



Plain Dealing

A policy and administrative bulletin for licensed dealers from the Dealer Section of the WisDOT Division of Motor Vehicles.

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“Nothing astonishes men so much as common sense and plain dealing.”

R. W. Emerson

Plain Dealing has a new section starting with this issue. We call it “The Right Way” in line with our mission of keeping dealers in business — doing business right. “The Right Way” will cover trade practice issues such as disclosure, advertising and purchase contracts. This time we look at disclosure — our next issue will consider some current advertising problems. Also in this issue, we have some news on a bankrupt extended service program and the latest on Truth-in-Mileage implementation.

We'd like to wish you all a happy holiday season and a healthy and prosperous new year!

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Rental and leasing companies to be licensed

Rental and leasing companies wishing to sell their vehicles at retail need a dealer license to do so. This is one of the changes brought about by revisions to the dealer definition rule, Trans 138, which took effect July 1, 1991.

The department originally extended a five-month grace period to rental and leasing companies allowing them until December 1, 1991, to obtain dealer licenses. Unexpected obstacles, such as reluctance of local zoning authorities to approve “used car lots” for these companies caused us to extend the deadline 90 days. By March 1, 1992, rental and leasing companies will need to be properly licensed as dealers to make retail sales.

Most of the dealer licensing requirements are the same for all applicants. Rental and leasing companies *will* need:

- A \$25,000 surety bond.
- An office within a permanent building.
- Zoning approval.
- Any locally required permit or license.
- A lease if the business real estate isn't owned by the licensee.
- A sales tax seller permit.
- The same fees (including the fee paid to the Office of the Commissioner of Banking).

We realize that there are some major differences between renting or leasing motor vehicles and selling them, particularly when a leasing company sells a vehicle at the end of the lease to the person who leased it. Therefore, we've established some exemptions to licensing requirements for these businesses. They do *not* have to provide:

- A Showroom (leasing companies only).
- Display or service facilities (or service agreement) if selling to people exercising the option to buy under the terms of a lease. A service agreement *is* required for other retail sales.

Other differences include:

- Salesperson licensing is required to the following extent —
 - ▶ Leases with an option to purchase must be reviewed and signed by a licensed salesperson when the option is exercised.
- All sales made to people other than lessees exercising their option to purchase must be made by a licensed salesperson.
 - ▶ Inspection and disclosure label — If a vehicle purchaser is the lessee or lessee's agent and driver, leasing companies (including dealers) may have the purchaser sign a statement to that effect and keep it in their records for four years instead of a disclosure label.

If you have questions about dealer licensing requirements or exemptions, please contact the Dealer Section's Business Licensing Unit at (608) 266-

The Right Way

Disclosure

You just got a great car from a wholesale auction. It's entered in your log book but you haven't had time to inspect it yet. A customer on your lot sees the car and wants to make an offer. Can you go ahead and make the sale?

Disclosure is probably the thorniest trade practice issue — both for you as dealers and for us as regulators. What *must* be disclosed? What *should* be disclosed? How do you discover items to disclose? A good rule of thumb is if you're not sure whether to disclose something, it's best to disclose it. Unhappy customers could establish that they wouldn't have bought the vehicle if they had known about the undisclosed item.

One of the top trade practice violations noted by our field investigators and consumer specialists is that used vehicles are being sold without inspection or a properly completed disclosure label.

Some dealers try to avoid their disclosure responsibilities and limit their liability by marking every item on the used vehicle disclosure label “yes” and “not ok.” This clearly isn't telling the truth about the vehicle's condition. Remember, all items marked “yes” or “not ok” require written explanation below the checklists. It's hard to explain what's wrong with an item that's working fine.

We've also heard of dealers selling “rebuilders” with no inspection or disclosure — just by marking “as is” on the purchase contract. The term “as is” refers to whether you're including a warranty of some kind. It isn't an exemption from inspecting and disclosing the condition of a vehicle.

The right way — according to Chapter Trans 139 — is to use “reasonable diligence” to inspect the exterior, interior, under the hood, under the vehicle and test drive it. Then, mark each item on the disclosure label to show the results of the inspection. You must also disclose other items that you may know about — perhaps information on the vehicle's title or in your own service department records.

The right answer to the situation described at the beginning of this article is *no*, you may not execute a purchase contract for a vehicle that hasn't been inspected. Until it's inspected, the car should have a “not inspected for sale” sign clearly displayed on it.

We've recently encountered these disclosure issues:

- **Window tinting** — You must disclose windows as “not ok” if they don't meet the requirements in s. MVD 5.52(1)(b) of the Wisconsin Administrative Code which says that windows cannot be tinted by any means other than that used in the original manufacturing process. In other words, after-market window tinting of any kind is not allowed. Federal standards on factory window tinting are strict and include a 70% light transmittance standard. A window that looks dark to you isn't likely to pass the federal standard. Check with your nearest State Patrol headquarters if you're in doubt about whether a particular vehicle meets the standards.
- You must disclose the **chassis year** of new motor homes and other new second stage vehicles if different from the model year of the finished vehicle. Trans 139.04(1)(b) requires you to make this disclosure on the purchase contract.
- **Mark each item** on the disclosure label separately. “Pencil-whipping,” or drawing a single line through all the boxes reduces the credibility of your inspection. It can also lead to problems like having to install air conditioning on a car that was disclosed as having “no” problems with its air conditioner — when it didn't have one to begin with.
- Be sure to **reinspect** any “stale” vehicles on your lot — and complete a new disclosure label — if there's a chance the vehicle's condition has changed since it was first inspected. Changes could occur when racking up mileage from repeated test drives or if the vehicle just sits in one spot — exposed to Wisconsin's harsh climate.
- If you know a vehicle was previously salvaged, write the words “**rebuilt salvage**” in the vehicle use section of the used vehicle disclosure label. You can sometimes find information about a vehicle's salvage history on the title in notations like, “This vehicle was previously titled as salvage in Illinois.”

Food for thought:

You take a car in trade. The owner tells you it uses oil and that's why he's replacing it. Do you disclose the information to prospective buyers?

We invite you to send us your answers to this dilemma. Mail them to: *Plain Dealing*, Wis. DOT/Dealer Section, P.O. Box 7909, Madison, WI 53707-7909; or fax them to (608) 267-0323. We'll print your answers as space allows and give you our answer in the next issue.

News in Brief

Another extended service program fails

Since 1987, more than 17 extended service contract companies have gone under. The most recent casualty is the Extended Service Program (ESP). The Office of the Commissioner of Insurance notified us that ESP went into bankruptcy July 26, 1991. As a result, ESP is not honoring claims.

After reviewing customer contracts, the Wisconsin Administrative Code, and the Wisconsin Statutes, the only position we can take is to require dealers to honor the service contracts they sold. ESP's service contracts were clearly between the selling dealer and the customer. We recognize that if you sold many of these service agreements you may face considerable liability. But choosing not to honor the contracts will only increase your liability.

The Wisconsin Administrative Code Chapter Trans 139.06(10) states:

It is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service agreement.

Under section 218.01(3)(a)6 of the Wisconsin Statutes, a dealer's license may be denied, suspended or revoked for "willful failure to perform any written agreement with any retail buyer." Consumers can also sue over motor vehicle trade practice violations and be awarded damages, costs and attorney fees.

Inform your service personnel that the dealership will honor these contracts. We also strongly suggest you notify your customers that their service agreements are still valid. You may not know how many or which of your customers have already contacted your service department and been turned away. You should also check your service records to learn if customers have already paid for covered repairs and should be reimbursed.

We're counting on your cooperation. If you have questions about the ESP service contract, please call Investigator Dawn Kalies at (608) 267-0483.

New tax exemption for mobile home sales

As of October 1, 1991, a new mobile home that is transported in two unattached sections is eligible for a sales and use tax exemption of 35% of the sale price. To qualify for the exemption, the total size of the combined sections (not including additions and attachments) must measure at least 984 square feet.

New mobile homes that are primary housing units will continue to qualify for a sales and use tax exemption. Sales tax on these units is still calculated on 65% of the sale price.

Customer Service Center hours continue to expand

The Division of Motor Vehicles' Bureau of Field Services continues its effort to provide later business hours at customer service centers. The Milwaukee area added these late service days:

Milwaukee Northwest Tuesday 10 a.m. – 8 p.m.

7301 W. Mill Road, Milwaukee

Milwaukee Southwest Tuesday 10 a.m. – 8 p.m.

5500 W. Grange Avenue, Greendale

Milwaukee Northeast Wednesday 10 a.m. – 8 p.m.

6073 N. Teutonia Avenue, Milwaukee

Milwaukee Southeast Thursday 10 a.m. – 8 p.m.

2424 10th Avenue, Milwaukee

During the rest of the week these locations are open from 9 a.m. until 5 p.m.

The Burlington office has expanded its hours to 10:30 a.m. – 5:45 p.m. on Wednesdays. They will continue to be open from 8:30 a.m. – 3:35 p.m. on Tuesdays. As of December 9, 1991, the Burlington office is located at Burlington Square, 425 Milwaukee Avenue.

Dealer Alert

Beware of doing business with Howard Klos or Brian Bateman. Both have been acting as motor vehicle brokers (**unlicensed dealers**). Their business names are Automotive Financial Company on West Oklahoma in Milwaukee and Bond Credit Assurance on West Beloit Road in Milwaukee. Howard Klos (Automotive Financial Company) recently added two partners, Jim Mullenix and Michael Meyer.

Remember the new **dealer inquiry phone line** for all your registration/titling and Truth in Mileage Act questions. The phone number, set up for dealers only, is **(608) 267-3646**. Share this number with your office staff and title clerks and save them the long waits on hold that often happen with the public number.

Policy Briefings

Independent Agents

It may sound tempting to let an “independent agent” try to sell some of your inventory at another location. However, there are so many violations of statute and rule in this kind of arrangement that two Wisconsin dealers who recently tried it were issued Special Orders (with press releases) by the Office of the Commissioner of Transportation.

The problems:

- The “independent agent” is usually acting as a motor vehicle dealer without a license.
- If the agent is a licensed dealer, he or she still could not enter into a consignment agreement with another dealer.
- These are off-premise sales, conducted away from the licensed location of the dealer who owns the vehicles.
- In each case, these off-premise sales violated all of the off-premise sale rules in Trans 138.08 — no 10-day advance notice was given to the department, there were more than 6 sales in a calendar year, the sales were longer than 10 days and no notice of the 3-day right to cancel was provided to consumers.

Our advice:

Don't get involved in this activity. Under the revisions to Trans 138.04(1)(b), consignment sales are not permitted between dealers. Remember too, that people who show your cars must be licensed salespeople for your dealership — and *only* for your dealership. (Salespeople may hold multiple licenses only when each location is under the same ownership.)

No on-the-job training for salespeople

In this age of high employee turnover it may seem like a good idea to have a newly-hired salesperson get some experience on the sales floor before taking the salesperson license exam. It's not a good idea. Wisconsin law is clear — motor vehicle salespeople must be licensed *before* engaging in business. And dealers are responsible for seeing to it that every salesperson they employ is properly licensed. When you allow an unlicensed salesperson to make a sale you risk having that sale voided as well as possible sanctions against your dealer license.

It's easy to make sure your staff is properly licensed. Anyone whose duties include selling or approving retail sales must have a salesperson license. If you hire someone who held a current license at another dealership you just need to fill out a salesperson license application. There is no charge to transfer the license. A new employee who hasn't been licensed as a salesperson in the past five years will need to pass the written exam. Examiners issue a receipt to those who pass the exam — ask to see it to be

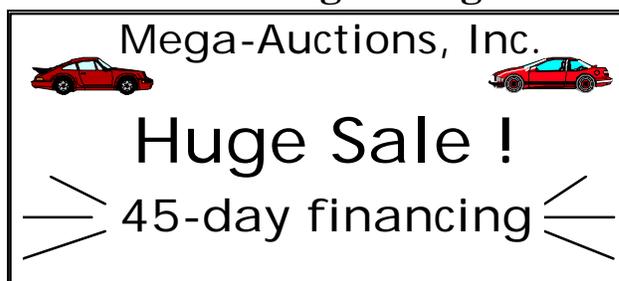
sure the employee passed. We'll mail the actual salesperson license to the dealership as soon as it's processed.

Off-premise: sale or display?

Ten-day advance notice must be filed with us for an off-premise sale, but is not required for display only. Distinguishing between a “sale” and a “display” has caused confusion among many dealers.

The distinction between a “sale” and a “display” is whether salespeople are present (including being accessible by means of a special phone or other communication device). If salespeople are present or readily accessible, the event is a “sale” regardless of whether any vehicles are actually sold. During a display, it is permissible for security people or people handing out literature (sometimes called “greeters”) to be present, but these people may not be salespeople and they cannot respond to consumer inquiries about the vehicles.

Auction financing arrangements



Mega-Auctions, Inc.

Huge Sale !

45-day financing

Sound good? You get 45 days to pay after taking possession of the vehicle. Of course, you don't get the title until you pay for it.

This works fine in states like Minnesota where dealers may sell a vehicle before they have the title. In Wisconsin, you must have the title *before* you can offer the vehicle for sale.

At least one Wisconsin dealer is in trouble for using a 45-day financing plan at a Florida auction and selling the vehicles before having properly assigned titles. Trans 138.04 (1)(a) says you must have:

As evidence of ownership, title for each used vehicle owned and offered for sale and MSO for each new vehicle owned and offered for sale. If a manufacturer or lending institution is holding the title or MSO to ensure payment at time of sale, the dealer shall have for each such vehicle either a factory invoice, a completed dealer reassignment form, or a purchase contract evidencing trade-in or purchase.

Remember, submitting your customers' applications for title/registration within seven business days of sale or transfer still applies.

Truth-in-Mileage Update

TIMA Guide Sent

A guide to Wisconsin's implementation of the Truth in Mileage Act (TIMA) was mailed to each Wisconsin dealer in September. The guide contains detailed information on how to handle the paperwork involved in both acquiring and selling vehicles. You'll also find examples of properly completed forms and step-by-step instructions on how to fill them out.

One copy of the guide was provided free of charge to each dealer. Additional copies may be ordered at a cost of \$2 each to cover shipping costs.

If you didn't receive your copy or wish to order additional copies, write to:

Wisconsin Division of Motor Vehicles
Bureau of Vehicle Services, Room 253
P. O. Box 7909
Madison, WI 53707-7909

(Your check for additional copies should be payable to Registration Fee Trust.)

The Wisconsin Division of Motor Vehicles has been in compliance with the provisions of the federal Truth-in-Mileage Act since October 29, 1991. We've been sending notices to dealers who made errors in some aspect of their odometer disclosures on title applications. We haven't

delayed processing the applications if the rest of the information and fees were correct.

Beginning January 1, 1992, odometer disclosures must comply with federal regulations in all respects. After that date, we'll be asking you to obtain a corrected odometer disclosure if you send an incorrect or incomplete one with a title application. Use your *Guide to Wisconsin's Implementation of Truth in Mileage* to be sure you're handling odometer disclosures correctly.

Texas power of attorney procedure

The Texas Division of Motor Vehicle Titles and Registration has asked us to tell Wisconsin dealers about their new procedures for secure power of attorney forms.

When Texas dealers use the Texas secure power of attorney form (form D12-271-A) they must complete it in duplicate (using carbon paper). The document with the original signatures then accompanies the title transaction. The duplicate copy is returned to the Texas DMV with a photocopy of the front and back of the title.

An out-of-state power of attorney form that accompanies a title transfer to a Texas dealer must also contain original signatures. If the document doesn't contain the original signatures, the vehicle must be titled in the state that issued the power of attorney form.

Paperwork Pointers

☞ Whenever a **vehicle is sold by or to a trust**, the trustees must complete a new form. The form (MV2790) is called "Trustee's Affidavit of Certificate of Title Addendum" and is required in place of the "Letters of Trust." The form can be ordered at no charge from: Document Sales, 3671 Pierstorff Street, P.O. Box 7713, Madison, WI 53707-7713.

☞ Remember to complete the section on the application for title/registration (MV1 or MV11) that asks for the county and city, village or township **where the vehicle will customarily be kept**. We need that information to accurately administer the county sales tax, municipal wheel tax and emission inspection programs.

☞ The City of Amery **repealed its municipal wheel tax** effective January 1, 1992. Payment is still required with applications involving a 1992 expiration date if the first date of operation occurs before December 31, 1991.

☞ **Salvage titles** can't be reassigned. If you purchase a salvage vehicle you must obtain title in the dealership's name before selling it. If the vehicle was last registered in another state, you must obtain a Wisconsin salvage title before the vehicle can be inspected.

☞ If you have a customer who needs to renew **Amateur Radio plates**, he or she will have to establish current eligibility for the plates. To establish eligibility, applicants should include a photocopy of their amateur radio station license issued by the Federal Communications Commission. If you are accompanying the customer to a DMV Customer Service Center, he or she should be sure to bring the original FCC license.

☞ **Salvage dealers** — when you write "junk" and your salvage dealer number on the face of titles, be careful not to cover any of the printed information. Remember that you must send the title or bill of sale to the department within 30 days of acquiring a vehicle.

☞ The 1992 issue of the **License Plate and Motor Carrier Credentials Guide** is now available. The guide provides concise information on all Wisconsin license plate types, eligibility for plate types, and fees. It also contains samples and information on motor carrier trip permits, fuel tax licenses and other motor carrier credentials. To request your free copy, write to: License Plate Issuance Unit, Wis. DOT, P.O. Box 7909, Room 87, Madison, WI 53707-7909.

1991 Licensing Actions

Doug's Used Cars, Neenah — License was suspended for 15 days, a Special Order was issued and the dealer paid a \$2,000 civil forfeiture. Dealer Section investigators found the dealership bought and sold vehicles from an unlicensed dealer, failed to properly disclose odometer mileage and failed to complete odometer mileage disclosure statements.

Egan Chev-Olds-Cadillac, Inc., Ashland — Special Order was issued for employing an unlicensed salesperson and conducting unlawful off-premise sales.

Mark B. Koenig DBA M's, Cedarburg — Special Order was issued for acting as a motor vehicle dealer without a license. A motor vehicle wholesaler license was issued under conditions including Koenig pleading guilty to seven counts of acting as a dealer without a license and \$2,300 in fines, and that he allow agents or employees of the DOT to inspect all business records necessary to verify compliance with the order.

Layton Park Auto Sales, St. Francis — Special Order was issued for failure to submit an application for title within seven business days, failure to display a used vehicle disclosure label on a vehicle offered for sale, failure to inspect a vehicle and inform a prospective retail buyer of its condition, and failure to write "rebuilt salvage" in the previous use area of the used vehicle disclosure label if the vehicle was formerly salvage.

Mauro Chevrolet-Cadillac, Inc., Kenosha — Dealer paid a civil forfeiture of \$2,000 plus \$433 in court costs for ten counts of failing to display used vehicle disclosure labels. Another 39 counts were dismissed.

In addition to the forfeiture, the dealership must submit a corrective plan of action to the department to assure compliance with motor vehicle trade practices.

Nelson Auto and Nelson Auto Salvage, Necedah — A Special Order was issued and civil forfeiture of \$4,000 was paid. Dealer Section investigators found that the dealers failed to enter vehicles in their used vehicle and salvage vehicle log books, retitled a vehicle after it was entered in the salvage log book as junked, failed to submit a title for a junked vehicle to the department within 30 days, and offered a vehicle for sale without proof of ownership.

Urban Sales & Service, Inc., Neillsville — A Special Order was issued and the dealer paid a civil forfeiture of \$1,500 plus court costs and an additional 20% penalty. Dealer Section investigators found that the dealership falsified a customer's signature on a used vehicle disclosure label, misrepresented the prior use of two vehicles as "executive driven" when in fact they were leased, and failed to provide a copy of the used vehicle disclosure label to a customer at retail sale.

U.S. Auto Sales, Milwaukee — Application for a motor vehicle dealer license was denied because of past violations and failure to resolve complaints before closing previous dealership in February 1991.

Von Loh Enterprises, Inc., Athens — A Special Order was issued for employing an unlicensed salesperson and conducting unlawful off-premise sales.

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