

Customer Convenience Can Cut Into Compliance

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In our December 2009 newsletter we discussed some potential perils of conducting vehicle sales with customers at their homes. In addition to worrying about the customer getting a statutory three day right to rescission and making sure that proper notices are provided to customers, dealers engaged in sales with customers located off of the dealership premises also need to be concerned with the other agencies regulating them, namely PennDOT, the Vehicle Dealer Board and the Department of Banking.

PennDOT

PennDOT regulates a dealership's ability to issue registration plates and process registration and title transfers for customers. The way this is done has changed drastically in the past ten to 15 years. Most dealerships are now connected electronically to PennDOT to process registrations and title transfers in real time allowing customers to leave a dealership with their permanent credentials (or to receive them several days later in the mail). In addition to customer convenience, being able to process PennDOT paperwork also provides dealers with an additional revenue source.

Dealers are authorized to issue and process registration and title credentials by entering into an Agent Services Agreement (the "Agreement") with PennDOT. If you have not read that Agreement, you may want to. Nine of its 26 pages specifically relate to prohibited activities for which the Agreement can be suspended or terminated. One prohibited activity is issuing temporary registration plates at a location not approved by PennDOT. PennDOT regulations also specifically provide that registration plates may not be issued at a location other than the dealer's approved place of business. The Agreement provides that a first violation of this prohibited activity results in a written warning, a second violation results in a three month suspension and a third or subsequent violation results in a (permanent) termination of the Agreement. PennDOT regulations require dealers who hold an Agreement with PennDOT to issue and process registrations and title transfers to maintain an established place of business. The regulations define "established place of business" as, "[T]he place occupied either continuously or at regular periods by a dealer, manufacturer or full agent, where the books and records are kept, where a large share of the business is transacted and which meets local zoning rules, ordinances and building codes." And, in the event a dealer changes its established place of business, the issuance or transfer of registration plates may not occur at the new location until it is approved by PennDOT.

Dealers may request, and PennDOT may authorize a dealer, to issue registrations at a location other than its place of business for a period of time not to exceed one year. Dealers most frequently make use of this option when engaging in organized off-site sales, i.e. tent sales. Dealers planning to take part in these organized off-site sales should remember to make the request to PennDOT far enough in advance of the event. We generally recommend doing so two to four weeks before the event. The Pennsylvania Automotive Association can assist dealers with the details of such a request.

PennDOT's regulations and the Agreement make it pretty clear that PennDOT expects registrations to be issued and registration and title transfers to be processed at the dealer's established place of business. This can cause some

challenges when working with customers off site. To avoid a violation of the Agreement and PennDOT regulations, the dealer should be certain that all PennDOT paperwork is completed and PennDOT products issued at the established place of business.

Vehicle Dealer Board

The Pennsylvania Board of Vehicles Act (the "Act"), which is enforced by the Vehicle Dealer Board (the "Board") similarly prohibits dealers from conducting business at any location other than that authorized by its license. The Act requires dealers to maintain an "established place of business", which is defined as "[A] permanent, enclosed building as more specifically defined by regulation which is accessible and open at reasonable times and at which the business may be lawfully conducted in accordance with the terms of applicable building codes, zoning and other land-use regulatory ordinances."

With the exception of public vehicle shows, off-premise sales and exhibitions, all of which a dealer may participate in within its relevant market area, dealers are expected by the Board to conduct sales from its licensed facilities. Doing otherwise could result in enforcement by the Board and imposition of a monetary sanction, suspension or revocation of a dealer's license.

Department of Banking

Most dealers arrange for third-party financing or provide buy here, pay here options to customers and, therefore, are required to be licensed by the Department of Banking ("Banking") as installment sellers. The Motor Vehicle Sales Finance Act ("MVSFA") requires that the installment seller's license certificate display the address of the licensee and be conspicuously posted in the installment seller's place of business. If an installment seller changes locations, the licensee must provide Banking prior written notice of the change and must return its installment seller license certificate to be updated to the new address. Generally, only one place of business may be operated under the same license. However, in the situation where a licensee has multiple places of business that are all conducted under one name and the business records for all locations are kept at one central location, only one license is needed.

While the MVSFA requires an installment seller to maintain its books and records at its place of business, there is no requirement in the MVSFA that installment contracts be entered into at the licensee's place of business. However, in addressing its position on installment sellers participating in tent sales, Banking has unequivocally stated that a copy of the installment seller's license certificate must be conspicuously posted at any location where buyers will be signing installment sales contracts. Banking does not provide dealers with a written approval allowing for this alternative installment seller location; however, installment sellers are required to provide Banking with prior written notification of any tent sale activity where installment contracts will be entered into. This notification must be received by Banking at least seven days prior to the start of the tent sale event and must provide Banking with the following information: location, starting date, length of the tent sale activity and a contact person for the licensee.

Considering Banking's position on tent sales, it is conceivable that in any instance where installment sale contracts are entered into outside of the dealer's premises, Banking will expect the installment seller's license certificate to be displayed. Failing to comply with Banking's requirements can result in administrative sanctions (monetary penalties, suspension or revocation of the installment seller license) as well as misdemeanor criminal charges.

It is obvious that dealers' continued desire to bring convenience to the customer also invokes its fair share of risks

and difficulties. For compliance sake, the best option is for dealers to conduct all sales activity in person from its licensed place of business. Perhaps an alternative to delivering the vehicle to the customer at a place off- site is for the dealer to chauffeur its customers into the dealership to consummate the sale. Recognizing that dealers could lose sales by not using certain customer conveniences, dealers should work with their legal counsel and staff to put best practices in place and be prepared to address the negative consequences of risks should enforcement become a reality.

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