

VADA Dealership True False



**2019 VADA CONVENTION
THE GREENBRIER
WHITE SULPHUR SPRINGS, WV**



Virginia Automobile Dealers Association



How well do you think you know the laws applicable to your business?

Are the following statements True or False?

TRUE OR FALSE



I am selling my multi-franchise dealership to a dealer from another state. One of my manufacturers is threatening to block the sale until I remove their franchise from the deal and sell it to their preferred purchaser under a right of first refusal in the franchise agreement. VA Code prevents the manufacturer from holding me hostage.

TRUE OR FALSE



True

- Legislation passed in 2019 prevents a manufacturer from cherry-picking one franchise out of a multi-franchise deal.
- A manufacturer cannot exercise a right of first refusal when the purchaser in a buy sell in a franchised dealer in any state.
- The only exception is if the exercise of the ROFR is in connection with a manufacturer's established minority program.

TRUE OR FALSE



Beginning July 1st, the fee for safety inspections for cars will be \$20.

TRUE OR FALSE



True

- 2019 bill raised the amount of the fee for safety inspections from \$16 to \$20.
- Where Virginia State Police currently receives \$0.50 of the \$16, on July 1, 2019 they will receive \$0.70 of the \$20.
- We worked closely this session with State Police to streamline the safety inspector certification process. With the increased funds, State Police has agreed to hire more non-Troopers to provide greater access to testing and a quicker turnaround for applicants.

TRUE OR FALSE



Under the revised buyers guide of the new Used Car Rule, if I offer a used vehicle with only a factory certified pre-owned warranty, I must note on the buyers guide that the vehicle is being sold as is.

TRUE OR FALSE



True

- The revised buyers guide changes the method by which a dealer can disclose warranties, limiting the box for warranty disclosures to dealer warranties.
- If the only applicable warranty is a non-dealer warranty, and there is no dealer warranty, then the box marked “AS IS – NO DEALER WARRANTY” must be checked. A dealer need not disclose non-dealer warranties. If it does, it must disclose them in the area below the box for notification as to whether a vehicle is sold as is or with a limited warranty.
- If you wish to disclose the terms of the factory warranty, you may do so in the “systems covered – duration” section – but you must make clear who is providing the warranty.

AS IS - NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.

DEALER WARRANTY

- FULL WARRANTY.
- LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED:

DURATION:

NON-DEALER WARRANTIES FOR THIS VEHICLE:

- MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.
- MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.
- OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

- SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.
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TRUE OR FALSE



The salespeople at our dealership often post vehicles for sale on their social media accounts. Those posts are advertisements and, if improper, the dealership and the salesperson can both be held responsible by the Motor Vehicle Dealer Board.

TRUE OR FALSE



True

- Social media posts by your employees are advertising, and they are illegal advertisements if they include prices, discounts, or offers not in compliance with the law.
- MVDB has begun imposing civil penalties on the dealer for ad violations in social media posts by employee(s).
- Have a written social media policy with the Dos and Don'ts of employee use of social media.
- Goal – use social media posts to drive prospects to dealer's website where full offers and disclosures are available.

TRUE OR FALSE



When we advertise vehicle prices, we include all possible rebates even if customers generally do not qualify for them all.

TRUE OR FALSE



False.

Some critical points:

- Itemizing deductions from price is not an excuse for advertising prices that are not available. For example, if itemized deductions are for offers that cannot be used together – customer loyalty and first time buyer incentives or lease and finance incentives – the resulting net prices are not legal.
- Purpose of itemization is to tell customers what they must do to qualify – the bottom-line price must be available to someone who can qualify for all deductions.
- Same principles apply to “savings” ads – customers must understand what they must do to qualify, and total savings cannot include incentives that are incompatible.

TRUE OR FALSE



When we advertise the annual percentage rate of the financing we offer we must make full follow on disclosures under the Truth in Lending Act.

TRUE OR FALSE



False

Simply advertising an annual percentage rate without further disclosures is not a violation of the Truth in Lending Act provided you use either the abbreviation APR or the term “annual percentage rate”. The problem for dealers arises because they sometimes qualify the availability of the APR by limiting the term with a disclaimer such as “available for financing up to 48 months.” The duration of the financing is a trigger term since trigger terms are the amount of a downpayment, the amount of an installment payment, the number of installments (term), or the amount of any finance charge.

If a trigger term is used, then the following must be disclosed:

- The amount of the installment payment
- The amount or percentage of down payment;
- The number of installments (term); and
- The annual percentage rate.

TRUE OR FALSE



The customer signed the retail installment sale contract in the wrong place. I have run a new one, and there is no change. I can sign it for the customer.

TRUE OR FALSE



False

- Signing a document for a customer, unless there is a power of attorney that specifically allows this, is a crime. It is forgery. It can cost you jail time and your salesperson's license. And it will render any retail installment sales contract or lease void, meaning that the finance source can demand that the dealership repurchase it.
- Protect against an employee forging a customer's signature on a recontract. With pressure to "turn" paper, it is easier to do the wrong thing – sign a revision for the customer.
- Review deal paperwork once forwarded to the office for signatures.
- When a customer comes in to resign, have another manager greet the customer and note that in the deal file.
- When papers are taken to the customer's house, follow up with a phone contact.

TRUE OR FALSE



I have heard that the Department of Defense has invalidated the December 2017 announcement that selling GAP to active duty service members and their dependents subject the transaction to the Military Lending Act. I can resume sales activities of GAP products benefiting those customers.

TRUE OR FALSE



False

- There has been no action to change the official Department of Defense Policy that sale of GAP or credit insurance, or cash out financing, subjects the transaction to the Military Lending Act.
- A transaction covered by the Military Lending Act can lead to severe problems, including rendering the finance contract void.
- Dealers should still avoid selling GAP and credit insurance, and not do cash out financing, with active duty military personnel and their dependents until something is officially published changing the December 2017 DoD position.

TRUE OR FALSE



I signed a contract with a vendor for three years. It has a provision that it will roll over for another three-year term at expiration. We need not worry about that. State public policy invalidates such roll over provisions.

TRUE OR FALSE



False

- There is a common misperception that there is some public policy against rollover provisions for similar terms. There is no such policy. Rollover provisions are enforceable.
- The best thing to do is to avoid a rollover term. Your contract should provide that once your initial term is over, it converts to a month-to-month contract.
- However, before you sign for an initial term of a lengthy duration, ask why. What is it about your supplier's business that makes it worthwhile for you to have a long term contract?
- Insist on a month-to-month contract and, if you cannot do that, then have an initial term of the lowest number of months you can with a rollover on a month-to-month basis.

TRUE OR FALSE



In my 20 group, several dealers in other states are having great success in advertising prices and then adding to them other fees. For all sales they are adding salesperson compensation fees. For used car sales they are adding vehicle reconditioning fees. In VA these fees are not permitted even if the fees are prominently disclosed in the advertisements.

TRUE OR FALSE



True

- These ingenious 20 group ideas are not permitted in Virginia.
- Virginia advertising law requires advertisement of the full price of a vehicle, with the only permitted exclusion for a dealer fee being the processing fee (with a proper separate disclosure).
- The processing fee and the electronic titling fee are the only non-governmental fees allowed in a transaction.
- Adding fees to advertised prices not specifically permitted by state law threatens to reinvigorate lawsuits against dealers for improper fees.
- There is no winning litigation over fees. Even if a dealer ultimately prevails, it still costs substantial attorneys' fees and unrecoverable time and effort.

TRUE OR FALSE



I could not get my customer's deal bought and need to rescind the transaction. I can unwind the deal only if I return any trade-in and downpayment.

TRUE OR FALSE



True

- If customer is told financing is not approved, either customer or dealer may cancel the contract. If the application is out to several finance sources, get your answers before contacting the customer.
- If a deal is cancelled based on the spot language, the customer is entitled to the trade and downpayment. Bullpen trades until deals are done, and do not pay off the trade until the deal is complete.
- Vehicle usage fees are prohibited.

TRUE OR FALSE



We are eliminating as much paperwork in the dealership as we can. One of the things we are doing, like other dealerships, is using an electronic credit application process. Even though we are doing this, we still have the customer fill out a credit application in his or her own handwriting, because that is a best practice.

TRUE OR FALSE



True

- One problem dealers are facing increasingly is the claim that the customer's income was misrepresented. This may lead to a finance or lease source requiring the customer's contract be repurchased. The finance or lease source will always claim it is a result of improper activities by dealer employees.
- That is often not the case, with a more frequent problem being misrepresentations by buyers.
- Having a customer sit with an F&I person and simply provide information to be electronically input to the application to the finance source may be the trend, but it does not protect the dealership.
- Have the customer fill out a handwritten credit application, even if it is only name, contact information, work information, and income. Having the customer's income in the customer's own handwriting is the dealership's best protection.

TRUE OR FALSE



Inputting vehicle information for credit approval as to model and equipment is a mechanical process which is not necessary to review.

TRUE OR FALSE



False

- Finance sources are increasingly looking to make their losses dealer losses.
- One of the steps they are taking today is to look for “powerbooking” – the overstatement of the model or equipment on a vehicle.
- They may start with a VIN, check to determine if the model and equipment appears inconsistent with the VIN information. They may go on to actually inspect the vehicle.
- Representations of model and equipment to finance sources should be regularly reviewed to protect against claims of powerbooking that can cost the dealership its business relationship with a finance source.

TRUE OR FALSE



When doing a large transaction, such as a multivehicle wholesale deal, the best protection for the dealership is to have the Seller email wire instructions so we may wire the funds.

TRUE OR FALSE



False

- Don't be a victim of cyber crime.
- It is easy for hackers to take residence in your computer system to watch for the opportunity to steal money with false wire instructions to accounts that are immediately emptied with the funds going overseas.
- Employees should be regularly trained about the dangers of not protecting passwords and clicking on suspicious links that can lead to phishing scams, malware, and ransomware.
- Most importantly, when preparing to transfer money by wire, make sure any emailed wire instructions are verified over the phone with someone the dealership knows to be the recipient of the funds.

TRUE OR FALSE



When a customer comes in to the dealership, we usually get their cell phone number. When they give us their cell phone number, we can send marketing texts.

TRUE OR FALSE



False

- Providing a cell phone number may be considered prior express consent, but that only permits you to make “informational” calls confirming an appointment or advising that the vehicle in service is complete.
- To do marketing, the dealership must have prior express **WRITTEN** consent which specifically indicates the dealership that may call or text, including the phone number for which consent is given, that the customer agrees to receive telemarketing calls, and that consent is not required as a condition of purchase.
- This must be signed by the customer.

TRUE OR FALSE



When the manufacturer changes my primary market area, I am really not in a position to challenge it since it is based on scientific principles.

TRUE OR FALSE



False

- Under Virginia Code Section 46.2-1572.4, any performance standard or program used by a manufacturer to measure dealer performance must be “fair, reasonable, and equitable.”
- Assignments of primary market area, or PMA, are always for the convenience of the manufacturer. The manufacturer will typically ignore critical issues such as geographic barriers, traffic patterns, work travel patterns, demographic information that affect affordability and desirability of similar brands, model preferences of the residents of the PMA, and other critical information. Many manufacturers expect that all census tracts or zip codes must be assigned to someone, even though the assigned dealer may not have a sales advantage.
- These tactics are not fair, reasonable, or equitable.
- You can request a review by a manufacturer. If it refuses, you have the right to use the internal appeal process of the manufacturer and then seek a review by a request for a hearing to the Commissioner of Motor Vehicles.

TRUE OR FALSE



The manufacturer and I have disagreements about the performance of the dealership. The manufacturer has provided a document that I am in breach of my dealer agreement, but it will give us time to cure it. I need the time, but I think signing the document will be a problem.

TRUE OR FALSE



True

- A dealer is never in breach of its franchise agreement until the Virginia DMV finds that after a hearing and it is upheld if the dealer chooses to appeal.
- Never agree that the dealership is in breach.
- If the manufacturer tenders a document in which you have to admit you are in breach, do not sign it.
- The manufacturer cannot terminate your dealership unless it goes through the hearing process but admitting you are in breach of your dealer agreement will not help you in that process.

VADA Dealership True False



QUESTIONS