Bulletin

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Two-Dealer Transactions: A Reminder

Based on recent consumer complaints, a reminder about the pitfalls of second-party dealer financing is needed.

Dealers providing financing for other dealers typically wish to:

- Not be liable to the consumer under *the Motor Dealer Act (MDA), Motor Vehicle Act* and etc., and
- Not breach the *MDA* by conducting an unpermitted off-site sale, and
- Create a security interest in the vehicle.

If these are the goals, dealers providing financing should use recognized financing options 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.

If a dealer takes title to a vehicle and then passes it along to the buyer, an agreement signed by the buyer acknowledging that the dealer is only providing financing will not be binding. A term that says a dealer is not selling the car to the buyer, when the dealer is on the title and purchase agreement as the seller, will not stand. Dealers cannot avoid responsibilities under the *Motor Dealer Act* for making declarations and selling a safe vehicle by having these types of conditions in a contract. The documented consumer sales transaction remains in place and the side agreement cannot create a legal fiction.

Under the law, 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, and
- Potentially in breach of the *MDA* by conducting an off-site sale without a permit, if another dealer processes the transaction at their location.

A consumer complaint about a transaction of this type will be directed to the dealership 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.

Is the Vehicle New or Used?

Low mileage alone does not define a new car. For example, a dealer may take a new vehicle back shortly after a sale and put it back on the lot. However, the vehicle's NVIS has been surrendered*, the warranty has begun, and it has been registered in someone else's name. This vehicle is no longer new.

Dealers need to remember that once a vehicle has been registered to a new owner, it is considered used and needs to be sold as such. As a result, a used vehicle may have lower mileage and be in better shape than a demo vehicle. However, a demo vehicle with higher miles should be sold as a demo, even though it may not have ever been registered to a new owner.

**A New Vehicle Information Statement (NVIS) is required for all new Canadian vehicles – this is the vehicle's "birth certificate" and identifies it as new. ICBC cannot register a vehicle without a NVIS.*

Check for Canadian Flood Damaged Vehicles

The Insurance Bureau of Canada (IBC) has compiled a database of flood damaged vehicles. Simply enter the vehicle's VIN and find out if it was damaged by the recent Alberta or Greater Toronto floods. The database includes vehicles that are deemed non-repairable and are branded as "Flood," "Fire," "Irreparable" or Salvaged." Of course, it is still crucial to complete a vehicle history report prior to selling a used vehicle to the public.