

automotive bulletin

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No April Fools' Joke: *Motor Vehicle Dealers Act, 2002* Comes into Force on April 1st, 2009

After years of discussion and refinement, Ontario's *Motor Vehicle Dealers Act, 2002* ("MVDA") is set to become law on April 1st, 2009. The new law, and in particular the lengthy and detailed Regulations that will be enacted with the MVDA, require that any business which buys, sells, leases, advertises or exchanges an interest in a motor vehicle in Ontario register as a "motor vehicle dealer" under the MVDA and, for some businesses, make extensive changes to their operations.

The new requirements are extensive. This Bulletin highlights some of the more significant changes and their implications for business.

Dealers Must be Registered and Existing Registrations to be Updated

The Regulations establish different classes of motor vehicle dealers: "general dealers" (consisting of two subclasses, "new and used motor vehicles" and "used motor vehicles"), brokers, wholesalers, exporters, outside Ontario dealers, lease finance dealers, and fleet lessors (consisting of two subclasses, "commercial lessor" and "short term lessor"). The category of registration defines the types of activities in which a registrant may engage.

For example, a business registered as a general dealer may engage in the widest range of activities, but it is subject to the most extensive regulation of its operations. Lease finance dealers, on the other hand, cannot be associated with a dealer (other than through the same manufacturer), and, with limited exceptions, may not sell a motor vehicle other than through a general dealer or lease a motor vehicle for terms longer than 120 days except through a general dealer.

Transition rules in the Regulations require businesses that are registered under the existing *Motor Vehicle Dealers Act* to elect the class of registration under which it wishes to be registered under the MVDA by February 27th, 2009, failing which it will be deemed to be a general dealer.

Onerous Vehicle Condition Disclosure Requirements

Perhaps the most important change introduced by the MVDA is the new and rigorous disclosure requirements regarding a vehicle's condition, which are designed to strengthen consumer protection and enhance transparency about a vehicle's operating history. Dealers must make specific disclosure about a vehicle's condition, history and prior usage in connection with the lease or sale of every vehicle, whether new or used.

Examples of the types of information that must be disclosed include:

- the vehicle's specifications and trim level

- specific components of the purchase price for the vehicle
- a statement about whether the dealer or salesperson is entitled to compensation for providing the application for financing for the purchase
- whether the vehicle has been involved in an accident and suffered more than \$3,000 in damage
- confirmation of the total number of kilometers traveled by the vehicle
- whether the vehicle has ever sustained damage by fire or immersion in liquid
- whether the vehicle's engine, transmission, power train, sub frame, suspension, computer equipment, electrical system, fuel operating system, or air conditioning system require repair

Additional disclosure requirements apply to contracts for "trade-ins", vehicles on consignment, and contracts for the sale of extended warranties and service plans.

Contracts also must include statements about the binding nature of the contract and availability of the Canadian Motor Vehicle Arbitration Plan to resolve disputes with the vehicle manufacturer. These statements must be explicitly set out in the contract and typed in a specified font size.

Consumers can Rescind Contracts

The disclosure must be made in the lease or sale contract. Failure to satisfy certain specified disclosure requirements provides a consumer with a right to rescind the sale or lease for a period of 90 days after receiving the vehicle.

A customer may cancel the contract even if the dealer did not know the information it was required to disclose or honestly believed its disclosure to be accurate, regardless of the steps taken by the dealer to ascertain or verify the information. And, upon rescission, the consumer is entitled to be repaid 100% of the consideration it paid for the vehicle.

New Required Disclosure in Advertisements

The Regulations also set out various disclosure requirements applicable to advertising by motor vehicle dealers. In particular, special rules apply to disclosure of the components of a price (including all costs the purchaser or lessee will have to pay), prior uses of the vehicle as a taxi, daily rental or police cruiser, and the extended warranty on a vehicle.

New Records Retention Obligation

The Regulations require dealers to maintain a record of every vehicle that comes into the dealer's possession for the purposes of a "trade" in the vehicle (e.g. purchase, lease, or advertising). Such information includes, among other items, the vehicle identification number, details about any issued safety standards certificate, the result of any inspection of the vehicle, and records of any repairs done by the dealer.

Dealers also will be required to maintain records of contractual arrangements entered into as prescribed in the Regulations and specific business records. Generally, contracts and records will be required to be maintained for at least **six years**.

Trust Accounts must be Established

Dealers registered in the category of general dealer are required to maintain a trust account to which must be deposited all monies received as deposits from customers. All other amounts in excess of \$10,000 that a dealer receives from a purchaser towards the purchase of a motor vehicle also must be deposited into the trust account until the final sale is concluded.

Checklist of Compliance Actions

There are a number of steps that businesses which trade in motor vehicles should take to ensure compliance with the new legislation. Some actions that may need to be taken include:

- updating standard forms of sales and lease contracts to include the new required disclosure

- filing an appropriate election with OMVIC for the class of registration that applies before February 27th, 2009
- ensuring all salespersons are appropriately registered under the MVDA
- coordinating with information technology departments and third parties to assess how best to collect (and maintain) information on vehicle(s) condition such as the warranty history so that required disclosure can be made when the vehicle is sold or leased
- communicating the new requirements and co-ordinating with retail dealers and salespersons to ensure they understand their obligations under the MVDA and the Regulations, including compliance with the new Code of Ethics
- developing internal compliance protocols for dealer advertisements

Complying with the new MVDA is not an April Fools' Joke. The new legislation is complicated and quite broad, and may require communication and co-ordination among operations, marketing, information technology and legal departments. A substantial investment of time and money might be required to update internal protocols, forms and technology. If the MVDA applies to you, the time is now to undertake appropriate efforts to ensure compliance.

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For more information on the MVDA, contact John Clifford co-leader of the McMillan's Automotive Group or Les Chalet, an Associate in the Automotive Group who helped prepare this Bulletin.

A Cautionary Note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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