

Answers

1. **True.** A new vehicle with an unrepaired recall cannot be delivered until the recall is remedied.
2. **False.** The federal law that requires grounding new vehicles with unremedied recalls applies to all new vehicles in dealer inventory. When you receive a vehicle from your franchisor, you may well check to see if there is an open recall. However, if the vehicle is in inventory several months, are you protected unless you check again before selling and delivering the vehicle? A recall may have been announced after your receipt of the vehicle. Notification to your store may not have been noted in your inventory records. You can only assure that the dealership is protected by checking the recall status of the new vehicle before delivery to the buyer.
3. **True.** Nothing in federal law prohibits the sale of a used motor vehicle because it has an unremedied recall. However, there are some practical issues to consider that we will discuss later in Answers to 6 and 8.
4. **False.** The Federal Trade Commission has taken the position in several recent cases that representing used vehicles offered for sale as safe and reliable can be unfair or deceptive for vehicles with unremedied recalls. When listing vehicles on your website or in the newspaper or other media where you make general claims about the safety and reliability of the used vehicles you sell, you can have a problem when some of the vehicles advertised have open recalls. Given the FTC's position, there is a potential for a consumer to bring a lawsuit alleging fraud or misrepresentation through failing to disclose an open recall. Advertising a used vehicle with an open recall requires great care that general representations about the safety and reliability of the used cars you sell do not land you in hot water.
5. **True.** A buyer of a vehicle who later discovers an open recall may have second thoughts about the purchase and consider a legal action for the dealer's failure to disclose a fact the buyer may consider material. A disclosure can provide protection against claims of breach of contract, misrepresentation, fraud, or deception by failure to disclose a material fact.
6. **False.** The disclosure will protect the dealership from claims that the consumer was fooled into buying the used car believing it was safe and reliable because the dealer did not disclose the open recall. However, the disclosure may not cover the dealer if the customer is injured in an accident he can blame on the recall. Disclosing an open recall at sale does not protect the dealership against all lawsuits.
7. **True.** Honda and now some other manufacturers have advised their franchised dealers that if they sell used vehicles with unremedied recalls on which the manufacturers issued a stop sale, the manufacturer will try to shift the liability for any injuries resulting from an accident blamed on the unremedied recall. Several franchisors claim that their dealer sales and service agreements require dealers to comply with stop sale directive. Those whose

franchise agreements do not presently provide for that may change the agreements through unilateral revisions. Abide by your franchisor's directive to protect your dealership.

- 8. True.** Since you have no sales and service agreement with Honda at your Ford dealership, the reversal of the indemnification that Honda threatens on sale of a stop sale used vehicle does not affect you. Nevertheless, you should recognize two important factors. First, if an injury occurs because of an accident involving a vehicle sold with an unremedied stop sale recall, the dealership could find itself a defendant in a legal action claiming damages from that defect. Second, failure to candidly disclose to a buying customer the recall status of a vehicle could lead to actions for breach of contract, misrepresentation, fraud, and deception by failure to disclose a material fact.
- 9. True.** Dealers that have a vehicle of its brand in for service are required to notify the owner of an open recall if the franchisor's dealer agreement requires it, which most, if not all do. As a best practice, investigate the recall status of a vehicle of your brand in for service and advise the customer of any open recall.
- 10. True.** The Federal Trade Commission views an advertisement that the vehicle is "certified" as a representation of its safety and quality. It has claimed it is an unfair and deceptive practice to sell a vehicle with an open recall as certified. In addition, many manufacturers prohibit certification under the manufacturer's program of a vehicle with an open recall.