement action we may take include:

- Citations (for specific violations only)
- Criminal action
- Court orders or injunctions
- Refer cases to other agencies
- Civil remedies by complaints including attorney fees (We may provide copies of complaints or be called to testify.)
- Claims against a dealer’s bond or letter credit

Although it is possible to enter the discipline process at any step, an orderly progression usually occurs through levels until there is a final disposition. The following two pages give detailed information on the types of disciplinary actions and examples of the violations that lead to them.

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## ***Types of Disciplinary Actions Explained***

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There are various possible licensing actions. They range in severity from the mildest (advisory letter) to the harshest (license revocation). Here are explanations of each type of action:

### **Advisory Letter**

An advisory letter lets you know that a complaint investigation or inspection has uncovered a violation of administrative rule or law. Its purpose is to teach the right way to conduct business. No action is required of you except to stop engaging in the activity that prompted the advisory letter. The advisory letter becomes part of your permanent dealer file.

### **Inspection Reports**

Inspection reports are official records of on-site inspections of a business. It's one of the ways we can meet with you face-to-face to explain the right way to conduct sales, handle paperwork and answer any questions you may have. The report records the items you may need to correct. It is up to investigator's discretion whether to issue an advisory letter or conduct a periodic inspection. If the violations noted in the inspection report are serious or repeated, you may be required to reply in writing, within 15 days, describing what you've done to correct each problem.

### **Warning Letter**

A warning letter is similar to an advisory letter, but is more serious. The letter specifies the violations noted during an investigation and refers to the applicable sections of law or rule. It is signed by the chief of the Dealer Section. A warning letter may follow an advisory letter if the same violation is repeated. For a more serious violation, the warning letter may be the first step with no advisory letter being issued. You must respond in writing to a warning letter assuring us that there will be no future violations of that nature. The letter and response become a permanent part of your file.

### **Informal Conference**

An informal conference is a meeting to discuss possible remedies and penalties that may apply to alleged violations. Either you or we may request an informal conference. The best use of the informal conference is to reach an agreement on restitution or remedies instead of starting a formal action to suspend or revoke a license.

The agreement may include your voluntary assurance to stop an illegal practice. Settlements breached at an informal conference don't require approval by the Division of Hearings and Appeals (DOHA) unless a special order is part of the agreement.

### **Corrective Plan of Action**

We may require you to prepare and submit a detailed plan to address problems in complying with laws or rules. Examples that may be included in a corrective plan of action are: hiring someone to specifically monitor compliance, submitting periodic progress reports, or reassigning problem personnel. We may offer the option of filing a plan if you have had several warning letters and continue to violate laws and rules, or in cases where there have been a lot of smaller violations not serious enough for more severe action.

A plan is often effective when violations occurred because of lack of knowledge and training in proper procedures. Our acceptance of your corrective plan of action gives notice that repeat offenses will result in more punitive action. The plan doesn't require approval by DOHA.

### **Citations**

A citation is a summons to appear in court or pay a fine. You may receive a citation for less serious violations, such as late title applications or failure to maintain log, especially if you fail to respond to repeated warning letters.

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### **Special Order**

A special order is issued by the Division of Hearings and Appeals (DOHA) in cases where there is a serious violation. The special order usually reflects a stipulation we've both agreed to and signed. It may also be issued by DOHA after a hearing. Special orders are recommended by DMV's Licensing Committee, comprised of the administrator of the Division of Motor Vehicles, the director of the Bureau of Vehicle Services and the chief of the Dealer and Agent Section, when they are satisfied that the allegations can be proved. Failure to comply with the conditions of a special order can be grounds for an immediate suspension, revocation or denial of a license.

### **Conditional License**

We may issue you a conditional license if you have a history of violations that meet criteria for a special order, or if your license has been previously suspended or revoked. The conditions may be listed in a letter of assurance we both sign or in a special order issued by DOHA. Violating terms of a conditional license may be grounds for the immediate and summary suspension or revocation of the license.

### **Criminal Actions**

We may file a complaint with the District Attorney, Wisconsin Department of Justice or U.S. Department of Justice for criminal prosecution. We are often working with a law enforcement agency when an investigation into the most serious violations leads to criminal prosecution.

### **Civil Forfeitures**

A civil forfeiture is a monetary penalty paid to the county as a result of a complaint filed in civil court.

It is usually used instead of suspending, revoking or denying a license. A recommendation to file an action in civil court is made by DMV's Licensing Committee. Forfeitures may be part of a stipulation in a consent judgment or may follow a court trial.

### **Suspension, Revocation, Denial or Voluntary Surrender of a License**

Suspension, revocation and denial are the strongest actions taken against a license. They are used in cases of serious violations of consumer rights, such as fraud, or when there is a potential threat to public health or safety. We do consider the dealership's responsiveness to making things right with their customers in deciding what kind of enforcement action to take. With serious violations, we may still take an enforcement action even though the customers have been satisfied. Taking care of the customers doesn't mean the violation didn't happen. Some dealers choose to voluntarily surrender their license to avoid licensing action.

A suspension or revocation action begins when the Licensing Committee is satisfied that an allegation is serious enough and can be proved. We file a complaint with the DOHA seeking suspension or revocation of the license and a formal hearing is held. The license is suspended or revoked after a hearing and the DOHA orders it, or you sign a stipulation agreeing to it.

We also have the authority to deny the renewal of a license when serious violations have occurred. The denial is signed by the chief of the Dealer and Agent Section following a review by the Licensing Committee and does not require the approval of the DOHA. You may appeal the denial to the DOHA and continue to operate until a decision is reached if your renewal and appeal are filed on time.

**Sign up to receive Plain Dealing by email at:**

**<http://www.dot.wisconsin.gov/business/dealers/listserv.htm>**

## Disciplinary Glossary

**Administrative Rule** – part of the Wisconsin Administrative Code, a rule interprets statute (law). Rules go into more detail and may provide specific procedures for carrying out a law. Rules carry the same weight in terms of enforcement as laws. The rules administered by WisDOT all start with “Trans.”

**Bird-dogging** – when a dealer or salesperson offers a monetary reward (or other consideration) to a customer for bringing in another customer. It’s another way to refer to chain, or pyramid sales plans.

**Bushing** – increasing the selling price of a motor vehicle after a purchase contract has been signed by both the buyer and the dealer.

**Denial** – refusing to issue a license (either on a first-time application or a renewal). The grounds for denial are listed in Wisconsin statute section 218.01 (3) (a).

**Revocation** – permanently taking away a license.

**Special Order** – (also known as a “cease and desist” order) issued by the Division of Hearings and Appeals usually based on a stipulation agreed to by DMV and the dealer. Usually contains a requirement that the dealer stop one or more specific practices.

**Stipulation** – a written agreement, signed by all parties, listing facts that are not disputed.

**Summary Suspension (or denial)** – a summary suspension or denial takes effect immediately. It may be appealed to the Division of Hearings and Appeals, but the business is not allowed to operate during the appeal.

**Suspension** – the period of time during which the license is taken away and the business can’t operate. The length of time is usually from 1 – 60 days depending on the seriousness of the violation(s).

**Voluntary Surrender** – the holder of the license returns it voluntarily to DMV; it may be to avoid serious licensing action.

## Violation Examples That May Lead to Licensing Actions

### Advisory or Warning Letter

- Failure to inspect for, or disclose existing mechanical or structural damage.
- Failure to inspect for, or disclose safety equipment defects.
- Failure to display used vehicle disclosure label.
- Failure to put warning on contract regarding illegal safety equipment.
- Failure to state that purchase contract is subject to buyer obtaining acceptable financing.
- Failure to return deposit in one business day.
- Failure to have title or MSO for vehicle offered for sale.
- Most advertising violations.
- Failure to transfer title within seven business days.
- Failure to obtain prior owner’s odometer statement.
- Bird-dogging.

### Corrective Plan of Action

Used for numerous or repeat violations of anything that would lead to a warning letter.

### Special Order, Civil Forfeitures

In addition to failing to live up to a corrective plan of action, or numerous or repeat violations leading to a warning letter:

- Knowingly misrepresenting significant prior use (e.g., saying a rental car was privately driven).
- Failing to disclose flood damage, salvage history, or other conditions subject to title branding.
- Knowingly making false statements on an application for title.
- Failing to record vehicles in the log book.
- Bushing.
- Unlicensed sales locations and salespersons.
- Failing to perform any written agreement with any retail buyer.
- Executing a purchase contract before the vehicle is inspected.

### Suspension, Revocation or Denial

In addition to violating a condition of a special order or conditional license, or numerous or repeat violations that would lead to a special order:

- Odometer fraud.
- Felony convictions for bank fraud, money laundering, stolen vehicles or auto parts theft.
- Giving a false odometer statement to a buyer with intent to defraud.

## *Goodbye to Sesquicentennial and Red-Letter Plates*

**Time has taken its toll on the popular plate; many are too faded to read.**

The special license plate developed for Wisconsin's Sesquicentennial will soon become history as it is replaced over the coming year. Issued between 1996 and 1998, the plate has had a long, successful run, but the aging plates are creating concerns for safety and law enforcement.

"The oldest Sesquicentennial plates have been on the road for more than 17 years now, much longer than national standards recommend," notes Mitchell Warren, director of the Bureau of Vehicle Services in the Wisconsin Department of Transportation's Division of Motor Vehicles (DMV). "Many of the plates are so faded and their reflectivity is so deteriorated, that they can't be read easily, if at all. It's really a safety and law enforcement issue."



Steven Riffel, Sheboygan Falls Chief of Police and President of the Wisconsin Chiefs of Police Association agrees. "Law enforcement officers around the state have been struggling with reading these faded plates for some time now. We appreciate the fact that they're being replaced." Stephen Fitzgerald, Superintendent of WisDOT's Division of State Patrol concurs. "Our officers need to be able to read license plates; it's pretty basic. We're glad DMV is addressing this issue. It will be a big help to our officers."

In addition to replacing the Sesquicentennial plates, DMV will also replace other standard auto plates that have red letters as they too are showing their age. The American Association of Motor Vehicle Administrators recommends license plates with white backgrounds and black letters or numbers. This provides the most contrast and is considered optimal.

Holders of plates being replaced will receive new plates over the next 14 months, starting in August.

"Plate holders will receive a notice from DMV when it is time to renew," notes Warren. "The notice will provide details, so holders are asked to keep their plates on their vehicles until they hear from us. There is no need to do anything right now."

In total, about 160,000 Sesquicentennial and 135,000 red-letter standard auto plates will be reissued. Over the course of the year, DMV expects to reissue on average about 25,000 sets of plates per month. Reissuance of these plates will be complete when the entire renewal cycle has passed in September of 2014.

Find out more about the reissuance of plates at the [official Wisconsin DMV web site](#) in the Announcements section, along with images of faded red-letter and Sesquicentennial license plates.



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## *What's News.... and Notes*

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### **Personnel Moves—Administrator's Office**

Recently there have been some personnel changes at the top levels of the Wisconsin DMV. DMV Administrator Lynne Judd retired after eight and a half years in the position. Former Deputy DMV Administrator, Patrick Fernan, has been appointed the new Administrator. Kristina Boardman, Operations Chief and Director of the Bureau of Field Services since 2006, has been named DMV's new Deputy Administrator.



### **Requests from Prospective Customers to Examine the Title of a Vehicle**

From the *Dealer Education* Section:

Many dealers feel that the Privacy Law prevents them from honoring a consumer's request to see the title of a vehicle being offered for sale. In Wisconsin State Trans. Rule 139, the dealer is required to show the title to perspective customers. The name and address of the former owner(s) is not considered disclosure of personal information and is therefore, not covered under the privacy law.

**Trans. 139.04(b) Show to each prospective purchaser, prior to sale, all odometer disclosure records or true and legible copies of such records relating to a vehicle since last titled, including the current title and all prior owner odometer disclosure statements.**

### **Dealer & Agent Section Retirements**

We would like to congratulate the following three staff members who retired in the past quarter. We appreciate the hard work, program knowledge and wonderful customer service that they brought to our team. Their dedication and loyalty to WisDOT, and especially their experience, will be missed!

**Linda Juno**, Agent Partnership Unit – 40 years of state service

**Sue Riemenapp**, Agent Partnership Unit – 34 years of state service

**Chris Carlsen**, Business and Consumer Service Unit Lead Worker – 32 years of state service

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## *Ready or Not!*

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### **Is your customer's vehicle ready to pass an emissions inspection?**

An emissions inspection result of "Reject" may be due to unset readiness monitors. A vehicle's On Board Diagnostic (OBD) system tracks and stores information about the emissions control devices and other engine related components.

Readiness monitors indicate if the components have been fully evaluated, and whether the system components have experienced any driving conditions that prevent the vehicle from being operated as designed by the manufacturer.

The emissions inspection equipment reads the monitor statuses as part of the inspection. If the vehicle's

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OBD system is in the process of resetting, one or more monitors will be unset, and the vehicle will be considered “Not Ready” for testing, and will receive a “Reject” inspection result.

Unset readiness monitor allowances:

<b>If the vehicle’s model year is:</b>	<b>Then the total number of unset monitors allowed is:</b>
1996-2000	2
2001 and newer	1

Some of the most common reasons for a vehicle to be “Not Ready” include:

- ◆ Recent vehicle repairs or maintenance in which diagnostic trouble codes have been cleared with an OBD scan tool.
- ◆ A recently disconnected or replaced battery.
- ◆ The vehicle’s computer requires an update, commonly referred to as a “reflash.”

A “Reject” result, for non-communication, differs from a “Reject” result for not ready due to monitors. The difference is that, the non-com result happens when we fail to establish a connection that allows us to “talk to” the On-Board Computer. Often this condition is caused by a missing power source or ground. A burnt fuse or broken wire to the computer will cause this condition.

Emissions inspectors follow procedures to ensure a proper connection between the DLC (Data Link Connector) and the OBD II cable connector. If the initial connection results in a non-com, the emissions inspector will run an OBD Protocol check and test the vehicle again.

## ***DOT Criminal Actions***

**Grady, Keith – Milwaukee** – Grady was sentenced to 30 days in jail, five years probation, and was ordered to pay \$70,000 in restitution for the following actions: VIN tampering and possession of a motor vehicle with the intent to sell knowing that the VIN has been removed, obliterated, tampered with, or altered.

**Grissman, Christopher – Little Chute** – Formal charges were requested in Outagamie County for six felony counts of VIN tampering under Wis. Statute 342.30 and four misdemeanor counts of removal of Manufacturer Identification and possession of ID under Wis. Statute 943.37.

**Harris, Fabian – Milwaukee** - Harris pled guilty to two counts of VIN tampering. Harris was previously indicted in December, 2011 on one count of VIN tampering and eleven counts of intent to sell a motor vehicle with a tampered VIN. Sentencing has been postponed until 10/02/2013.

## ***DOT Citations***

**Delavan Lake Auto – Delavan** – One citation was issued for failure to transfer title.

**Garner, Glen dba Moore Automotive – Milwaukee** – Garner entered a plea of no contest and was issued four citations for failure to process title applications within seven business days. Garner was fined \$400.

**Groom, Torrey – Viroqua** – Groom was issued two citations, one for operating as an unlicensed motor vehicle dealer, and one for failure to transfer the interest in a motor vehicle. His initial court appearance was 7/8/2013.

**Jones, Jeffrey – Menasha** – Jones was issued 13 citations for failure to transfer title. Jones entered a not guilty plea and agreed to comply with salvage licensing requirements in 60 to 90 days in exchange for dismissal of the citations.

**King, Lamonda – Milwaukee** – King was issued 14 citations for operating as an unlicensed motor vehicle dealer.

**Kosmatka, John – Milwaukee** – Kosmatka was issued four citations and was found guilty of failure to transfer titles and operating as an unlicensed motor vehicle dealer. He was fined \$1,899.60.

**McBride, Robert – Milwaukee** – McBride was issued five citations for failure of transferee to obtain title per Wis. Statute 342.15(6).

**Robs Automotive LLC – Jefferson** – A citation was issued for gross misuse of dealer plates per Wis. Statute 341.55(1). A ticket for \$238.30 was issued.

**Zupanc, Troy – Marshfield** – A citation was issued for failure to transfer title and another citation was issued for operating as an unlicensed motor vehicle dealer.

## ***DOT Enforcement Actions***

**Colon, Julio – Chicago, IL** – Colon's buyer's license under Cars for Less (Grandville, MI) was cancelled. The MI license used to gain access to auction in WI was fraudulent, and no valid license was ever issued in MI to Cars for Less.

**Garcia-Gutierrez, Jose – Cicero, IL** – Garcia-Gutierrez's buyer's license under Cars for Less (Grandville, MI) was cancelled. The MI license used to gain access to auction in WI was fraudulent, and no valid license was ever issued in MI to Cars for Less.

**Hernandez, Esquivel – Chicago, IL** – Hernandez was denied a buyer's license under Universal Auto Sales out of Hammond, IN. This dealer's license was revoked by the state of Indiana in November of 2012 for failing to appear at an audit requested as a result of unlicensed dealer activity in WI.

**Herrera Patino, Jose – Chicago, IL** – Patino was denied a buyer's license under Universal Auto Sales out of Hammond, IN. This dealer's license was revoked by the state of Indiana in November of 2012 for failing to appear at an audit requested as a result of unlicensed dealer activity in WI.

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## ***DOT Enforcement Actions***

**Medina, Antonio – Chicago, IL** – Medina's buyer's license under Perez Auto Sales (Quinnesec, MI) was cancelled. The MI license used to gain access to auction in WI was fraudulent, and no valid license was ever issued in MI to Perez Auto Sales.

**Minocqua Auto Clinic LLC – Minocqua** – An assurance of compliance was issued for multiple violations.

**Park Place Auto Sales – Omro** – A Special Order was signed stipulating a two-day suspension for improper replacement of odometers (one with 128,000 miles less, a second with 43,000 miles less). Two victims were paid \$1,500 each in restitution.

**R and R Enterprises of Coloma LLC – Coloma** – A Special Order was signed stipulating a 15-day suspension for failure to enter vehicles into the dealer logbook and for attempting to sell a motor vehicle that the dealer does not own.

**Villasenor, Luis F – Chicago, IL** – Villasenor's buyer's license under Cars for Less (Grandville, MI) was cancelled. The MI license used to gain access to auction in WI was fraudulent, and no valid license was ever issued in MI to Cars for Less.