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Handbook addresses challenges of family-owned dealerships

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Compliance matters

Is your dealership following these rules and regs?

Automobile dealerships must comply with a dizzying array of rules and regulations governing everything from the issuance of credit to the truthfulness of advertisements. Failure to follow these rules can result in substantial fines, and in the most severe cases, even prison terms for dealership owners.

The first step to ensuring compliance with all of the rules and regs is making sure you're aware of them. These rules fall into several broad categories, including the ones detailed below.

CONSUMER CREDIT

Providing credit to finance the purchase of vehicles is one of the primary services offered by dealerships. Perhaps the most important law governing consumer credit is the Truth in Lending Act, which is implemented by Regulation Z.

Reg. Z is intended to help make sure that credit terms and rates are disclosed to customers in such a way that they can readily make comparisons between lenders. In addition, it requires that certain disclosures be presented to customers clearly in writing and in a form they can keep. These disclosures include the amount financed, the finance charge, the annual percentage rate and the payment total.

With the recent proliferation of identity theft, it's imperative that dealerships safeguard all "personally identifiable information."

Regulation M implements the consumer leasing provisions of the Truth in Lending Act. It's intended to ensure that lessees receive meaningful disclosures enabling them to compare lease terms between lessors and with credit transactions. Reg. M also is intended to limit the amount of balloon payments in consumer leases.

PROTECTION OF CUSTOMER DATA

With the recent proliferation of identity theft, it's become imperative that dealerships safeguard all "personally identifiable information" they possess about their customers. The Gramm-Leach-Bliley (GLB) Act is intended to protect your customers' personal financial data.

Specifically, the Financial Privacy rule (part of the GLB Act) sets standards for privacy notices, opt-out notices, and the use and disclosure of nonpublic personal information. Also, the act's Safeguards rule requires dealerships (and many other types of businesses) to draft a written security plan for protecting the confidentiality and integrity of both customer and employee data. This data includes Social Security numbers and bank and credit card information.

Two other rules related to the protection of customer data are the Disposal rule and the Red Flags rule. The Disposal rule requires you to properly dispose of information contained in consumer reports and records to guard against unauthorized use of or access to the data. And the Red Flags rule requires you to draft a written identity theft protection program designed to detect, prevent and mitigate identity theft.

ADVERTISING

Most dealerships rely heavily on advertising to help drive customer traffic and boost sales. Dealership advertising is governed by the federal truth in advertising laws, a collection of advertising rules administered and enforced by the Federal Trade Commission. There are three primary rules in this law:

- Advertisements must be truthful and nondeceptive. They must tell the whole truth, not a half-truth or slighted version of the truth intended to make a vehicle look more appealing.
- You must possess evidence to back up any claims (whether express or implied) made in your advertisements.
- Advertising can't be unfair. An "unfair" ad is defined as an advertisement that substantially injures customers, violates established public policy, or is unethical or unscrupulous.

Dealerships also are subject to fuel economy advertising rules that apply to the new vehicles you sell. According to these rules, if your ad lists fuel economies for both city and highway driving, they must be labeled "estimated city mpg" and "estimated highway mpg." In addition, fuel economy estimates must match the exact make and model of the vehicle being advertised.

EMPLOYEE COMPLIANCE TRAINING

One way to help make sure your dealership remains in compliance with these and other rules is to hire a firm to perform employee compliance training. In fact, compliance training is required for some federal regulations, including the Safeguards rule and the Red Flags rule. Contact your dealer's association or Dealer 20 Group to learn more about compliance training, including firms that can provide this type of training to your employees.

Also keep an eye on actions by the federal government. The Trump administration has promised to cut back on rules and regulations and those affecting auto dealerships could possibly be revised or eliminated.

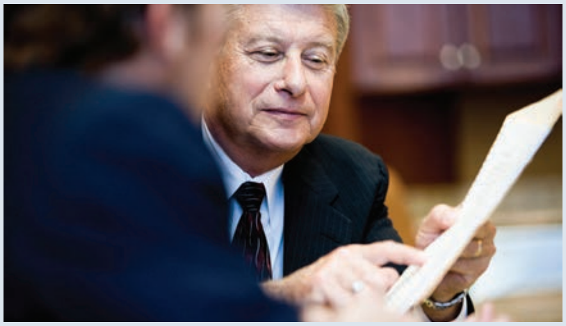
MAKE SURE YOUR WARRANTIES MEET FEDERAL REGULATIONS

A federal law called the Magnuson-Moss Warranty Act requires any manufacturer or seller of a product covered by a warranty to provide customers with detailed information about the warranty coverage. This includes dealerships selling automobiles.

The act contains three main requirements that likely apply to your dealership:

1. You must designate your written warranty as either "full" or "limited."
2. You must state certain specified information about your warranty coverage in a single document that's easy to understand.
3. You must ensure that warranties are available at the location where your vehicles are sold (that is, at your dealership) so customers can read them before buying the vehicle.

Magnuson-Moss Warranty Act lawsuits can be filed in federal court by multiple customers as class action suits. So, take extra care to make sure your dealership meets these warranty requirements.



How fringe benefits can benefit your employees *and* your dealership

It's a cutthroat world when it comes to hiring and retaining top-notch dealership employees. Overall turnover at dealerships was about 40% in 2016, according to the National Automobile Dealers Association (NADA), while turnover among salespeople in 2016 was a staggering 72%.

One strategy for combating these high turnover rates is offering a competitive package of employee benefits that go beyond the health care coverage and retirement plan that might immediately come to mind. As a bonus, your dealership also may reap valuable tax benefits.

INSURANCE: A POPULAR BENEFIT

Long-term care (LTC) insurance is a type of coverage some dealerships now offer to employees. With lengthening life expectancies and soaring nursing home and assisted living costs, long-term care has become an important issue for many employees. Premiums you pay toward LTC insurance may be deductible for your dealership and generally aren't counted as wages. Therefore, they're not subject to federal income tax withholding or Social Security, Medicare or Federal Unemployment Tax Act (FUTA) taxes.

Another carrot: Many employees place a high value on life insurance to help provide income for their families should they die unexpectedly. In general, your dealership can deduct premiums you pay toward qualified group term life insurance coverage. Your employees, meanwhile, can exclude from gross income premiums you pay on up to $50,000 of coverage. Premiums you pay above this amount are taxable to the extent they exceed the employee's contributions to coverage.

Disability insurance provides income for employees unable to work due to a serious injury or illness. In general, your dealership can deduct premiums you pay toward qualified group disability insurance coverage. Again, your premium payments aren't included in employees' gross income.

MORE OFFERINGS

Providing certain kinds of financial assistance beyond insurance may also offer tax advantages. For example, some of your employees may want to pursue their education by attending college or grad school during off-work hours. Through an educational assistance program, you can help pay these employees' education expenses — including tuition, fees, books, supplies and equipment. Contributions your dealership makes toward these expenses are generally tax-deductible. And up to $5,250 of educational assistance you provide annually can be excluded from employees' taxable income.

Dependent care assistance may also be highly valued by some of your employees. It includes household and dependent care services for employees that you pay for (either directly or indirectly) or provide.

These benefits must be provided under a formal, written dependent care assistance program that covers your employees only. Employees can generally exclude up to $5,000 of these benefits per year from their gross income, or $2,500 per year for married employees who file separate tax returns.

Another fringe benefit offered by some dealerships is employee discounts on vehicles or other merchandise or services. These discounts aren't deductible for your dealership. But the value of discounts can be excluded from employees' wages as follows:

- Discounts on services — 20% of the price charged to nonemployee customers, and
- Discounts on merchandise — your gross profit percentage multiplied by the price charged to nonemployee customers.

Retirement planning services are yet another fringe benefit that's often perceived as valuable — especially when retirement is looming on the horizon for employees. In general, your dealership can deduct costs you pay for retirement planning advice or information provided to employees or their spouses, if you maintain a qualified retirement plan such as a 401(k). The value of this advice can be excluded from your employees' taxable wages.

In addition, here are a few more fringe benefits your dealership could offer:

Paid time offer for volunteer work. For example, employees would be allowed to take one or two days off work with pay to serve at the nonprofit organization of their choice.

Discount shopping programs. Your dealership could team up with a local or national retailer to offer employees discounts on products or services.

Health club benefits. You could negotiate a discount at a local health club for employees and reimburse them up to a certain amount for their membership dues.

Talk to your employees and managers to find out what other kinds of fringe benefits they would find most appealing.

TAX AND HR BENEFITS

Offering fringe benefits like these can provide your dealership with both tax and human resource advantages, while also offering tax and other financial benefits for your employees. Consult with your tax advisor about the current status of these tax benefits, since they could be affected by tax law changes.

Getting your brand mix right

Adding or swapping a franchise requires due diligence

After several strong sales years in a row, some auto dealers today are considering adding a franchise to expand their sales base. Such a decision shouldn't be made hastily, though.

EXPLORING CHOICES

If you're in the market for an acquisition, you could apply for a new franchise or take over an existing one. Either option requires extensive market research.

When picking the best brand to add, base your decision on historic and projected sales volume, recent demographic trends and objective third-party data. Your Dealer 20 group can provide comparable market data and "war stories" of good (and bad) branding experiences. Also ask manufacturers for assistance in gauging the viability of your expansion plans — they have a vested interest in your success, and deep pockets.

SEEKING COMPATIBILITY

Some brands are like oil and water. Others complement each other. Ideally, you want the right mix of products to appeal to a broad market without cannibalizing existing sales or sending an inconsistent marketing message. Also, some manufacturers have similar rules and service agreements, making certain combinations more compatible than others.

If your current product mix isn't working, consider swapping franchises with another dealership. For example, Keith operated a combination Lexus-BMW dealership. Steve operated a store that sold Fords and Volvos.

Last year, Keith's uncle died, bestowing him with a Nissan franchise. The inherited store seemed like a poor fit with Keith's other brands. So, he swapped it with Steve's Volvo franchise. This arrangement allows both dealers to offer more consistent images: Keith focuses on upscale models; Steve concentrates on middle-market brands. So far, both dealers are happy with their realigned product lineups — but it took more work than either anticipated.

Manufacturers may ask for leasehold improvements as a condition to approving a new franchise, which can make your plan cost-prohibitive.

Indeed, swapping franchises is about more than trading keys and switching vehicles. Other assets, such as signs, parts, accessories, prepaid advertising and manufacturer-specific service equipment, may need to be transferred. You also may exchange certain employees, such as sales, finance or service professionals trained to work specifically on one brand.

Similar to adding a new franchise, swaps also require approval from manufacturers, lenders and licensing boards.

GETTING MANUFACTURER BUY-IN

Most manufacturers are highly selective when it comes to granting new franchises or approving franchise sales or swaps. Manufacturers want to ensure franchisees won't do anything that might cheapen or compromise their image. And they won't allow you to open a store that might grab sales from other franchisors that offer their brand.

It's also important to review your current franchise agreement(s) carefully before adding another product line to the mix. Your existing agreement(s) may require you to designate dedicated sales and service professionals for each brand — or even operate stand-alone facilities. Manufacturers also may ask for leasehold improvements as a condition to approving a new franchise. These requirements can make your plan cost-prohibitive.

PURSUING LICENSES AND LOANS

Dealerships typically must be licensed by the state for each brand sold — and you generally must immediately notify the state board *in writing* if you plan to add, swap or drop a franchise. You also may have to pay fees and complete an application packet, which includes such documentation as financial statements and affidavits of extended service contracts.

In addition, you'll need to work with lenders to transition the franchise's debt obligations. If you're buying or swapping a franchise, the original owner may retain some of its debt, but floor plans transfer with their respective collateral. Also beware that banks may change loan terms, depending on market conditions and the new borrower's financial health.

A NEW VENTURE

The prospect of taking on a new franchise is exciting. But before becoming swept up in the thrill of it all, make sure you've done your homework. Your CPA can assist you with a financial analysis of the venture to help ensure the outcomes will be what you expect.

Handbook addresses challenges of family-owned dealerships

Running a successful dealership is challenging enough. If your dealership is family-owned, you face additional challenges. One is that it's easy for family issues to bleed over into the business and vice versa.

So you must make firm distinctions between where the family and the business start and where they stop. A formal family employment handbook can help.

A HANDY REFERENCE

Your family employment handbook should detail the expectations and requirements for family members who want to work in the dealership so there are no misunderstandings. It might answer such questions as:

- What kind of education or training should family members obtain before they can work in the dealership?
- Should family members work at other businesses before working at the dealership to give them a taste of life outside the family business?
- What are the compensation guidelines for family members?
- What are the promotion criteria for family members?

Your handbook also should detail the job application process for family members. For example, will they go through a formal job interview with a nonfamily dealership manager to add more objectivity to the hiring process?

AIM FOR A FAIR WORK ENVIRONMENT

One of the biggest risks of running a family-owned dealership is that nonfamily employees will perceive that family members are being given preferential treatment. By creating a family employment handbook, you can formalize policies and procedures related to the hiring and management of family employees — and thus help create an objective work environment.

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Proven expertise in helping dealerships build success

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- Gift and estate planning
- Representation before tax authorities

Paul A. Cerrone, CPA, MST, CVA, managing partner, is an ADP Certified CPA with more than 30 years of experience in serving automotive dealers. He specializes in helping clients minimize taxes, maximize profits and achieve their business and personal financial goals. Paul can be reached at 508-845-7600 or pcerrone@cgscpas.com.

We would welcome the opportunity to put our expertise to work for you, your family and your company.

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