



Rules & Best Practices From Purchase to Sale



Road Map

- Duty of Care
- Regulatory Regime
- General Requirements
- Vehicle Acquisition
- Reconditioning & Display for Sale
- Advertising
- Sales Process
- Financing
- Deal Documentation
- Post Sale



Duty of Care

- All Laws & Regulations based on idea that Dealer has a “duty of care” to buyers. This includes:
- Full Disclosure
 - Advertising
 - Vehicle history
 - Financing terms
- Truthful Representations
- Safety & Reliability



Federal Regulatory Regime

- FTC
 - Unfair Trade Practices Act
 - Used Car Rule (Title 16, Ch. 1, Sub. D, Part 455)
 - Privacy Rule (Graham-Leach-Bliley Act)
 - Privacy Safeguards Rule (Graham-Leach-Bliley Act)
 - Red Flags Rule
 - Equal Credit Opportunity Act
 - Truth in Lending Act (Reg. Z)
 - Fair Credit Reporting Act
 - Advertising Rules
- OFAC & Department of Treasury FinCEN
 - SDN Search Rule (Executive Order 13224 & US Patriot Act)
- IRS
 - Form 8300 Cash Reporting Rule
- OSHA
 - Emergency Action Plan Rule



New Mexico Regulatory Regime

- Dealer-related Laws
 - NMSA Chapter 66 (Motor Vehicle & Dealers)
 - NMSA Chapter 58-19 (Financial Institutions)
 - NMSA Chapter 57-12 (UTPA)
- Regulatory Agencies
 - TRD
 - MVD
 - DLB
 - Attorney General
 - RLD (BHPH Dealers)
- Enforcement
 - Regulatory Agencies
 - Civil Litigation



NMIADA Member Litigation Case Studies

- Advertising
 - Vehicle Specially Priced on Internet
 - Sticker price \$2K Higher by accident
 - Buyer does not see internet ad, willing to pay Sticker
 - Do you sell at Sticker?
- Inspection for Prior Repair/Alteration (6% Rule)
 - Inspection Properly executed
 - Disclosure Affidavit filled out and signed by dealer
 - Both reviewed by client and signed
 - Not notarized
 - How would judge react?



General Dealer Requirements

- Dealer License Requirements (NMAC 18.19.4)
- Bond required (NMSA 66-4-7//NMAC 18.19.4.16)
- Annual License Renewal (NMAC 18.19.4.30)
 - Can be done up to 120 days prior to expiration
- State Tax Compliance required (NMAC 18.19.4.31)
- NM Secretary of State good standing required
- 4 Hours of Annual Continuing Education required
- NM Motor Vehicle Finance License (NMSA 58-19)
 - If more than \$100K in outstanding loans
 - Annual Fees plus audit fees



Why Compliance Matters

- More paperwork to buy a car than a house in state of NM
- Not following state and fed regulations leads to triple damages
- Upset clients
- Lawsuits
 - If **ONE** part of the paperwork isn't accurate or in compliance you **WILL LOSE.**
 - Buying back vehicle is almost always best route



Vehicle Acquisition

- Federal Odometer Rule (49 U.S.C. Chapter 327)
 - Odometer tampering illegal
 - Proper Odometer chain required
 - UTPA violation
- State Rules
 - Do not allow others to buy on your Dealer License
 - Demo Tag required for all vehicles (NMSA 66-3-6)
 - Valid for as long as in dealer inventory
- Best Practices
 - Check NCIC for liens/stolen (VRS system)
 - Check for Recalls
 - Transfer title to Dealership name
 - Create Vehicle Jacket (copy of all dox)
 - Ensure open title chain has odometer readings at every transfer



Reconditioning and Display for Sale

- Vehicle must be safe and roadworthy (NMSA 57-16A)
 - 15 Day/500-mile Implied Warranty of Merchantability. Must be “substantially free of a defect that significantly limits the use of the used motor vehicle for the ordinary purpose of transportation on any public highway.”
 - “As Is” retail sales are illegal – Specific issues can be waived
- Best Practices
 - Recon for safety & reliability first
 - Average recon cost is \$1,000-\$1,200
 - Note specific unrepaired issues to be included on Waiver of Implied Warranty Form at point of sale



Reconditioning and Display for Sale

- Prior Alteration or Repair Inspection (NMSA 57-12-6)
 - Violation is considered UTPA violation
 - Favorite civil litigation issue in New Mexico
- NMAC 12.2.14 Requires inspection prior to sale
 - Qualified Inspector
 - Qualified Inspection Form (NMAC 12.2.14.8.C)
 - Prior Damage Disclosure Affidavit (NMAC 12.2.14.8.A)
 - Dealer Signature Upon Inspection
 - Dealer Signature must be notarized to be Affidavit
 - Disclosure in Lieu of Inspection (NMAC 12.2.14.12)
 - Vehicles 10 years/125K miles exempt
 - Create Disclosure in Lieu of Inspection Form
 - Still required to disclose everything reasonably knowable
- VIN Inspection for Out of State Titles during Recon



Reconditioning and Display for Sale

- Vehicles can only be displayed for sale at licensed Dealer registered business location
- Buyer's Guide must be prominently displayed upon offer for sale
 - Spanish language Guide required if buyer's language
 - Federally required contract. Repair after implied warranty equals lifetime warranty
 - Fill out accurately



Advertising

- Federal & NM law demand disclosures and truth
- Nationally most litigated car dealer issue
- Misleading or inaccurate statement same as a lie
- Financing-related disclosures always required
- Disclosures/disclaimers must be 10 pt type min
- Lowest advertised price must be final sale price
- DTSC must be included in advertised price
- UTPA applies



Sales Process

- Demo Tag Limitations (NMSA 66-3-6)
 - Testing
 - Demonstrating
 - Preparing Vehicle for Sale
- Red Flag Rules
 - Identity Theft Prevention Program required
 - Written process for detecting/evaluation Red Flags
- Specially Designated Nationals
 - Accomplish OFAC check prior to sale
- Privacy Protection Act
 - Privacy Safeguards Program required
 - Privacy Notice to Buyer at sale and annually
- Dealer Transfer Service Charge
 - No “doc” fee allowed, only DTSC
 - Cash buyers must be notified that TT&L can be done by buyer
 - DTSC Notice should be posted prominently at dealership
- Taxes
 - NM Motor Vehicle Excise Tax of 4%
 - NM Gross Receipts Tax on add-ons, service & gap contracts



Financing

- Truth In Lending Act (TILA or Reg Z)
 - TILA Box must contain:
 - APR
 - Total Finance Charge (Interest over term)
 - Amount Financed (Total amount of loan)
 - Total Of Payments (All payments during term)
 - Total Sale Price (Down payment plus Total Payments)
 - Cannot require ancillary products to get financing
- Equal Credit Opportunity Act
 - No discrimination on basis of race, color, religion, national origin, sex, marital status or age or based on public assistance income
- Risk-Based Pricing Notice
 - Required if dealer is original creditor (16 CFR 640)
 - Required if terms offered are “materially less favorable than the most favorable terms available to substantial proportion of consumers”
- Fair Credit Reporting Act
 - Adverse Action notification detailing why credit refused



Deal Documentation

- Accurate documentation is only protection
- Temporary 30 Day Registration and Tag
 - Valid Drivers License & Current Insurance
 - No more than 3 Temp Tags per deal
 - 4th Tag requires DLB permission
- Power of Attorney Required for Title/Registration
- Deal documentation and deal jacket should be kept on site for 5 years to comply fully
- All regulatory agencies have right to inspect



NMIADA Dealer Closing Checklist

Customer: _____ Date: _____

Vehicle Yr/Make: _____ Model: _____ Deal# _____

Closing Agent: _____ Lienholder: _____



NMIADA Deal Documentation Checklist

Deal Forms

- Drivers License
- Test Drive Agreement
- Privacy Policy
- Proof of Residency (x2)
- Buyer's Guide (Signed)
- Implied Warranty (Notary Optional)
- Waiver of Implied Warranty (Specify in detail)
- NMAG 6% Damage Disclosure (Notarized)
- NMAG 6% Vehicle Inspection
- Recall Acknowledgement
- Odometer Statement
- CarFax/ Autocheck (Signed)
- We Owe
- Arbitration Agreement

Finance Paperwork

- Credit Application
- References
- Credit Disclosure
- Bill of Sale
- Retail Purchase Agreement
- Finance Contract
- Insurance Coverage Agreement
- Power of Attorney
- Down Pmt Receipt *: _____
 Check Cash CC
- Gap Insurance
- Extended Warranty
- Lender Agreement

Drive-Out

- Proof Of Insurance
- Temporary Tag & Registration (x2 Printed)
- Emissions Certificate (Bernalillo)
- Extended Service
- Approval Sheet
- Affidavit of One In The Same (If Needed)
- VIN Inspection
- Deal Jacket

Trade-In

- Make: _____ Year: _____ VIN: _____
- Trade-In Appraisal
 - Bill of Sale
 - Title
 - Trade-In Odometer
 - Trade-In P.O.A.
 - Trade-In Pay Off Information
 - Payoff Sheet & Difference Form

NOTES:



Post Sale

- Title & Registration within 30 days (NMSA 66-3-107)
 - Cash sale title due immediately to buyer
 - No Title For Hostage
- 15 Day//500 Mile Implied Warranty
 - Use Goodwill Repair Acknowledgement after expiration
- File IRS Form 8300 in 15 days for cash over \$10,000
 - Have policy on handling \$10K cash transactions
 - Report all “suspicious” transactions
 - Notify client of Form 8300 filing by Jan 31 following year
 - Keep all paperwork for 5 years
- Repossession Rules (Uniform Commercial Code)
 - Perfected lien & Finance document with terms
 - Peaceful only
 - Judicial available
- Send Privacy Policy Annually



Good Organization Is Key to Compliance



Conclusion

- **UTPA Violations = Triple Damages + Attorney's Fees**
 - Odometer Disclosure
 - Buyers Guide
 - Prior Damage Disclosure (6%)
 - False Advertising
 - Title For Hostage
 - Failure to Honor Implied Warranty (15/500)
- **Check Lists Ensure Compliance (But ONLY If Utilized)**
- **Untrained Employees Are Primary Issue**
- **Custom Thumb Drives Available at the NMIADA Desk**
 - Sample of all Forms
 - State Law & Regulations
 - Dealer Closing Checklist
- **When In Doubt, Reach Out!**