

**July, 2019**

**Compliance – Read this article and possibly save at least \$1,000.00 !!!**

## **HIGHLIGHTS FROM A RECENT CIADA COMPLIANCE CLASS**

Below are outlines of common discussion points, investigations and enforcement actions by the Auto Industry Division and Motor Vehicle Dealer Board.

### **Spot Delivery**

- Cannot keep any part of the down payment for usage fees or damage to the vehicle. If buyer will not pay, option is civil action lawsuit. Retaining any portion of the down payment is an invitation for a consumer attorney lawsuit with a very high probability that you will lose.
- When financing falls through, Retail Installment Contract must be cancelled in writing.
- Buyer must be notified within 10 days of contract date when financing has not been approved.
- Annual Percentage Rate of Interest on the “Disclosures Required as Part of a Motor Vehicle/Powersports Vehicle Sale (DR 2434)” form, must match the APR on the Retail Installment Contract.

### **Material Particulars**

“Material Particulars” mean those details concerning a vehicle for sale that are essential or necessary for a reasonable prospective Buyer to know prior to making the decision to buy or not to buy a vehicle. Disclosure must be a written document noting all known “Material Particulars” and signed by both the buyer and seller with each party keeping a copy.

#### **Disclosure Process**

Prior to the signing of the Contract, the Seller shall produce a written document disclosing all known Material Particulars. Both the Seller and Buyer must sign the document. The document is deemed to be part of the Contract. A signed copy of the Contract and the disclosure document shall be provided to the Buyer at the time of sale. The Seller shall retain a copy of the Contract and the disclosure document.

Material Particulars include but are not limited to any of the following:

1. The motor vehicle is a “Salvage vehicle” as that term is defined in the Colorado “Certificate of Title Act,” part 1 of article 6 of title 42, C.R.S. 2. The motor vehicle has sustained damage, whether repaired or not repaired, of the following types:
  - a. Frame or unibody damage of any grade or type; or
  - b. Flood, fire or hail damage; or
  - c. Accident or collision damage.
3. The motor vehicle has been modified in a way that impacts warranty coverage.
4. The motor vehicle had been declared a “total loss” by an insurance company.

5. The motor vehicle had been stolen.
6. The motor vehicle had been used as a police vehicle, vehicle for hire, rental vehicle, or a loaner or courtesy vehicle, if such use is clearly ascertainable from a title brand, from information obtained from a prior owner, from a Vehicle Identification Number (VIN), from a State-issued Identification Number, or from any other source.
7. The motor vehicle had been put to a use or had been altered in such a way that a reasonable person would consider unusual or extraordinary, such as use as a racing vehicle.

**Matters Generally Not Considered “Material Particulars”**

1. Normal wear and tear.
2. Completed or prior mechanical repair.
3. General maintenance.
4. Repair or replacement of tires, wheels, glass, handlebars, moldings, radios, in dash audio equipment, or the like, provided that the repair or replacement was completed in a manner reasonably comparable to manufacturer’s specifications and provided that any repaired or replaced item is functioning at the time of sale in the manner that a reasonable person would expect.
5. Touch-up paint for minor scratches, dents, or dings.
6. Completed recall repair, provided the repair was done by a dealer authorized by the manufacturer to perform such repairs

In Colorado, a Dealer is not required to “investigate” the background of every vehicle sold but must disclose what is known based on the above rules.

**30 Day Title Delivery**

Title must be delivered within 30 days except when the dealer has taken every reasonable action necessary to deliver or facilitate the delivery of the certificate of title within thirty days. To qualify as having taken every reasonable action to deliver or facilitate the delivery of the certificate of title, the dealer must have, at a minimum:

- (a) Processed and mailed any required loan payoffs in a reasonable amount of time;
- (b) Contacted the prior lender and taken any actions necessary to obtain a certificate of title or duplicate certificate of title, either of which must be free of liens;
- (c) Taken any action necessary to obtain information or signatures from the prior owner necessary to have a new certificate of title issued for the motor vehicle;
- (d) Submitted all paperwork that the dealer has obtained to the authorized agent and that is necessary to have a new certificate of title issued for the motor vehicle; and
- (e) Corrected any errors in any filings with the department in a reasonable amount of time.

### Temporary Tags

A Dealer must only use Department approved Mounting Boards for affixing Temporary Registration Permits.

A dealer may issue a second temporary registration number plate if the dealer:

- (1) has issued a temporary plate to the owner when selling the motor vehicle to the owner;
- (2) has not delivered or facilitated the delivery of the certificate of title to the purchaser or the holder of a chattel mortgage within sixty days after the motor vehicle was purchased; and
- (3) has taken every reasonable action necessary to deliver or facilitate the delivery of the certificate of title including making any required payoffs.

Dealer can charge buyer exact cost of what dealer pays for the mounting boards.

### Accepting Credit Cards

Dealers cannot charge a fee or pass on any Merchant Account fees to the buyer.

### Here is the BEST for LAST

**Save a minimum fine of \$1,000.00 by keeping your salesperson licenses current !!!**

Generally, every month the Auto Industry Division is investigating, and Motor Vehicle Dealer Board is approving fines for at least several dealers who have inadvertently allowed a salesperson's license to lapse. For example, at May's Board meeting three dealers were fined a total of \$4,000 and three more dealers were charged with using "unlicensed salespeople. **CHECK YOUR LICENSE DISPLAY BOARD** today and then set-up a monthly process to make sure renewal paperwork is submitted on time for those licenses that are expiring. When hiring a new salesperson or bringing back a previous employee, double check the status of the sales license. Especially when a salesperson transfers the license – there could be only a month or two left before the license expires.