



Plain Dealing

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

Vol. 2, No. 4

Summer/Fall 1992

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

R. W. Emerson

Thanks to all of you who entered the ad contest in the last issue! You are a tough group to fool. The contest winner is Jody Schutte of Zimbrick, Inc. in Madison. Jody identified and clearly explained 12 errors in the ad. (This is especially impressive because I thought I was putting 10 errors in the ad—Jody found two errors in two spots I counted as one each.) Congratulations, Jody! A video and guidebook are on their way to you.

For those of you who would like to order your own copy of *The Right Way*, be sure to read the cover story. This issue is also packed with information on changes in vehicle emission law, title fees and policy developments. Hang on to it for future reference!

In this issue:

The Right Way 2

News in Brief 3

Dealer Alert..... 4

Policy Briefings 5

Paperwork Pointers..... 5

Licensing Actions..... 6

Plain Dealing is published quarterly by the Wisconsin Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Dealer Section.

Roger Cross, administrator
Martha Gertsch, director
Chuck Supple, section chief

Address correspondence to Vikki VanDeventer, editor, Plain Dealing, DOT Dealer Section, P.O. Box 7909, Madison, WI 53707-7909 or FAX to (608) 267-0323.

Training videos now available for dealers

Years in the making — exotic locations throughout Wisconsin — a cast of hundreds — the story you've been waiting for . . . *The Right Way — A Guide for Motor Vehicle Dealers* is now available on video tape with a companion guidebook.

The video helps us accomplish two goals:

- Provide consistent, current information that's easy to work with, and
- Speed up the process of issuing dealer licenses.

We've spent a year pilot-testing a system of issuing first-time dealer licenses using the video and guidebook as training tools. The system allows us to issue a license as soon as the paperwork is complete instead of having to wait until a field investigator could visit the dealership for a face-to-face training session. In the past year, 170 licenses have been issued with the video and guidebook.

The Right Way covers three primary topics:

- Record-keeping and Disclosure Rules
- The Purchase Contract
- Odometer Statements and Title/Registration Applications.

The guidebook provides additional material on these topics and includes copies of forms, helpful phone numbers and copies of all back issues of *Plain Dealing*.

A second training video on the Truth in Mileage Act (TIMA) called *TIMA: It's the Mileage that Counts* is also available for purchase. This video provides an overview of the federal Truth in Mileage Act and has a companion guidebook available as well. The guidebook contains detailed information on how to handle the paperwork involved in both acquiring and selling vehicles. It includes samples of completed forms and step-by-step instructions on how to fill them out. To order:

Videos	
<i>The Right Way—A Guide for Motor Vehicle Dealers</i>	\$12.00
<i>TIMA: It's the Mileage that Counts</i>	\$12.00
(All prices include tax and shipping.)	
Make your check payable to V.I.P. Duplicating Services and mail it to:	
V.I.P. Duplicating Services 6430 Bridge Road Madison, WI 53713	
Guidebooks	
<i>The Right Way—A Guide for Motor Vehicle Dealers</i>	\$2.00
<i>TIMA: Wisconsin Implementation Guide</i>	\$2.00
Make your check payable to Registration Fee Trust and mail it to:	
Wisconsin Dept. of Transportation Dealer Section P.O. Box 7909 Madison, WI 53707-7909	

The Right Way

Purchase Contracts

Question: A customer refuses delivery of a car after she signed a contract to buy it. Is your dealership entitled to keep her down payment? Under what circumstances?

Your customer has decided on a car—you sit down to draw up the purchase contract—the hard part is over, and you can just coast from here—right? Wrong!

The purchase contract is a legal document binding both parties. It's important to complete it *the right way*.

The Wisconsin Administrative Code Chapter Trans 139 covers purchase contract requirements in detail. Some of the most often overlooked requirements we see on purchase contracts are:

- Include the *salesperson's* full name and license number in the space provided.
- Place the required *warning* on the face of the contract when selling a vehicle with uncorrected safety defects:

WARNING! This vehicle cannot be legally operated on Wisconsin highways and may not be safe.
- *Rebates* must be listed separately and include information on whether the buyer or the dealer is to receive the rebate.
- *Buyer's representations* at the bottom of the contract should be completed for the dealership's protection.
- Any *changes* made to a contract must be initialed by both parties.

We've also encountered some other purchase contract issues recently:

◆ Dealer **documentation (DOC) fees** aren't allowed in Wisconsin. Trans 139.05 (8) specifically prohibits these service fees.

A dealer licensee shall not assess a purchaser an additional service fee or charge for completing any sales-related vehicle inspection or forms which are required by law or rule.

Some of our neighboring states do allow limited DOC fees. For example, Illinois dealers may charge up to \$40 in paperwork fees. Wisconsin dealers may charge a service fee to someone consigning a vehicle through them because that person is actually a seller, not a purchaser.

- ◆ When a **contract is rewritten** (instead of amended) you need to indicate on the face of the second contract that it supersedes the first contract. You must provide your customer with copies of both contracts and you must keep a copy of both contracts in your file.
- ◆ Beware of the difference between using a **discount** and increasing a customer's trade-in allowance. If a deal falls through (because the vehicle was not available for delivery within 15 days after the anticipated delivery date or if acceptable financing was not obtained) and you've already sold the customer's trade-in, you must refund the trade-in allowance stated on the contract to the customer. You may not want to find yourself paying more for a vehicle than it's worth.
- ◆ If you've indicated on a purchase contract that a vehicle has **remaining manufacturer's warranty**, and you later determine that no warranty remains—the dealership is responsible for living up to the terms of the warranty.
- ◆ Remember, no contract can be written for a used vehicle until the vehicle is inspected and a used vehicle disclosure label is completed.

Answer: The dealership may keep a customer's down payment for non-acceptance of delivery if all of these conditions are true:

- ◆ A penalty amount not exceeding 5% was written in on the contract.
 - ◆ The down payment does not exceed the penalty amount (anything over the penalty amount must be refunded to the customer within 24 hours).
 - ◆ The contract was not subject to the customer arranging financing or approving financing arranged by the dealership. (Or, if financing was involved, the customer did obtain or approve the financing.)
 - ◆ The vehicle was available for delivery within 15 days of the stated delivery date.
-

News in Brief

Emission test changes planned

Changes are proposed for Wisconsin's Vehicle Inspection Program which may take effect as early as January 1, 1993. The Vehicle Inspection Program applies to vehicles domiciled in Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha counties. Sheboygan County will be added to the list in July, 1993.

1. **Newer vehicles will be tested less often.**
Studies show that newer vehicles are less likely to fail an emission test—so they will be tested every other year (at 2, 4, and 6 years, then every year after that).
2. **Older vehicles will be tested.**
All vehicles from model year 1968 on will be subject to emission testing. Those from model years 1968–1974 will receive emission tests only—not equipment inspections.
3. **Waiver cost limit will increase.**
Waivers for vehicles that fail the emission test will only be issued to vehicle owners who can prove they've spent at least \$200 on emission-related repairs (for model years 1981 or newer, or \$75 for model years 1980 or older). These amounts will increase to \$450 on July 1, 1994. The \$450 amount could be even higher because it will be indexed for inflation.
4. **Inspection when ownership changes.**
Vehicles more than five model years old will be required to be inspected upon change of ownership. The department will notify consumers within five days of processing title application paperwork that they have 45 days to bring the vehicle to an emission test site. Both an emissions test and expanded equipment inspection will be done if required.
5. **Equipment inspection to expand.**
Vehicles six years old and older (back to model year 1975) will undergo a comprehensive under-hood inspection every three years at renewal time. In addition to checking the catalytic converter, fuel filler restrictor and fuel cap, inspectors will also check the air system, positive crankcase ventilation system, exhaust gas recirculation system and evaporative canister.

Even with these changes, dealers will still only be required to perform a visual inspection of the emission system. You need to determine whether all components of the emission system are there. If a component is missing or clearly isn't functioning, that information must be disclosed to a prospective buyer. However, you aren't required to know whether a vehicle will pass an emission test. Stating that the components are there and appear to be working is not a guarantee that the car will pass an emission test.

There is an aid to performing the visual inspection of emission components. Since 1968 the Environmental Protection Agency has required vehicle manufacturers to put a sticker under the hood listing all emission-related components.

The department is looking at the possibility of making emission pre-tests available to dealers. The details aren't worked out yet—but you should know that if you do an emission pre-test and the vehicle fails, you must disclose that to a prospective buyer or repair the vehicle if you're in the seven-county area.

If you have questions about the new emission-testing requirements or would like to receive a brochure with more detailed information, contact Judy Cappaert at the Milwaukee District Office of the Vehicle Inspection Program—phone (414) 266-1094.

Title fee change

A \$7.50 "environmental surcharge" will be added to motor vehicle title transfer fees beginning December 1, 1992. This changes the fee for transferring a title or issuing an original Wisconsin title from \$5 to \$12.50.

The fee change is a result of the Non-Point Source Pollution Bill enacted by the state legislature earlier this year. The Department of Natural Resources will use the surcharge to fund pollution and erosion-control programs.

Applications for title (forms MV1 and MV11) and other Department of Transportation forms are being revised to show the fee change and effective date. You may continue to use up your current supply of forms if you collect (and write in) the new \$12.50 fee. Other title and registration fees, including the \$8 fee for a replacement title, will remain the same.

Wisconsin dealers received a special mailing with more details about the title fee change in late October.

Extended warranty warning

Beware of doing business with this company which may try to sell you vehicle service contracts:

Ed Lemco & Associates
P.O. Box 1779
Albany, OR 97321

The Office of the Commissioner of Insurance tells us this company hasn't obtained authority to do business in Wisconsin. The company has been ordered to stop soliciting new business, adhere to contractual obligations of warranties currently in force, pay a forfeiture for nonresponse and provide information requested.

If you have questions about whether a company selling service contracts is authorized to do business in Wisconsin, call Insurance Examiner Rhonda Shaw at the Office of the Commissioner of Insurance—phone (608) 267-7186.

Wisconsin passes “Secret Warranty” law

A new section in Chapter 218 requires motor vehicle manufacturers to inform consumers of the existence of a warranty adjustment program. An “adjustment program” is defined as an extended policy program under which a manufacturer agrees to pay for all or part of a condition that may substantially affect the vehicle’s durability, reliability or performance. “Adjustment program” doesn’t include service provided under a written warranty, safety or emission-related recall program or individual adjustments made on a case-by-case basis.

Under the law (which took effect September 1, 1992) manufacturers will need to establish a procedure to inform consumers of adjustment programs, including notifying consumers by first class mail within 90 days of an adjustment program being adopted. Dealers must be notified in writing within 30 days of the program being adopted.

Manufacturers will also have to inform consumers who buy or lease a new vehicle of their rights under this law using the following language:

Sometimes . . . (manufacturer’s name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your motor vehicle dealer to determine whether any adjustment program is applicable to your vehicle.

Consumers will also be eligible for reimbursement of repair expenses if they paid for repairs before learning of the manufacturer’s adjustment program. To do so, a consumer needs to make a written claim to the manufacturer within two years of paying for the repair. The manufacturer then has 21 business days to notify the consumer whether the claim will be allowed or denied. If the claim is denied, specific reasons must be given in writing.

Consumers may bring court actions to recover damages caused by a violation of this law. If the consumer wins, the court will award double damages plus court costs and attorney fees.

Dealer Section installs new phone system

Calls to the Dealer Section are being directed more efficiently thanks to a new automated phone system. Callers with touch tone phones can even get information on dealer licensing after hours and leave a name and address to have application forms mailed.

To use the system, call us at (608) 266-1425. If you have a touch tone phone you’ll be able to choose which area of the Dealer Section you want to speak to: Business Licensing, Consumer Assistance, Odometer Investigations or get a listing of staff names and phone extensions. Once you’ve chosen an area, you’re offered other choices—such as listening to information on how to qualify for the different types of dealer licenses and having an application kit sent to you.

During regular business hours (Monday–Friday, 7:45–4:30) you always have the option of speaking to one of our representatives. If all lines are busy, you’ll be asked to leave your name and phone number so we can call you back (and save you some long distance charges). Give it a try—we think you’ll be less likely to hear a busy signal and more likely to get information you need.

Farewell, mobile home dealers

Mobile home dealer and salesperson licensing has been transferred to the Department of Administration, Division of Housing. The change took effect July 1, 1992. The Division of Housing is headquartered on the fourth floor of the new Department of Administration building at 101 E. Wilson Street in Madison. Their phone number is (608) 264-9596 and mailing address is P.O. Box 8944, Madison, WI 53708-8944.

Ross Kinzler of the Wisconsin Manufactured Housing Association presented an award to the Dealer Section for exceptional service to the manufactured housing industry. We’ve enjoyed our long working relationship with mobile home dealers and will continue to license recreational vehicle dealers and salespersons.

Dealer Alert

Don’t photocopy driver licenses of people who are test-driving your vehicles. While you do need to look at the driver license before allowing someone to test-drive, and you may even want to write the information down, photocopying a driver license is prohibited by s. 343.43 (1) (f), stats., “No person shall: (f) Reproduce by any means whatever a copy of a license.”

If you provide **loaner cars** to your service department customers, be sure they’re properly registered. Dealer plates and cardboard “License Applied For” plates cannot be used on loaner vehicles.

No license plate is necessary when driving a vehicle to or from a salvage inspection. Section 341.05 (19), Wisconsin Statutes, states that a vehicle is exempt from registration when previously registered and being operated to or from a salvage inspection location.

Dealers must inspect and disclose the general condition and safety equipment of all vehicles they offer for sale. A salvage inspection to retitle a rebuilt salvage vehicle is not a substitute for your own inspection and completing the used vehicle disclosure label.

Policy Briefings

VIN Inspections—which dealers may perform them

Employees or agents of licensed dealers are authorized by the Wisconsin Administrative Code Chapter Trans 155 to perform vehicle identification number (VIN) inspections on out-of-state vehicles. The vehicle must be in the dealer's possession and offered for sale by the dealer.

Some wholesale auctions, salvage pools and wholesale dealers have been conducting VIN inspections as a convenience to retail dealers. The administrative intent of Chapter Trans 155 was to have the inspection performed as close to the point of retail sale as possible. We've developed the following policies to clarify which dealers may perform VIN inspections:

- **Wholesale auctions** *may not* perform VIN inspections.
- **Wholesale dealers** *may only* perform VIN inspections when applying for title in their own dealership name.
- **Motor vehicle salvage pools** *may only* perform VIN inspections when applying for title in the name of an insurance company.
- **Retail dealers** *may not* use a Power of Attorney to authorize a wholesale auction, salvage pool or wholesale dealer to perform VIN inspections on their behalf.
- **Retail dealers** *may* perform VIN inspections when titling vehicles in their own dealership name or in their retail purchaser's name.

The procedure for performing a VIN inspection requires both the vehicle and the title to be present. The person performing the inspection writes the VIN down as observed on the vehicle, then compares the number to the VIN on the title. This clearly prohibits a VIN inspection when a vehicle is sold "title attached."

Salvage pools have 12 days to furnish title

As licensed wholesale dealers, motor vehicle salvage pools have been required to furnish title to buyers immediately upon sale. In practice, salvage pools act as the intermediary between sellers and buyers of salvaged vehicles—they don't own the vehicles and don't have title in their name. Their operation is similar to a wholesale auction dealer. Therefore, salvage pools have the same amount of time (12 days) as a wholesale auction to deliver title to the buyer.

What's in a name?

Doe Enterprises, Inc. does business as John's Auto Sales. In which cases should the legal corporate name be used, and when may the trade name or dba be used? We issue your dealer license under your legal corporate name and also print any trade names you've reported to us on your license certificate.

Your trade name may be used on your business sign and in any advertising. When writing a purchase contract, you must use your legal corporate name. You may add the trade name if you wish. The legal corporate name must also be used on all title/registration documents—again with the option of adding the trade name if you choose.

If you do use a trade name or dba, be sure it is listed correctly on your license certificate. The department does not have authority to regulate which trade name a dealer chooses to use and will not intervene in disputes between dealers or dealers and manufacturers concerning the use of a particular name. When choosing a trade name, you should keep in mind that while we can't stop you from using a particular name, a lawsuit by a registered owner of the name would stop you.

Paperwork Pointers

VIN inspections are still required on vehicles that were last titled in another state. Being able to perform your own VIN inspections doesn't exempt you from doing them. Overlooking them means delays for your customers.

When ordering **temporary plates**, please be sure to put your dealer license number on your request. It allows us to process your order much faster.

For **dealer trades** of new vehicles, it's important to preserve the chain of ownership by completing a conforming odometer statement. Most manufacturer's statements of origin don't conform to Truth in Mileage Act requirements and can't be used to make odometer

statements. Use a conforming attachment (such as the MV2115 reassignment form) to make the statement.

Avoid delays in receiving new **salesperson licenses**—be sure you're using the correct form. The most recent salesperson license application form MV2184 has a revision date of 12/90. Using this form will help ensure you've paid the correct fees. If you need a free supply of the latest revision, mail your request to:

Maps and Publication Sales
Wisconsin Department of Transportation
P.O. Box 7713
Madison, WI 53707-7713

1992 Licensing Actions

Auto Haus on Velp, Green Bay—Special Orders were issued to the dealership, salesperson **Robert Houge** and an unlicensed individual, **Bradley Lueck**, for participating in a scheme allowing Lueck to buy and sell vehicles using Auto Haus on Velp's motor vehicle dealer license. Lueck and the dealership also paid civil forfeitures of \$1,500 each.

Avello Motor Car Sales, Inc., Milwaukee—Commissioner of Transportation Conradt upheld the Department of Transportation's denial of Avello's dealer license application. The denial was based on an unresolved consumer complaint involving failure to transfer title and properly disclose the condition and mileage of a car sold on consignment.

B & B Auto, Eau Claire—Dealer surrendered wholesale license instead of having citations written following an investigation into misconduct.

Beno's Auto Towing, Milwaukee—A Special Order was issued for failure to keep records of vehicles purchased or acquired for salvage and failure to mail titles or bills of sale to the department within 30 days.

Bob's Auto and Truck Repair Center, Milwaukee—A Special Order was issued for allowing an unlicensed individual to use a dealership Buyer Identification Card to gain entry to a salvage pool, buy salvage vehicles and resell them to the public.

Clements Sugar Bowl Salvage, Mauston—Surrendered salvage dealer license after Juneau County District Attorney charged them with 44 counts of failure to keep records.

Dalles Auto Sales, Inc., St. Croix Falls—A Special Order was issued for selling new vehicles without a franchise and participating in a scheme to conceal unlawful sales.

Friendly Auto Sales, Cudahy—A Special Order was issued for knowingly selling vehicles to an unlicensed dealer.

Ideal RV and Auto, Chippewa Falls—Surrendered motor vehicle dealer license because of allegations of odometer tampering. A criminal investigation is continuing.

Jankowski Motor Sales, Inc., Milwaukee—Commissioner of Transportation Conradt upheld the department's denial of

Jankowski's motor vehicle dealer license. The denial was based on failure to maintain a sales tax seller permit and making material misstatements on the license application and financial statement.

KBS Company, Inc. dba Midway Motor Mart, Chippewa Falls—Motor vehicle dealer license was revoked during an ongoing investigation into alleged odometer tampering. Investigators also found the dealership lacked the necessary financial resources to continue in business.

Terry Larsen Chevrolet, Inc., Webster—A Special Order was issued for providing new vehicles to a dealer who was not franchised to sell them and participating in a scheme to conceal unlawful sales.

Lisbon Motors, Milwaukee—A Special Order was issued for failing to give a written installment contract to some customers who financed vehicles through the dealership, keeping license plates and titles for vehicles financed, and failing to properly disclose vehicle condition.

Milwaukee Dealer Mart, Inc., Milwaukee—Commissioner of Transportation Conradt upheld the department's denial of the dealership's motor vehicle dealer license. The denial was based on failure to maintain a sales tax seller permit.

Mobile Homes, Inc. dba Renard Homes, Appleton—A Special Order was issued for engaging in net sales commissions on consigned mobile home sales.

Mound View Motors, Adams—Special Orders were issued to the dealership and two individuals, **James Carpenter** and **Kenneth Young**, for participating in a scheme allowing the individuals to conceal their activities as unlicensed dealers by using Mound View's dealer license. Carpenter and Young also agreed to pay civil forfeitures of \$250 each.

Norb's Auto, Inc., Milwaukee—Surrendered motor vehicle dealer license and signed an agreement with Milwaukee District Attorney prohibiting any future involvement in vehicle sales following an investigation into selling vehicles to an unlicensed dealer.

Wis. Dept. of Transportation
Dealer Section
P.O. Box 7909, Room 806
Madison, WI 53707-7909