



# **VEHICLE SALES AUTHORITY GENERAL GUIDELINES**

**Effective April 1, 2018**

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## Record of Updates

The table below outlines the updates to the VSA General Guidelines since these guidelines were first published. The “Date” column shows the month that the updated guidelines were published. The “Changes” column describes the changes from the previous version of the guidelines. The updated version of the General Guidelines is available on the Vehicle Sales Authority (VSA) website at [www.vehiclesalesauthority.com](http://www.vehiclesalesauthority.com).

Date	Changes
June 1, 2010	Original document
April 1, 2014	Added: Official Marks – Logo of the VSA (section 1.4); Certificate of Registration to be Displayed (new section 2.11); Licensing consequences for non-payment of Compensation Fund assessments (new section 2.6.8); defined “disposition” as found in section 29 of the <i>Interpretation Act</i> .
April 1, 2018	<p>General update and changes to reflect amendments contained in the <i>Motor Dealer Amendment Act, 2016</i> and amendments to the regulations. This includes the following changes:</p> <ul style="list-style-type: none"> <li>• 2. Motor Dealer Registration <ul style="list-style-type: none"> <li>○ Removed some details regarding registration and added links to the VSA Licensing Policy and Procedures, Fund Administration Policy and other material available on the VSA website.</li> <li>○ Added new section 2.12 on use of the VSA name and logo.</li> <li>○ Added new section 2.14 on requirement to conduct business on dealer premises.</li> </ul> </li> <li>• 3. Consignment Sales <ul style="list-style-type: none"> <li>○ Removed some details regarding authorization for consignment sales and added link to the VSA Licensing Policy and Procedures.</li> </ul> </li> <li>• 4. Salesperson Licensing <ul style="list-style-type: none"> <li>○ Updated references to the Salesperson Licensing Regulation and added a link to the VSA Licensing Policy and Procedures</li> </ul> </li> <li>• 7. Internet and Other Electronic Sales <ul style="list-style-type: none"> <li>○ Added this part based on amendments to the <i>Motor Dealer Act</i> and regulations.</li> </ul> </li> <li>• 9. Leases <ul style="list-style-type: none"> <li>○ Removed guidelines addressing leases entered into before July 1, 2006.</li> </ul> </li> </ul>

# 1. Introduction

## 1.1. Purpose of the General Guidelines

The Motor Vehicle Sales Authority of British Columbia (VSA) is responsible for administering the *Motor Dealer Act*, its associated regulations, and those parts of *Business Practices and Consumer Protection Act* prescribed in the Motor Dealer Act Regulation.

The purpose of the Motor Vehicle Sales Authority General Guidelines (General Guidelines) is to explain the VSA's approach to interpreting and enforcing provisions of the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act* and their respective regulations. These guidelines also provide information about other legislation that may apply to a motor dealer or salesperson but is not directly administered by the VSA, as well as guidance and recommendations on best practices for those in the motor vehicle sales industry.

While the General Guidelines are based primarily on laws designed to protect consumers, the VSA believes that by following these guidelines, the industry will also benefit from the application of consistent standards of conduct and fair competition in the marketplace. It's true that responsible dealers will benefit the most. They are the ones who adopt high standards of conduct voluntarily. For them, laws such as the *Business Practices and Consumer Protection Act* and the *Motor Dealer Act* pose few problems. In fact, they protect these reputable dealers from others that would be willing to use unfair business practices were it not for the presence of regulations.

The General Guidelines do not change the law and are not a substitute for legal advice that should be obtained independently by a dealer or salesperson. Wherever words or expressions used in these guidelines differ from the wording of the legislation, the wording in legislation will prevail.

## 1.2. Important terms

Definitions of important terms used in the General Guidelines are provided in Part 16. Terms that are defined in Part 16 are hyperlinked and show as [underlined and in blue](#). If you are reading the General Guidelines as an electronic document, you can use the hyperlink to jump directly to the definition of the term in Part 16.

### **1.3. Legislation applicable to dealers and salespeople**

In addition to the *Motor Dealer Act* and its associated regulations, there are a number of other federal, provincial, and municipal laws and regulations that apply in the motor vehicle sales industry. It is the responsibility of dealers and salespeople to be aware of and abide by the laws and regulations that govern how they conduct business.

The Registrar will consider any failure to abide by legal requirements when making registration and licensing decisions.

The General Guidelines are based on requirements found in the following laws:

- [Business Practices and Consumer Protection Act](#) (BPCP Act)
  - [Business Practices and Consumer Protection Regulation](#) (BPCP Reg)
  - [Disclosure of the Cost of Consumer Credit Regulation](#)
- [Competition Act](#)
- [Financial Institutions Act](#)
  - [Insurer Exemption Regulation](#)
- [Motor Dealer Act](#) (MDA)
  - [Motor Dealer Act Regulation](#) (MDA Reg)
  - [Motor Dealer Consignment Sales Regulation](#) (CS Reg)
  - [Motor Dealer Customer Compensation Fund Regulation](#) (CCF Reg)
  - [Salesperson Licensing Regulation](#) (SL Reg)
- [Motor Vehicle Act](#) (MVA)
  - [Motor Vehicle Act Regulations](#) (MVA Regs)
- [Personal Information Protection Act](#) (PIPA)
- [Sale of Goods Act](#) (SG Act)

The links above, except for the *Competition Act*, are to unofficial copies of provincial legislation on the Queen's Printer electronic publishing website at <http://www.bclaws.ca>. The link for the *Competition Act* is to the federal government's Justice Laws website at <http://laws-lois.justice.gc.ca>.

Official copies of provincial statutes and regulations may be ordered through the Crown Publications website at <http://www.crownpub.bc.ca> or by contacting them at:

Telephone: 250-387-6409 or 1-800-663-6105 (toll-free)



Fax: 250-387-1120

Mailing address: PO Box 9452 Stn Prov Govt, Victoria BC V8W 9V7

Physical address: 563 Superior Street, Victoria BC V8V 1T7

#### **1.4. Official Marks – VSA Logo**

The following are the registered Official Marks of the Motor Dealer Council of British Columbia, doing business as the Motor Vehicle Sales Authority of British Columbia (the “VSA”), and may not be used or reproduced in whole or in part, in any colour or font and in any combination or individually:

- (a) by a motor dealer or another person licensed under the *Motor Dealer Act* unless permitted or directed to by the Registrar in accordance with the *Motor Dealer Act*, or
- (b) by any other person unless they receive prior written approval from the VSA.

“Motor Vehicle Sales Authority of British Columbia”

“Vehicle Sales Authority”

“VSA”



#### **1.5. For more information**

A dealer who has questions or would like more information about the General Guidelines should contact the VSA

- by e-mail at [licensing@mvsabc.com](mailto:licensing@mvsabc.com), or
- by phone at 604-574-5050, local 707.

A salesperson who has questions or would like more information about the General Guidelines should contact the VSA

- by e-mail at [salespersonlicensing@mvsabc.com](mailto:salespersonlicensing@mvsabc.com), or
- by phone at 604-574-5050, local 710.

Enquiries may also be directed to the VSA

- by fax at 604-574-5883
- by mail at Suite 208-5455-152 Street, Surrey, BC V3S 5A5, or
- by contacting your Regional Compliance or Licensing Officer.

## **2. Motor Dealer Registration**

### **2.1. Introduction**

This part of the General Guidelines outlines the requirements related to registration and renewal of registration as a motor dealer. Under the *Motor Dealer Act*, the Registrar has the discretion to determine whether these requirements have been met and the conditions, if any, under which a registration is granted or renewed.

Detailed requirements for dealer registration are contained in the VSA's [Licensing Policy and Procedures](#) available on the VSA website.

### **2.2. Requirement to be registered**

- 2.2.1. Unless specifically exempted in the Motor Dealer Act Regulation, any person who, in the course of business, [sells](#), exchanges or otherwise engages in the [disposition](#) of a motor vehicle to a [consumer](#) is a motor dealer who must be registered by the VSA and meet all of the requirements for maintaining registration as a dealer. [MDA – section 3(1)]
- 2.2.2. If a person carries on business as a motor dealer at more than one premise in British Columbia, the person must register separately for each premise from which they operate. [MDA – section 4(2)]

### **2.3. Application for registration**

Information on applying for registration as a motor dealer is available on the VSA website – see the link [Apply to be a dealer](#).

- 2.3.1. Any individual (sole proprietor), partnership, or corporation applying for a new motor dealer registration must complete the Application for Registration as a Motor Dealer form (Form 1) and submit it to the VSA along with the application fee. [MDA – section 4(1)]
- 2.3.2. Every individual who is a sole proprietor, a partner in a partnership, an officer or director of a corporation, or a shareholder of a private corporation that is applying for a new motor dealer registration must complete and sign a Dealer Applicant Profile form (Form 1a). [MDA – section 7(1)]
- 2.3.3. An applicant for registration must identify an individual who is an owner, shareholder, director or officer, general manager or senior manager of the

applicant who will be the applicant's [authorized spokesperson](#). An [authorized spokesperson](#) is an individual who has the authority to speak, decide, and act on behalf of the applicant on all matters regarding registration and compliance. [MDA – section 7(1)]

- 2.3.4. An applicant for registration must provide a Letter of Credit in an amount set by the Registrar as evidence of financial responsibility, which must be automatically renewable annually. [MDA – section 4(5)]
- 2.3.5. An applicant must pass a new dealer inspection of the applicant's proposed dealer premises by a VSA Compliance Officer prior to being fully registered. [MDA – section 3]

## **2.4. Requirement for criminal record check**

- 2.4.1. Every individual who is a sole proprietor, a partner in a partnership, an officer or director of a corporation, or a shareholder of a private corporation that is applying for a new motor dealer registration must provide consent for a criminal record check to the VSA, including criminal history from every country in which the individual has resided. [MDA – section 7(1)]
- 2.4.2. At any time, the Registrar may require that a registered individual provide an updated criminal record check. [MDA – section 7]
- 2.4.3. The presence of a criminal record will not automatically exclude a person from being registered as a dealer. The circumstances of any prior criminal record will be reviewed by the Registrar to determine the relevance of past convictions. [MDA – section 5]
- 2.4.4. Once registered, any individual who was required to provide a criminal record check must inform the VSA as soon as possible of any change to their criminal history from what was indicated in the most recent criminal record check provided to the VSA. [MDA – section 7]

## **2.5. Term of registration and renewal**

- 2.5.1. The term of dealer registration and renewal of registration is one year and it expires at midnight on the day prior to the anniversary of it taking effect. [MDA – section 4(3)]

- 2.5.2. A dealer applying for renewal of registration must complete a Notice of Registration Renewal (Form 2) and submit it to the VSA along with the renewal application fee at least 14 business days prior to the expiry date of their registration. [MDA – section 4(1)]

## **2.6. Compensation fund payments**

The requirements for dealers make payments to the Motor Dealer Customer Compensation Fund are contained in the VSA's [Fund Administration Policy](#) available on the VSA website.

## **2.7. Change of name, address or ownership**

- 2.7.1. Where there is any change to a dealer's name or address, or to the partners in a partnership, the officers or directors of a corporation, or the shareholders of a private corporation that is a registered dealer, the dealer must complete a Notice of Change (Form 3) and submit it to the VSA along with any applicable fee within 14 days of the change. [MDA – section 12]
- 2.7.2. Where there is a change to a partner, an officer or directors of a corporation, or a shareholder of a private corporation that is a registered dealer, every new individual must complete and submit a Dealer Applicant Profile form (Form 1a). [MDA – section 7(1); MDA Reg – section 7]
- 2.7.3. Registration as a motor dealer is not transferrable to any other individual, partnership or corporation. Where there is a change to a sole proprietor or where, in the opinion of the Registrar, a change of partners, officers or directors of a corporation, or shareholders of a private corporation, constitutes a change in ownership, the new ownership will be required to submit an application for a new registration. [MDA – sections 4, 5 and 10]

## **2.8. Contact information**

- 2.8.1. A dealer must provide the VSA with any changes to its contact information, including any change to the dealer's [authorized spokesperson](#), within 14 days of the change. [MDA – section 12; MDA Reg – section 7]

## **2.9. Dealer records**

- 2.9.1. A dealer must maintain the written records of any transaction involving the purchase or [sale](#) of a vehicle to a [consumer](#) for a period of 2 years from the date of the transaction, and keep those records at the dealer's registered premises. Written records include documents in electronic form. [MDA – section 11; MDA Reg – section 20]
- 2.9.2. Examples of the records that must be maintained under paragraph 2.9.1 include, but are not limited to
- (a) vehicle purchase agreements
  - (b) dealer buy-in documents
  - (c) conditional sales contracts
  - (d) consignment agreements
  - (e) importation documents
  - (f) records concerning any material reconditioning or other substantial work performed on the vehicle, including the date and the particulars of substantial work done, supported by repair orders, the cost of such work and details of any inspection conducted under the *Motor Vehicle Act*
  - (g) where a dealer is required to maintain a trust account, statements and all other records relating to the trust account
  - (h) APV9T and any other relevant I.C.B.C. forms
  - (i) credit reports, credit agreements, and credit disclosure statements
  - (j) warranties
  - (k) insurance documents
  - (l) documentation regarding any odometer adjustment, repair or replacement
  - (m) advertising and marketing documents
  - (n) communications with the consumer regarding the transaction, including emails, and
  - (o) vehicle history reports such as ICBC Vehicle History Report, CarProof, CarFax; PPSA lien search, safety check, Private Vehicle Inspection Report, and Structural Integrity Assessment Report. [MDA Reg – section 20]

## **2.10. Advertising**

2.10.1. The requirements for vehicle advertising are explained in the [VSA Advertising Guidelines](#) available on the VSA website. Compliance with the laws underlying the Advertising Guidelines will be enforced by the Registrar.

## **2.11. Certificate of Registration to be Displayed**

2.11.1. A motor dealer must display their certificate of registration issued by the Registrar in a conspicuous place at their usual place of business. [MDA Reg – section 5]

2.11.2. A motor dealer's certificate of registration consists of the following two items:

- (a) A paper certificate issued by the VSA and containing the motor dealers' registration number and any conditions of registration, and
- (b) A decal containing the motor dealers' registration number, the VSA logo and name for display as required by the Registrar. [MDA - sections 4(4), 13(1); MDA Reg – section 5]

2.11.3. It is a condition of a motor dealer's registration that they display their paper form and decal form of their certificate of registration as follows:

- (a) The paper form of the certificate of registration must be displayed in a conspicuous place where it can be easily seen by consumers entering the motor dealer's business premises. It may be displayed where the motor dealer is legally required to display their business licence.
- (b) The decal form of the certificate of registration must be displayed
  - (i) on a glass front door at the motor dealer's registered business premises so that consumers may easily see the decal, or
  - (ii) where there is no glass front door, on a glass window near the front door at the motor dealer's registered business premises so that consumers may easily see the decal. [MDA sections 4(4), 13(1); MDA - Reg section 5]

## **2.12. Use of the VSA name and logo**

- 2.12.1. A motor dealer or another person licensed under the Motor Dealer Act may display the VSA's name and logo only if
- (a) they have obtained written approval from the Registrar, and
  - (b) the name and logo are displayed in accordance with the terms and conditions set by the Registrar. [MDA section 13(4)]

## **2.13. Requirement for licensed salespeople**

- 2.13.1. The [sale](#) of a motor vehicle to a [consumer](#) must be completed through a licensed salesperson. [MDA – sections 1(1) and 3(c); SL Reg – section 2]
- 2.13.2. A dealer who directly engages in, or in any way participates in soliciting, negotiating or arranging for the [sale](#) of a vehicle is a salesperson and must have a salesperson licence – see Part 4. [MDA – section 1(1); SL Reg – section 2]
- 2.13.3. A dealer must not employ a person as a salesperson (see paragraph 4.2.1.) unless that person holds a valid salesperson licence. [MDA – section 13.1]
- 2.13.4. Where a dealer employs a new salesperson at a registered premises, the dealer
- (a) must ensure that the new salesperson is licensed, and
  - (b) where the new salesperson is already licensed at a different premises, must notify the VSA as soon as possible that the salesperson is also employed at the new premises. [MDA – section 13.1; MDA Reg – section 7]
- 2.13.5. Where a dealer terminates the employment of a salesperson, the dealer must notify the VSA as soon as possible of the termination and ensure that the salesperson's licence is returned to the VSA. [MDA – sections 1(1) and 7; MDA Reg – section 7; SL Reg – section 2]

## **2.14. Business to be conducted from dealer premises**

- 2.14.1. A dealer must conduct business solely at a registered dealer premises unless
- (a) the Registrar has issued an off-site sale permit, or



- (b) the business is conducted using the internet or other electronic means and meets the applicable requirements. [MDA – section 3(1)(c), 3(1.1) and MDA Reg – section 6]

## **2.15. Off-site sale permits**

The detailed requirements for obtaining an off-site sale permit are contained in the VSA's [Off-site Sale Permit Request form](#) available on the VSA website.

- 2.15.1. A dealer or an off-site sales event organizer applying for an off-site [sale](#) permit must complete an Off-site Sale Permit Request (Form 4) and submit it to the VSA along with the permit fee at least 3 weeks prior to the proposed off-site [sale](#). [MDA – sections 3 and 4; MDA Reg – section 6]
- 2.15.2. A surcharge may be applied to the permit fee where an application for an off-site permit is received by the VSA less than 3 weeks from the proposed off-site [sale](#). [MDA – sections 3 and 4; MDA Reg – section 6]
- 2.15.3. A dealer may not have more than 36 off-site sale days in a calendar year. [MDA Reg – section 6]

## **2.16. Medical leave**

- 2.16.1. Where an individual dealer requires a medical leave from employment as a dealer, the Registrar may place the dealer's registration on hold. [MDA – section 4]

The requirements for dealer medical leave are contained in the VSA's [Licensing Policy and Procedures](#) available on the VSA website.

## **3. Consignment Sales**

### **3.1. Introduction**

This part of the General Guidelines outlines the requirements related to an authorization to engage in consignment [sales](#). An authorization to engage in consignment [sales](#) is a privilege that may be granted by the Registrar. Under the *Motor Dealer Act*, the Registrar has the discretion to determine whether these requirements have been met and the conditions, if any, under which an authorization to engage in consignment [sales](#) is granted or renewed.

Detailed requirements for authorization of consignment sales are contained in the VSA's [Licensing Policy and Procedures](#) available on the VSA website.

### **3.2. Meaning of consignment**

- 3.2.1. Consignment means any arrangement by which a motor vehicle is entrusted to a dealer by a [consumer](#)
- (a) for [sale](#) by the dealer
  - (b) under a conditional [sale](#) to the dealer for the purpose of resale, or
  - (c) to display by the dealer for [sale](#). [CS Reg – section 1]

### **3.3. Requirement to be authorized**

- 3.3.1. A new motor dealer registration will include a condition prohibiting the dealer from engaging in consignment [sales](#). Any dealer who wishes to engage in consignment [sales](#) must be duly authorized to do so by the Registrar, and must meet all of the requirements for engaging in consignment [sales](#). [MDA – section 4(4)]
- 3.3.2. If a dealer wishes to engage in consignment [sales](#) at more than one premises, the dealer must obtain a separate authorization for each premises from which they wish to engage in consignment [sales](#). [MDA – section 4(4)]

### **3.4. Eligibility to engage in consignment sales**

- 3.4.1. To be eligible for consignment [sales](#), a dealer must
- (a) be registered as a dealer in good standing and have a favourable registration and compliance history

- (b) have at least 3 years experience as a dealer or engaged in an equivalent business in which
  - i. there were no significant financial issues such as bankruptcy, receivership, liquidation or legal proceedings related to an inability to meet financial obligations
  - ii. the dealer was responsible for holding substantial sums of money (i.e. \$10,000 or more) in trust for customers or in equivalent circumstances, and
  - iii. there were no substantiated complaints regarding issues of trust, including deceptive or unconscionable practices, fraud, theft, or other illegal activities.
- (c) provide a Letter of Credit, in addition to any Letter of Credit required for registration as a motor dealer, as evidence of financial responsibility, which must be automatically renewable annually
- (d) open and maintain a designated first party trust account with a savings institution located in British Columbia, and
- (e) pass a consignment inspection – see Part 5.3. [MDA – sections 3(1)(a)(ii), 4(4), 4(5), 4(6), 5 and 7; CS Reg – sections 2, 4 and 6]

3.4.2. A dealer who wishes to conduct consignment sales must apply to the VSA and the application will be reviewed by both the Licensing and Compliance departments before the Registrar decides whether to authorize a dealer to conduct consignment sales. [MDA – section 7(1)]

### **3.5. Consignment agreement**

3.5.1. Prior to engaging in a consignment, a dealer must prepare a written consignment agreement and must provide a copy of the agreement to the owner of the consigned vehicle at the time the agreement is signed by the owner. [CS Reg – section 2(1)]

3.5.2. A consignment agreement must contain all of the following information:

- (a) a complete description of the vehicle being consigned
- (b) the minimum price the consignor will accept for the sale of the vehicle
- (c) the amount payable to the dealer, for services provided by the dealer, expressed as:
  - i. a fixed amount payable only if the vehicle is sold, or any one or combination of the following:

- (A) a fixed amount payable whether or not the vehicle is sold
  - (B) a percentage of the actual selling price of the vehicle, payable only if the vehicle is sold
  - (C) an amount that exceeds the agreed upon minimum selling price of the vehicle, payable only if the vehicle is sold
- (d) the duration of the consignment agreement
- (e) a statement that any cheque, bank draft or money order of the purchaser must be made payable to the dealer in trust
- (f) a statement that the consignor must not sign over vehicle ownership registration forms in blank to the dealer
- (g) a declaration of title from the consignor, including any outstanding liens, which must be discharged at the time of sale
- (h) a description of any warranty or guarantee assignable to the consignor
- (i) a statement of the responsibilities of both the consignor and the dealer with respect to insurance coverage on the vehicle during the period of the consignment agreement, and
- (j) a statement of the responsibilities of both the consignor and the dealer when the vehicle is sold by the dealer, including a statement that:
  - i. the dealer must send or deliver to the consignor notification of the sale of the consigned vehicle within one day after the sale of the consigned vehicle, and
  - ii. disbursement of the consigned proceeds must take place within 14 days after the sale of the consigned vehicle unless the consignor specifically waives this right, in writing, after the sale. [CS Reg – section 2(2)]

### **3.6. Purchase agreement**

- 3.6.1. Prior to completing the [sale](#) of a consigned vehicle, a dealer must prepare a written purchase agreement and must provide a copy of the agreement to the purchaser of the consigned vehicle at the time the agreement is signed by the purchaser. [CS Reg – section 4(1)]
- 3.6.2. In addition to the information that must be included in any type of vehicle sales or purchase agreement (see parts 6.2 and 6.3), a purchase agreement for the [sale](#) of a consigned vehicle must contain all of the following additional information:
  - (a) a statement that the vehicle is on consignment

- (b) a statement that any cheque, bank draft or money order received from the purchaser in payment for the consigned vehicle must be made payable to the trust account of the dealer by identifying the trust account in the manner that the trust account is identified in the records of the savings institution. [CS Reg – section 4(2)]

### **3.7. Plain language required**

- 3.7.1. Every consignment agreement and purchase agreement for a consigned vehicle must be written in plain language, in not less than 8 point type, and in a manner which is easily understood by a reasonable person. [CS Reg – section 5]

### **3.8. Proceeds of the sale of a consigned vehicle**

- 3.8.1. Any payment received by a dealer from the [sale](#) of a consigned vehicle is held by the dealer in trust for the consignor and for any person that has a lien on the vehicle. [CS Reg – section 6(1)]
- 3.8.2. Money held in trust under paragraph 3.9.1 continues to be the beneficial property of the consignor and any person that has a lien on the vehicle and it may not be used as collateral by the dealer. [CS Reg. – section 6(2)]
- 3.8.3. Within one day after any payment is received from the purchaser of a consigned vehicle, the dealer must deposit the payment in a trust account at a savings institution located in British Columbia, and the trust account must be designated as a trust account in the records of the savings institution and in the dealer's records. [CS Reg – section 6(3)]
- 3.8.4. A dealer must not withdraw or authorize the withdrawal of money held in trust unless the withdrawal is to
  - (a) disburse the [sale](#) proceeds to a consignor or lien holder under a consignment agreement
  - (b) correct an error caused by money deposited in the trust account by mistake, or,
  - (c) make a payment to the dealer as authorized in the consignment agreement, and then, only after the payment of the disbursements described in paragraph (a). [CS Reg – section 6(4)]

- 3.8.5. Within one day after the [sale](#) of a consigned vehicle, the dealer must send written notice of the [sale](#) to the consignor. [CS Reg – section 2(2)(j)(i)]
- 3.8.6. A dealer must disburse the [sale](#) proceeds within 14 days after the sale of the consigned vehicle. [CS Reg – section 2(2)(j)(ii)]
- 3.8.7. The consignor may waive the requirement in paragraph 3.9.6 if the waiver
- (a) is provided after the [sale](#) of the consigned vehicle is completed, and
  - (b) is in writing and clearly indicates the consignor's intention to waive the right to receive the proceeds within 14 days of the [sale](#) of the consigned vehicle.
- [CS Reg – section 2(2)(j)(ii)]

## **4. Salesperson Licensing**

### **4.1. Introduction**

This part of the General Guidelines outlines the requirements related to salesperson licensing and renewal of a license. Under the *Motor Dealer Act* and the Salesperson Licensing Regulation, the Registrar has the discretion to determine whether these requirements have been met and the conditions, if any, under which a license is granted or renewed.

Detailed requirements for authorization of consignment sales are contained in the VSA's [Licensing Policy and Procedures](#) available on the VSA website.

### **4.2. Requirement to be licensed**

- 4.2.1. Any individual who directly engages in, or in any way participates in soliciting, negotiating or arranging for the sale of a vehicle on behalf of a dealer is a salesperson and must have a salesperson licence issued by the VSA. [MDA – section 1(1); SL Reg – section 2-]
- 4.2.2. Any individual who is a registered dealer and who directly engages in, or in any way participates in soliciting, negotiating or arranging for the sale of a vehicle is a salesperson and must have a salesperson licence issued by the VSA. [MDA – section 1(1); SL Reg – section 2]
- 4.2.3. The requirement to be licensed as a salesperson applies to any individual whose activities and decisions affect the sale of a vehicle, including but not limited to those working in the following circumstances:
  - (a) a individual dealer engaged in sales
  - (b) new and used vehicle sales staff and management
  - (c) business office staff
  - (d) lease office staff
  - (e) internet sales staff, and
  - (f) direct marketing staff. [MDA – section 1(1)]
- 4.2.4. If an individual works as a salesperson at more than one dealer premises in British Columbia, then that individual must be licensed separately for each dealer premises in which the individual works. [SL Reg – section 6(2)(a)]

### **4.3. Application for licence**

- 4.3.1. Any individual applying for a new salesperson licence must complete the Application for Registration as a Licensed Salesperson form (Form 5) and submit it to the VSA along with the application fee. [SL Reg – section 3(1)]
- 4.3.2. An applicant for a salesperson licence must be a registered dealer or provide proof of employment by a registered dealer prior to being licensed. [SL Reg – section 2(d)]
- 4.3.3. An applicant for a salesperson licence must complete a course registration form for any required certification course and submit it to the VSA along with the course fee. [SL Reg – section 3(1)]

### **4.4. Requirement for criminal record check**

- 4.4.1. Any individual applying for a new salesperson licence must provide consent for a criminal record check to the VSA, including criminal history from every country in which the individual has resided. [SL Reg – section 3(2)(g)]
- 4.4.2. At any time, the Registrar may require that a licensed salesperson provide an updated criminal record check. [SL Reg – section 6(1)(d)]
- 4.4.3. The presence of a criminal record will not automatically exclude a person from being granted a salesperson licence. The circumstances of any prior criminal record will be reviewed by the Registrar to determine the relevance of past convictions. [SL Reg – section 5(1)]
- 4.4.4. Once licensed, a salesperson must inform the VSA as soon as possible of any change to their criminal history from what was indicated in their most recent criminal record check provided to the VSA. [SL Reg – section 6(1)(a)]

### **4.5. Conditional and regular licence**

- 4.5.1. A conditional salesperson licence is a temporary licence that allows an applicant to work as a salesperson while completing any outstanding requirements for a regular licence. [SL Reg - section 6(1)(e), (i)]
- 4.5.2. A conditional licence is valid until the date shown on the licence document and will generally be valid for a period of no more than 45 days. [SL Reg - section 6(1)(e), (i)]



- 4.5.3. A person with a conditional licence may work as a salesperson at the dealership named on the licence as long as the licence remains valid. [SL Reg - section 6(1)(e), (i)]
- 4.5.4. A regular licence will be granted to an individual who has successfully completed any required certification course and met all other application requirements. [SL Reg - section 4]
- 4.5.5. A salesperson's licence will not be renewed where the salesperson has not completed their continuing education requirement. [SL Reg – section 5(1)]

#### **4.6. *Term of licence and renewal***

- 4.6.1. The term of a regular salesperson licence is one year and it expires at midnight on the day prior to the anniversary of it taking effect. [SL Reg – section 4]
- 4.6.2. A licensed salesperson applying for renewal of licence must complete a Registration of Renewal form (Form 6) and submit it to the VSA along with the renewal application fee at least 14 business days prior to the expiry date of their license. [SL Reg – section 3(1)]
- 4.6.3. Where a licensed salesperson submits an application for renewal of licence online along with the required fee and is granted a renewal, the licence will automatically be renewed for one additional year upon expiry. [SL Reg - section 3(1)]

#### **4.7. *Employment as a salesperson***

- 4.7.1. A licensed salesperson may work only at the dealer premises named on their salesperson licence. A salesperson may hold more than one licence in order to work at more than one dealer premises. [SL Reg – section 6(2)(a)]
- 4.7.2. If a licensed salesperson changes dealer premises or gets a new employer, the salesperson must notify the VSA of the change. [SL Reg – section 6(1)(a)]
- 4.7.3. When a licensed salesperson ceases to work for a dealer or at a particular dealer premises, the salesperson must return the licence that names the former dealer or dealer premises to the VSA. [SL Reg – section 6(1)(i)]

- 4.7.4. A licensed salesperson must return a licence to the VSA and request deactivation of the licence if they are not currently employed as a salesperson. [SL Reg – section 6(1)(b)]
- 4.7.5. Where a licence is deactivated under paragraph 4.7.4, the VSA will designate the licence as “inactive”, provided that all other licensing conditions, including renewal requirements, are met. An inactive licence may be reactivated if the licensed salesperson is re-employed as a salesperson. [SL Reg – section 6(1)(i)]

#### **4.8. Advertising**

- 4.8.1. The requirements for vehicle advertising are explained in the [VSA Advertising Guidelines](#) available on the VSA website. Compliance with the laws underlying the Advertising Guidelines will be enforced by the Registrar.

#### **4.9. Contact information**

- 4.9.1. A licensed salesperson must provide the VSA with any changes to the salesperson’s contact information prior to or immediately upon making the change. [SL Reg – section 6(1)(a)]

#### **4.10. Medical leave**

- 4.10.1. Where a licensed salesperson requires a medical leave from employment, the Registrar may place the salesperson’s license on hold. [SL Reg – section 6(1)(i)]
- The requirements for salesperson medical leave are contained in the VSA’s [Licensing Policy and Procedures](#) available on the VSA website.

## 5. Compliance and Enforcement

### 5.1. Introduction

Compliance with the laws underlying the General Guidelines and any other conditions of registration or licensing will be enforced by the Registrar.

Under the *Motor Dealer Act* (MDA) and the *Business Practices and Consumer Protection Act* (BPCP Act), the Registrar has the authority to conduct inquiries, inspections, investigations and hearings, and to authorize others to conduct these activities on the Registrar's behalf<sup>1</sup>. The Registrar has authorized VSA staff, including Compliance Officers, Compliance Assessment Officers, Licensing staff, and Consumer Services Officers to conduct one or more of these activities.

### Inspections

An inspection of a dealer's premises, vehicles on the premises and a review of the applicable records is conducted by a Compliance Officer to ensure that the dealer is complying with the requirements of the MDA, its regulations and the applicable sections of the BPCP Act.

The inspection process also provides an opportunity for the Compliance Officer to

- develop a relationship with the dealer and licensed salespeople and obtain support from all licensees
- become familiar with the general operations of the dealer
- inform and educate the dealer and salespeople on legal requirements and ensure awareness of any recent changes to the law or policy
- offer advice, information and suggestions to the dealer and salespeople, and
- take a pro-active approach to preventing consumer complaints and to follow up on any current complaints or concerns.

### Investigations

Investigations are conducted in response to a complaint, inspection report or other information received by the VSA about a registered or unregistered dealer or salesperson.

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<sup>1</sup> MDA – sections 1 (definition of Registrar), 7, 25 and 26; MDA Reg – section 7 and 29(2)(b)(i); BPCP Act – sections 149 to 151, 152(1) and 153.

## Hearings

Hearings are conducted by the Registrar where the results of an inspection or investigation indicate that there are significant and unresolved compliance issues, or where the Registrar proposes to cancel or suspend a registration or licence.

### **5.2. Enforcement by the Registrar**

5.2.1. Enforcement activities may be initiated as a result of

- (a) routine VSA inspections of dealers
- (b) a complaint received by the VSA
- (c) a failure of a dealer or salesperson to provide information requested by the VSA, or
- (d) a failure of a dealer or salesperson to comply with the requirements of registration or licensing. [MDA – sections 7, 25 and 26; MDA Reg – section 7; SL Reg – section 7; BPCP Act – sections 149 to 168]

5.2.2. In addition to the Registrar’s authority under the *Motor Dealer Act* and regulations, the Registrar also has the powers of the “Director” to enforce parts of the *Business Practices and Consumer Protection Act* as they relate to dealers and salespeople. [MDA – section 8.1; MDA Reg – section 29]

5.2.3. To address non-compliance, the VSA has established a Progressive Enforcement Program, starting with a warning and progressing to a suspension or cancellation of a dealer registration or salesperson licence. Nonetheless, depending on the nature of the non-compliance, the VSA may proceed directly to any appropriate level of enforcement under the Progressive Enforcement Program. Enforcement actions by the Registrar will always depend on the circumstances of each case.

The Progressive Enforcement Program consists of the following levels of enforcement:

- (a) a warning (verbal or written)
- (b) an acknowledgement of violation (see paragraph 5.2.4)
- (c) a violation ticket
- (d) an undertaking (see paragraph 5.2.5)
- (e) a hearing
- (f) a compliance order (see paragraph 5.2.6)

- (g) an administrative penalty (see paragraph 5.2.7)
  - (h) placing conditions on a registration or licence, and
  - (i) suspension or cancellation of a registration or licence.
- 5.2.4. An acknowledgement of violation is a statement by a dealer/salesperson acknowledging that the dealer/salesperson committed an offence and includes the dealer/salesperson's undertaking not to commit further offences.
- 5.2.5. An undertaking contains terms and conditions that the dealer/salesperson and the Registrar agree are appropriate. It may include a condition that a dealer/salesperson reimburse a consumer, reimburse the VSA for investigation and legal costs, and pay an administrative penalty. [BPCP Act – sections 154 and 164]
- 5.2.6. A compliance order contains terms and conditions the Registrar determines are appropriate. It may include a condition that a dealer/salesperson reimburse a consumer, compensate other persons who have suffered a loss or damage, and reimburse the VSA for investigation and legal costs. [BPCP Act – sections 155 and 164]
- 5.2.7. An administrative penalty of up to \$5,000 may be imposed by the Registrar on an individual dealer/salesperson and up to \$50,000 on a corporation for each breach of the *Business Practices and Consumer Protection Act*. If a dealer does not pay the administrative penalty within 30 days, the Registrar must impose a second penalty equivalent to 10% of the first penalty. The Registrar may impose an administrative penalty for each day that a breach continues. [BPCP Act – sections 164 and 165; BPCP- Reg sections 9 and 11]

### **5.3. Types of Inspections**

- 5.3.1. A Compliance Officer may conduct any of the following types of inspection:
- (a) routine inspection
  - (b) change inspection
  - (c) new dealer inspection
  - (d) consignment inspection
  - (e) re-inspection, and
  - (f) dealer closing inspection. [MDA – section 26; BPCP Act – section 149]

## **Routine inspection**

- 5.3.2. A routine inspection is conducted without notice to the dealer and includes a review of
- (a) randomly selected dealer records regarding the sale, lease or other [disposition](#) of a vehicle, including financing records
  - (b) vehicles displayed for sale at the dealership, and
  - (c) dealer advertisements. [MDA – section 26; BPCP Act – section 150]
- 5.3.3. A routine inspection will be conducted when deemed necessary and at least once every two years. [MDA – section 26; BPCP Act – section 150]

## **Change inspection**

- 5.3.4. A change inspection is conducted with or without notice to the dealer, and may include a routine inspection and a consignment inspection. [MDA – section 26; BPCP Act – section 150]
- 5.3.5. A change inspection will be conducted when a dealer changes premises or ceases operations. [MDA – section 26; BPCP Act – section 150]

## **New dealer inspection**

- 5.3.6. A new dealer inspection is conducted with or without notice to the dealer and consists of an inspection of the proposed dealer premises, including:
- (a) a review of the suitability of the applicant's physical location, signage, office, records, repair facility, and display spaces
  - (b) a review of the applicant's business licenses for the dealership and the repair facility
  - (c) verification that stock numbers are included on vehicles displayed for sale
  - (d) verification that the required salesperson licenses have been or will be issued, and
  - (e) verification that the dealer is in compliance with all other requirements of legislation and conditions of registration. [MDA – section 26; BPCP Act – section 150]

- 5.3.7. A new dealer inspection will be conducted prior to final approval of an application for a new dealer registration. [MDA – section 26; BPCP Act – section 150]

### **Consignment Inspection**

- 5.3.8. A consignment inspection is conducted with or without notice to the dealer and includes a review of the dealer's
- (a) trust accounts
  - (b) purchase and consignment agreements
  - (c) advertisements, and information affixed to consigned vehicles, and
  - (d) compliance with requirements regarding payments and time limits for payments to consignors. [MDA – section 26; BPCP Act – section 150]
- 5.3.9. A consignment inspection will be conducted when deemed necessary and at least once every year. [MDA – section 26; BPCP Act – section 150]

### **Re-inspection**

- 5.3.10. A re-inspection is conducted when a compliance issue was identified during a previous inspection. The purpose of a re-inspection is to ensure that identified compliance issues have been resolved. [MDA – section 26; BPCP Act – section 150]

### **Other inspection**

- 5.3.11. At any time, the Registrar may determine that an inspection is necessary to ensure compliance with registration or licensing requirements. [MDA – section 7 and 26; BPCP Act – s.149]

## **5.4. Compliance issues identified by an inspection**

- 5.4.1. Where a Compliance Officer identifies a compliance issue during an inspection, the Officer will document the issue in the inspection report and will determine an appropriate enforcement action based on the VSA's Progressive Enforcement Program (see paragraph 5.2.3). [MDA – section 7 and 26; BPCP Act – s.149]
- 5.4.2. Where appropriate, a dealer will be provided with an opportunity to resolve any compliance issues identified during an inspection, and a re-inspection will be

conducted to ensure that the issues have been resolved. [MDA – section 7 and 26; BPCP Act – s.149]

- 5.4.3. If a re-inspection reveals that a compliance issue has not been adequately resolved, the Compliance Officer may proceed with further enforcement action. [MDA – section 7 and 26; BPCP Act – s.149]

## **5.5. Investigations**

- 5.5.1. The VSA will investigate a complaint about a registered or unregistered dealer or salesperson where the complaint involves a possible compliance issue. [MDA – section 25; BPCP Act – s.149]
- 5.5.2. During an investigation of a complaint, the VSA will provide the dealer or salesperson who is the subject of the complaint with written information about the nature of the complaint. [MDA – section 25]
- 5.5.3. A dealer or salesperson who is the subject of an investigation must provide documents and information requested by the VSA. [MDA – sections 7 and 25; SL Reg – section 8; BPCP Act – section 150]
- 5.5.4. Where a compliance issue is identified during an investigation, the VSA will document the issue in the investigation report and will determine an appropriate enforcement action based on the VSA’s Progressive Enforcement Program. (see paragraph 5.2.3).

## **5.6. Hearings**

- 5.6.1. A hearing will be conducted whenever the Registrar proposes to
- (a) refuse to register a dealer or licence a salesperson
  - (b) cancel an existing registration or licence, or
  - (c) suspend an existing registration or licence. [MDA – section 6; SL Reg – section 7]
- 5.6.2. At the conclusion of a hearing the Registrar may
- (a) issue a compliance order, and
  - (b) impose an administrative penalty. [BPCP Act – sections 155 and 164(1)]



5.6.3. A hearing may be conducted where

- (a) there are continuing or unresolved compliance issues
- (b) a compliance issue involves a loss or potential loss to a consumer, or
- (c) the conduct of a dealer or salesperson brings the professionalism of the motor vehicle sales industry into disrepute. [MDA – section 6; SL Reg – section 7; BPCP Act – sections 155 and 164(1)]

5.6.4. A hearing may be conducted by way of written submissions or may be an oral hearing.

## **6. Purchases**

### **6.1. Offer to purchase**

In a typical vehicle transaction, the first documentation is an offer to purchase made by a [consumer](#) with the assistance of a salesperson, often in the form of a worksheet.

- 6.1.1. A [consumer](#) has the right to retract an offer to purchase at any time prior to the time the offer is formally accepted by the dealer. A [consumer](#) should always be advised that an offer to purchase is binding once it is accepted by the dealer. [SG Act – section 23(2); VSA best practices]
- 6.1.2. An offer to purchase should include any additional costs or credits that will apply to the final purchase price and that are known to the dealer or salesperson at the time that the offer to purchase is made. If such costs and credits are not included and the total price on the purchase agreement is different from the offer to purchase, then the [consumer](#) is not obligated to accept the purchase agreement. [Common law of contract; BPCP Act – sections 4(1) and 4(3)(c)(i)]
- 6.1.3. A dealer/salesperson should give a copy of an offer to purchase to the [consumer](#) at the time the offer is made. [VSA best practices]

### **6.2. Purchase agreements**

- 6.2.1. A dealer must give a copy of a purchase agreement to the purchaser immediately after the agreement is accepted by the dealer. [MDA Reg – s.21(3)]

#### **New vehicle**

- 6.2.2. At a minimum, a purchase agreement for the sale of a [new vehicle](#) or a [demonstrator](#) must include the following information:
  - (a) the name and address of the purchaser and dealer
  - (b) the date of the sale
  - (c) the make of the vehicle
  - (d) the model year
  - (e) the manufacturer's vehicle identification number
  - (f) the body type

- (g) the particulars, including price, of extra equipment or accessories added to or removed from the vehicle by the dealer according to the agreement made at the time of the sale
  - (h) the actual selling price of the vehicle
  - (i) the tax payable pursuant to the *Social Service Tax Act*
  - (j) the down payment or deposit, including the value ascribed to any trade-in, and the terms and conditions governing the refund of the deposit
  - (k) the balance to be paid by the purchaser, and
  - (l) an itemized list of the cost of any other charges for which the purchaser is responsible, including insurance and licence fees if they are to be added to the contract price. [MDA Reg – section 21(1)]
- 6.2.3. When including the model year under paragraph 6.2.2(d), the dealer is responsible for the accuracy of the model year of the vehicle as it would be registered by ICBC. The VSA recommends that a purchase agreement for a recreational vehicle include both the model year and vehicle identification number (VIN) of both the chassis and the coach. [MDA Reg – section 21(1); VSA best practices]

### **Used vehicle**

- 6.2.4. At a minimum, a purchase agreement for the sale of a [used vehicle](#) must include the information required in a purchase agreement for a [new vehicle](#) (see paragraph 6.2.2) and the following information:
- (a) any documentation or transfer fee
  - (b) the recorded odometer reading at the time of sale
  - (c) the name of any jurisdiction known to the dealer other than British Columbia in which the vehicle has previously been registered
  - (d) an itemized list of any repairs to be effected and the additional cost, if any
  - (e) a statement that the vehicle complies with the requirements of the *Motor Vehicle Act*, and
  - (f) in the case of a vehicle not suitable for transportation a statement to that effect. [MDA Reg – section 21(2)]

### **6.3. Declarations regarding vehicle condition or history**

- 6.3.1. In every purchase agreement, a dealer must disclose, to the best of the dealer's knowledge and belief, the following information:
- (a) whether the vehicle has previously been used
    - i. as a taxi
    - ii. as a police or emergency vehicle, or
    - iii. in organized racing
  - (b) whether the vehicle has
    - i. in the case of a new vehicle, sustained damage requiring repairs costing more than twenty percent of the asking price of the vehicle, or
    - ii. in the case of a used vehicle sustained damages requiring repairs costing more than \$2,000
  - (c) whether the vehicle has been used as a lease or rental vehicle
  - (d) whether the vehicle has been brought into the province for the purpose of resale, and
  - (e) whether the odometer of the vehicle accurately records the true distance traveled by the vehicle. [MDA Reg – section 23]
- 6.3.2. The declarations about vehicle condition and history in paragraph 6.3.1 should be in the form of a question to which the dealer must answer "yes" or "no". A dealer may not leave an answer blank or indicate that the answer is "unknown". [MDA Reg – section 23]
- 6.3.3. The declarations about vehicle condition and history in paragraph 6.3.1 are to be made to the best of the dealer's knowledge and belief. This means that the requirement to declare information applies where the dealer has either actual knowledge or constructive knowledge of the information that must be disclosed. Constructive knowledge means that the information is something that a dealer using reasonable care and due diligence ought to have known given the availability of information from ICBC, CarProof, dealer and manufacturer records, or other reliable sources, or through a comprehensive inspection of the vehicle. [MDA Reg – section 23]
- 6.3.4. Although the requirements regarding declarations in section 23 of the Motor Dealer Act Regulation are subject to the dealer's reasonable knowledge and belief, under the *Business Practices and Consumer Protection Act*, the failure to

accurately declare a material fact may be a deceptive act even where the dealer did not have actual or constructive knowledge of the material fact.

- 6.3.5. For the purpose of determining whether damage must be declared under paragraph 6.3.1(b), the calculation of the cost of repairs must
- (a) be the total cost of all repairs of damage to the vehicle (for example, if the vehicle has been in two separate accidents, with the cost of repairs being \$500 for the first accident and \$1700 for the second accident, the total cost of repairs would be \$2200 and therefore must be declared)
  - (b) include any amount paid toward repairs as a deductible by the owner of the vehicle, and
  - (c) exclude taxes paid on the repairs. [MDA Reg – section 23(b)(i) and (ii)]
- 6.3.6. In addition to the specific information required to be disclosed in paragraph 6.3.1, a dealer must disclose any other information about the condition or history of the vehicle that may affect the purchaser's decision to purchase the vehicle at the agreed selling price. A failure to disclose such information may be a deceptive act under the *Business Practices and Consumer Protection Act* (see part 14.2). [BPCP Act – sections 4(1), 4(3)(a)(ii), 4(3)(a)(iii) and 4(3)(b)(vi)]
- 6.3.7. The VSA recommends that dealers declare any damage sustained by a vehicle offered for sale and provide details where they are available. Dealers should obtain vehicle claims history reports from reliable sources to obtain or confirm information regarding the history of the vehicle including any damage. The VSA also recommends that dealers inspect all vehicles prior to offering them for sale. [VSA best practices]
- 6.3.8. Dealers should fully complete the declarations on the APV9T transfer form required by ICBC and should ensure the accuracy of those declarations are to the best of the dealer's knowledge and belief (see paragraph 6.3.3). [VSA best practices]
- 6.3.9. Dealers should not make positive declarations, for example that a vehicle has sustained more than \$2000 damage, that may not be true or that the dealer has no reason to believe are true. This type of false declaration is not in the public interest and is not an acceptable business practice. These misleading records make it more time-consuming and expensive for dealers to obtain the true vehicle history for their customers. [VSA best practices]

## **6.4. Vehicles with propane equipment**

- 6.4.1. Any vehicle offered for sale that includes a propane device or storage tank must display a valid inspection certificate. [*Gas Safety Regulation* B.C. Reg. 103/2004 made under the *Safety Standards Act* S.B.C. 2003 c. 39 and B.C. Safety Authority Directives]
- 6.4.2. Vehicles with propane equipment require periodic maintenance and inspection. Dealers should conduct these maintenance procedures and safety checks on any used vehicle with propane equipment that is offered for sale. This work can only be done by a BC Safety Authority registered dealer or repair shop. [*Gas Safety Regulation* B.C. Reg. 103/2004 made under the *Safety Standards Act* S.B.C. 2003 c. 39 and B.C. Safety Authority Directives].

## 7. Internet and other electronic sales

### 7.1. Introduction

Section 3(1.1) of the Motor Dealer Act provides an exception to the requirement that a motor dealer only conduct business from the dealer's registered business premises. This exception applies to business conducted by 'electronic means, including the internet'.

Under section 8.1 of the *Motor Dealer Act* and section 29(1) of the Motor Dealer Act Regulation, the Registrar has the authority to enforce the following sections of the *Business Practices and Consumer Protection Act* in relation to internet or other electronic transactions between a dealer/salesperson and a [consumer](#):

- Section 18(1) and 18(2) [*application*]
- sections 46 to 52 [*Division 4 – Distance Sales Contracts*]
- sections 53 to 56 [*Division 5 - General*].

The requirements in these sections of the *Business Practices and Consumer Protection Act* will apply to a sale of a motor vehicle to a [consumer](#) if

- the [consumer](#) does not enter into the purchase agreement in person with the dealer/salesperson, and
- the [consumer](#) does not have the opportunity to inspect the vehicle prior to entering into purchase agreement.

### 7.2. Distance sales contracts

7.2.1. In relation to the sale of a motor vehicle conducted by electronic means, including through the internet, the purchase agreement is a 'distance sales contract' under the *Business Practices and Consumer Protection Act* if

- (a) the [consumer](#) does not enter into the purchase agreement in person with the dealer/salesperson, and
- (b) the [consumer](#) does not have the opportunity to inspect the vehicle prior to entering into purchase agreement. [BPCP Act – section 17 – definition of 'distance sales contract']

7.2.2. Where a purchase agreement is a distance sales contract, it must meet all the requirements for a distance sales contract in the *Business Practices and Consumer Protection Act* as well as the requirements in the *Motor Dealer Act* and regulations – see [section 6](#) above.

### **7.3. Purchase agreement – distance sales contract requirements**

- 7.3.1. In addition to the requirements identified in [section 6](#) above, a purchase agreement that is a distance sales contract must also include the following information:
- (a) the dealer's telephone number and, if available, fax number [BPCP Act – section 46(1)(a) and 19(c)]
  - (b) the dealer's email address, if available [BPCP Act – section 46(1)(b)]
  - (c) any shipping charges to be paid by the purchaser [BPCP Act – section 46(1)(a) and 19(g)]
  - (d) a description of any customs duties, brokerage fees or other additional charges that may apply if the dealer cannot reasonably determine the amount of those charges [BPCP Act – section 46(1)(a) and 19(g)]
  - (e) the date that the purchaser will receive the vehicle [BPCP Act – section 46(1)(a) and 23(2)(a)]
  - (f) the arrangements for pick-up or delivery, and if delivered including the identity of the shipper, the mode of transportation and the place of delivery to the purchaser [BPCP Act – section 46(1)(e)], and
  - (g) the dealer's cancellation, return, exchange and refund policies. [BPCP Act – section 46(1)(f)]
- 7.3.2. The information in paragraph 7.3.1 must be disclosed to the [consumer](#)
- (a) before the [consumer](#) enters into the purchase agreement, and
  - (b) in a clear and comprehensible manner. [BPCP Act – section 46(1) and (2)]

### **7.4. Purchase agreement in electronic form**

- 7.4.1. If a purchase agreement is a distance sales contract and it is in electronic form, the dealer must do the following before the [consumer](#) enters into the purchase agreement:
- (a) make the information required in paragraph 7.3.1 available in a manner that requires the consumer to access the information and allows the [consumer](#) to retain and print the information, and



- (b) provide the consumer with a reasonable opportunity to correct any errors in the purchase agreement and inform them of the opportunity to do so before deciding whether or not to enter into the purchase agreement. [BPCP Act – section 47(2)]

## **7.5. Requirement to provide a copy of purchase agreement**

- 7.5.1. A dealer must send a copy of a purchase agreement that is a distance sales contract to the purchaser immediately after the agreement is accepted by the dealer. [MDA Reg – s.21(3)]
- 7.5.2. Paragraph 7.5.1 applies even though section 48(1) of the Business Practices and Consumer Protection Act allows a supplier 15 days to give a consumer a copy of a distance sales contract.

## **7.6. Purchaser's right to cancel purchase agreement**

- 7.6.1. If a purchase agreement is a distance sales contract, the purchaser may cancel the purchase agreement by giving notice of cancellation to the dealer in the following circumstances:
  - (a) the purchaser may give notice of cancellation up to 7 days after receiving the copy of the purchase agreement if the dealer did not comply with the requirements identified in [sections 7.3](#) and [7.4](#) above [BPCP Act – section 49(1)(a)(i) and (ii)]
  - (b) the purchaser may give notice of cancellation up to 30 days after the purchase agreement was entered into if the dealer does not provide a copy of the purchase agreement within 15 days of the date the agreement was made [BPCP Act – section 49(1)(b)]
  - (c) the purchaser may give notice of cancellation at any time before the vehicle is delivered if
    - i. the vehicle is not delivered within 30 days of the date that the purchaser is to receive the vehicle under the purchase agreement, or
    - ii. if there is no date for delivery specified in the purchase agreement and the dealer does not deliver the vehicle within 30 days of the date the purchase agreement was made. [BPCP Act – section 49(1)(d)]

7.6.2. If a purchase agreement is cancelled under paragraph 7.6.1, then the following are also cancelled:

- (a) any other related [consumer](#) transaction
- (b) any guarantee given in respect of the total price under the purchase agreement
- (c) any security given by the purchaser in respect of the total price under the purchase agreement, and
- (d) any credit agreement where credit is extended or arranged by the dealer, whether or not the credit agreement is a part of or attached to the purchase agreement. [BPCP Act – section 49(2)]

### **7.7. Requirement to return vehicle on cancellation**

7.7.1. If a purchase agreement is cancelled under paragraph 7.6.1, the purchaser must return the vehicle within 15 days after the notice of cancellation was given or after the goods have been delivered to the purchaser, whichever is later. [BPCP Act – section 51(1)]

7.7.2. The purchaser must return the vehicle unused and in the same condition as that in which it was delivered and the dealer must accept the returned vehicle. [BPCP Act – section 51(2) and (4)]

7.7.3. The purchaser may return the vehicle by any method that permits the consumer to produce confirmation of the delivery to the supplier. [BPCP Act – section 51(3)]

7.7.4. The dealer is responsible for the reasonable cost of returning the vehicle. [BPCP Act – section 51(5)]

### **7.8. Requirement for refund on cancellation**

7.8.1. If a purchase agreement is cancelled under paragraph 7.6.1, the dealer must

- (a) refund all the money the dealer received in respect of the purchase agreement and any related consumer transaction, whether the money was received from the purchaser or any other person. The refund must be made within 15 days after the notice of cancellation is given to the dealer. [BPCP Act – section 50]
- (b) cancel any future payments or charges that have been authorized by the purchaser. [BPCP Act – section 56]

- 7.8.2. If the dealer does not provide a refund as required under paragraph 7.6.3, the purchaser may recover the refund from the dealer as a debt due. [BPCP Act – section 55]

## 8. Providing Credit

### 8.1. Introduction

Under section 8.1 of the *Motor Dealer Act* and section 29(1) of the Motor Dealer Act Regulation, the Registrar has the authority to enforce the following sections of the *Business Practices and Consumer Protection Act* in relation to credit agreements between a dealer and a [consumer](#):

- sections 66(2) and 67 to 70 [disclosure requirements applicable to all credit agreements]
- sections 71 and 73 to 77 [rights and obligations of borrowers and credit grantors]
- sections 79 and 80 [disclosures where credit arranged by loan brokers], and
- sections 83 to 88, except sections 84(m) and 88(2)(a) [disclosure required in relation to fixed credit]

### 8.2. General

8.2.1. A dealer who extends credit to a consumer must understand and abide by all of the provisions of the *Business Practices and Consumer Protection Act* applicable to the credit that the dealer is offering.

### 8.3. Disclosure requirements

8.3.1. If a dealer is providing credit to a [consumer](#), the dealer must disclose the following information, in writing, to the [consumer](#) before the [consumer](#) enters into the credit agreement:

- (a) the effective date of the written statement of disclosure
- (b) a description of the vehicle and other products and services included in the sale
- (c) the outstanding balance after application of every payment made by the borrower on or before the effective date of the statement
- (d) the nature and amount of each advance, charge or payment accounted for in the outstanding balance disclosed under paragraph (c)
- (e) the date on which interest begins to accrue and the details of any grace period

- (f) the annual interest rate and the circumstances under which unpaid interest will be compounded
- (g) if the annual interest rate may change during the term
  - i. the initial annual interest rate and the compounding period
  - ii. the method of determining the annual interest rate at any time, and
  - iii. unless the amount of the scheduled payments is adjusted automatically to account for changes in the annual interest rate, the lowest annual interest rate, based on the initial outstanding balance, at which the payments would not cover the interest that would accrue between payments
- (h) the nature and amount of any charges, other than interest, that are not disclosed under paragraph (d) but that are payable or will become payable by the borrower in connection with the credit agreement
- (i) the total of all advances made or to be made in connection with the credit agreement
- (j) the [APR](#)
- (k) the nature of any default charges provided for by the credit agreement
- (l) a description of the subject matter of any security interest
- (m) a statement that the borrower is entitled to prepay the full outstanding balance at any time without any prepayment charge or penalty and is entitled to make partial payments without penalty on any scheduled payment date or at least monthly
- (n) the nature, amount and timing of payments for any optional services purchased by the borrower for which payments are to be made to or through the credit grantor
- (o) the conditions under which the borrower may terminate services referred to in paragraph (n)
- (p) if the credit agreement is a scheduled-payments credit agreement
  - i. the term of the agreement
  - ii. the amortization period if it is longer than the term
  - iii. the amount and timing of any advances to be made after the effective date of the statement
  - iv. the amount and timing of any payments to be made after the effective date of the statement

- v. the total of all payments to be made in connection with the credit agreement, and
  - vi. the total cost of credit
- (q) if the credit agreement is not a scheduled-payments credit agreement
  - i. the circumstances in which the outstanding balance, or any portion of it, must be paid, or
  - ii. the specific provisions of the credit agreement that describe those circumstances. [BPCP Act – section 84]

## 9. Leases

### 9.1. Introduction

Both the Motor Dealer Act Regulation (sections 30 and 31) and the *Business Practices and Consumer Protection Act* (section 101) contain legal requirements for the lease of a vehicle to a [consumer](#).

The Motor Dealer Leasing Regulation was repealed on July 1, 2006 and does not apply to leases made on or after July 1, 2006.

### 9.2. Disclosure Requirements

9.2.1. A dealer must disclose the following information, in writing, to a [consumer](#) before the [consumer](#) enters into a contract to lease a vehicle from the dealer:

- (a) a summary of costs and credits relating to any extended warranty and that is due upon signing the lease
- (b) all express warranties and guarantees made by the manufacturer or dealer with respect to the vehicle
- (c) who is responsible for the maintenance and servicing of the vehicle
- (d) a description of any insurance, including types and amounts of coverage, required to be provided and paid for by the [consumer](#)
- (e) any limitations on the [consumer](#)'s use and enjoyment of the vehicle, including, without limitation, any restriction respecting authorized drivers or requirements for permission to take the vehicle outside of British Columbia
- (f) the amount of tax in each periodic payment to be made by the [consumer](#) under the agreement, based on the applicable tax rate at the time of disclosure, and
- (g) the requirement under section 31(3) of the Motor Dealer Act Regulation that the vehicle remain in the possession of the dealer and the [consumer](#)'s rights and the dealer's obligations under sections 31(4) to (6).  
[MDA Reg – section 31(13)]"eqp\pue.

9.2.2. In addition to the information in paragraph 8.2.1, a dealer must also disclose to a [consumer](#) the following information in writing prior to or at the time of entering into a contract to lease a vehicle from the dealer:

- (a) the effective date of the written statement of disclosure

- (b) a statement that the transaction is a lease
- (c) a description of the leased vehicle
- (d) the term of the lease
- (e) the cash value of the leased vehicle
- (f) the nature and amount of any other advance received, and of each charge incurred, by the [consumer](#) in connection with the lease at or before the beginning of the term
- (g) the nature and amount of each payment made by the [consumer](#) at or before the beginning of the term
- (h) the capitalized amount
- (i) the amount, timing and number of the periodic payments
- (j) the estimated residual value of the leased goods
- (k) for an option lease
  - i. how and when the option may be exercised,
  - ii. the option price if the option is exercised at the end of the term, and
  - iii. the method of determining the option price if the option is exercised before the end of the term
- (l) for a residual obligation lease
  - i. the estimated residual cash payment, and
  - ii. a statement that the [consumer](#)'s maximum liability at the end of the term is the sum of
    - (A) the estimated residual cash payment, and
    - (B) the estimated residual value less the realizable value of the leased vehicle
- (m) the circumstances (for example, unreasonable wear or excess use), if any, under which the [consumer](#) or the lessor may terminate the lease before the end of the term and the amount, or the method of determining the amount, of any payment that the [consumer](#) will be required to make on early termination of the lease
- (n) if there are circumstances in which the lessee will be required to make a payment in connection with the lease and if that payment is not a payment required to be disclosed under paragraphs (g) to (m),
  - i. the circumstances, and
  - ii. the amount of the payment or the method of determining the amount



- (o) the implicit finance charge
- (p) the [APR](#), and
- (q) the total lease cost. [BPCP Act – section 101]

### **9.3. Lease agreements**

- 9.3.1. In addition to the requirement for written disclosure before entering into a lease contract, the items in paragraph 8.2.1 (a) to (f) must also be included in every vehicle lease contract with a [consumer](#). [MDA Reg – section 30(3)]
- 9.3.2. A dealer should not lease a vehicle to a [consumer](#) using a form of business lease if the vehicle is intended to be used primarily for personal, family, or household purposes, as this may be a deceptive act or practice under the BPCP Act. [BPCP Act – sections 4(1), 4(3)(b)(iv) and 4(3)(b)(vi)]

### **9.4. Cooling off period**

- 9.4.1. The cooling off period provisions described in this part apply to any lease of a vehicle by a dealer to a [consumer](#). [MDA Reg – section 31(2)]
- 9.4.2. After a dealer and a [consumer](#) enter into a lease, the vehicle leased to the [consumer](#) must remain in the possession of the dealer for one clear day (see paragraph 8.4.3) after the lease is signed, unless the [consumer](#) waives this period as described in paragraph 8.4.5. [MDA Reg – section 31(3)]
- 9.4.3. One clear day means that the vehicle must remain in the possession of the dealer on the day that the lease is signed and a full business day following the day that the lease is signed. A business day cannot be a Sunday, a holiday or a day in which the dealership is not normally open. [*Interpretation Act* – section 25(4)]
- 9.4.4. During the period that the leased vehicle must remain in the possession of the dealer, the [consumer](#) may cancel the lease, and if the [consumer](#) does cancel the lease, then
  - (a) the dealer must reimburse to the [consumer](#) any deposit or other money paid to the dealer in respect of the lease, and
  - (b) the [consumer](#) is not liable to pay any charge, fee or penalty for cancelling the lease contract. [MDA Reg – section 31(4) and (5)]

- 9.4.5. A [consumer](#) may waive the right to a cooling off period but the waiver must be in writing and brought to the consumer's attention. [MDA Reg – section 31(6)]

## **9.5. Warranties and guarantees**

- 9.5.1. By law, all warranties and guarantees with respect to a vehicle and the equipment on the vehicle made by the manufacturer to the dealer are assigned to a [consumer](#) who leases the vehicle. [MDA Reg – section 31(7)]

## 10. Deposits

### 10.1. Introduction

A deposit is the purchaser's financial commitment to the seller to finalize a sale. A deposit comes with certain legal rights and obligations on a dealer and a consumer.

The conditions under which a deposit will be returned to a [consumer](#) can be a source of conflict between a [consumer](#) and a dealer.

If a dealer asks for money for providing a service that may lead to the purchase of a vehicle, such as

- holding a vehicle
- locating a vehicle
- bringing in a vehicle, or
- arranging financing for a vehicle

the dealer should clearly state the terms on which that service is provided and be careful not to confuse the payment for the service with a deposit given as part of a purchase agreement to finalize the purchase of a vehicle.

### 10.2. Deposit terms

10.2.1. A written purchase agreement must contain the terms and conditions under which a deposit is refundable. [MDA Reg – section 21(1)(j)]

10.2.2. Where a deposit is taken without a written purchase agreement, a dealer should ensure that there is a written agreement supporting the taking of the deposit, which contains the terms and conditions under which a deposit is or is not refundable. [VSA best practices]

10.2.3. When a dealer cannot deliver a vehicle as promised, the dealer should generally refund the full amount of a deposit. In such cases, the dealer should always offer to return the customer's deposit before suggesting that an alternative vehicle be purchased. [Sale of Goods Act – sections 11 and 15(1); BPCPA section 4(3)(b)(iv); VSA best practices]

### **10.3. Deposits and the BPCP Act**

- 10.3.1. Under the *Business Practices and Consumer Protection Act*, the taking of a deposit is a [consumer](#) transaction and must therefore meet the requirements of the Act. The terms and conditions of the giving and the taking of a deposit must be clear and unambiguous regarding the [material facts](#) and all [material facts](#) must be stated to the [consumer](#). Failing to do so is a deceptive act or practice under the act. [BPCP Act – section 4(3)(b)(vi)]
- 10.3.2. A blanket statement that a deposit is “non-refundable” is ambiguous and misleading. There are situations in which a deposit will be refundable, such as when a dealer cannot deliver on its promise. [BPCP Act – section 4(3)(b)(iv) and (vi)]
- 10.3.3. If money is taken as a deposit, or if nothing is said about the purpose of taking a sum of money, and the dealer later claims it was for a partial or down payment, this is a deceptive act. Depending on the circumstances, this may also be an unconscionable act. [BPCP Act – section 4(3)(b)(vi) and 8(3)(b)]
- 10.3.4. Where a [consumer](#) alleges a deceptive or unconscionable act or practice, the onus is on the dealer to prove that their conduct was not deceptive or unconscionable. It is therefore in the interest of the [consumer](#) and the dealer to properly document any agreement regarding a deposit, and to ensure that the [consumer](#) receives a copy of the agreement. If there is no documentation then there is little evidence for the dealer to meet its burden of proof if a challenge arises. Therefore, at a minimum, the taking of a deposit requires a dealer to clearly set out the following information in writing:
- (a) whether a payment is a deposit or a partial or down payment
  - (b) the purpose for which a deposit is taken
  - (c) the amount of the deposit
  - (d) the terms and conditions under which the deposit will or will not be refundable, and
  - (e) any other terms affecting the deposit, such as whether a deposit will be credited towards the purchase of a vehicle. [BPCP Act – sections 5 and 9; VSA best practices]

# 11. Vehicle Warranties

## 11.1. Disclosure of warranty information

11.1.1. Where a vehicle is sold with a warranty, a dealer should fully disclose the details of the warranty and provide a copy of the details to the purchaser. The details disclosed should include the following:

- (a) the identity of the warrantor
- (b) the parts and labour that are covered
- (c) any time or distance limits
- (d) whether the warranty is transferrable
- (e) the obligations of the purchaser and the seller or warrantor, including conditions and restrictions, and
- (f) the procedures for making a warranty claim. [VSA best practices]

11.1.2. A [demonstrator](#) or a late model [used vehicle](#) may carry the balance of the original new car warranty provided by the manufacturer, or a [demonstrator](#) may have a new car warranty extended beyond the normal period. In such cases, the dealer should disclose the specific time period and odometer reading that defines the limit of warranty coverage prior to completing a sale. [VSA best practices]

11.1.3. Where a dealer intends to sell a warranty that is in fact a form of insurance, the dealer must be authorized to sell insurance or otherwise be exempted under the *Financial Administration Act*. [*Financial Administration Act* – section 75; Insurance Company Exemption Regulation – section 4]

## 11.2. Implied warranty under the Sale of Goods Act

11.2.1. The *Sale of Goods Act* imposes an "implied warranty" from the seller on any [new vehicle](#) sold to a [consumer](#). This warranty provides that the vehicle will be

- (a) reasonably fit for the purpose for which it was purchased, and
- (b) durable for a reasonable period of time having regard to the use to which it would normally be put and to all the surrounding circumstances of the sale or lease. [SG Act – sections 18(a) and (c)]

11.2.2. The implied warranty in the *Sale of Goods Act* means that a dealer cannot avoid responsibility for repairing or replacing defective vehicle components simply

because they are not covered by the manufacturer's warranty. The dealer's responsibility extends to defects such as water leaks around windows or trunk, malfunctioning power windows, and poor quality exterior or interior finish. [SG Act – sections 18(a) and (c)]

11.2.3. The implied warranty in the *Sale of Goods Act* applies regardless of any provision in a purchase agreement that attempts to limit warranties on the vehicle. For example, a contract might state that the manufacturer's new car warranty represents the entire liability of the manufacturer or seller to the purchaser. Despite this statement, the implied warranty in the *Sale of Goods Act* continues to apply to the vehicle. It is misleading to tell new car purchasers that their only rights with respect to warranties are those provided by the manufacturer. [SG Act – section 20(2); BPCP Act – section 4(3)(b)(iv)]

11.2.4. The implied warranty provisions of the *Sale of Goods Act* noted in paragraph 10.2.1 can apply equally to a [used vehicle](#) except where limited by law. A dealer/salesperson should get legal advice to determine when such limitations may apply to a [used vehicle](#). [SG Act – section 20; VSA best practices]

## **12. Dealer Repairs and Alterations**

### **12.1. General**

- 12.1.1. When a dealer makes repairs or alterations to a vehicle before offering it for sale, such repairs must not be of a temporary nature, but must meet industry standards and the requirements of the *Motor Vehicle Act*. A repaired vehicle should always be in reasonable condition for its age and asking price. [MVA – section 222; MVA Regs – section 8.01; SG Act – section 17 and 18]
- 12.1.2. When a contract for the sale of a vehicle is drawn up conditional upon repairs or alterations being completed
- (a) the repairs or alterations should be written into the contract, and
  - (b) the dealer should have procedures to ensure that any such conditions are approved by a person authorized to include these conditions in the contract. [VSA best practices]
- 12.1.3. No repairs or alterations should be made to a vehicle after the sale is completed without the written consent of the purchaser. [Common law of contract and tort; VSA best practices]

### **12.2. Odometer repair or replacement**

- 12.2.1. Where it is necessary for a dealer to exchange or repair an odometer or any part of a vehicle that is directly related to its odometer, and the repair or replacement results in the odometer reading being changed, the dealer must record the reading that was on the odometer before the repair or replacement and the reading at the time of the sale
- (a) on the sales order or purchase agreement, and
  - (b) in the dealer's permanent written records. [MDA Reg – section 25]

## **13. Tied Selling – Sickness, Accident and Life Insurance**

### **13.1. General**

13.1.1. A dealer may not sell any kind of insurance, other than a warranty related to a vehicle, unless that dealer is authorized to sell insurance or is otherwise exempted under the *Financial Institutions Act*. [*Financial Institutions Act* – section 75; Insurance Company Exemption Regulation – section 4]

### **13.2. Where insurance is required for credit**

13.2.1. Where a purchaser is required to have insurance in order to qualify for credit, the purchaser may obtain the insurance from an insurer and insurance agent of the purchaser's choice. [BPCP Act – section 71(1)]

13.2.2. Where a dealer offers to provide or arrange insurance that a purchaser is required to obtain in order to qualify for credit, the dealer must clearly disclose to the purchaser, in writing, that the purchaser is free to purchase the insurance from an insurer and insurance agent of the purchaser's choice. [BPCP Act – section 71(2)]

### **13.3. Where insurance is not required for credit**

13.3.1. Where a purchaser is not required to have insurance in order to qualify for credit, a dealer must not

- (a) indicate to the purchaser that insurance is required, or
- (b) indicate that purchasing insurance will improve the likelihood of the credit being granted where that is not the case. [BPCP Act – sections 4(1), 4(3)(b)(ii) and 4(3)(b)(iv)]



## 14. Unfair Practices

### 14.1. Introduction

Under section 8.1 of the *Motor Dealer Act* and section 29(1) of the Motor Dealer Act Regulation, the Registrar has the authority to enforce the following sections of the *Business Practices and Consumer Protection Act* in relation to transactions between a dealer/salesperson and a [consumer](#):

- sections 4 to 6 [*deceptive acts or practices*]
- sections 7 to 10 [*unconscionable acts or practices*].

### 14.2. Deceptive act or practice

14.2.1. In a transaction between a dealer and a [consumer](#), a deceptive act or practice is

- (a) an oral, written, visual, descriptive or other representation, or
- (b) any conduct

by a dealer or salesperson that has the capability, tendency or effect of deceiving or misleading a [consumer](#) or guarantor. [BPCP Act – section 4(1)]

14.2.2. A deceptive act or practice may occur before, during, or after a transaction.  
[BPCP Act – section 4(2)]

14.2.3. The following are examples of deceptive acts or practices:

- (a) a representation by a dealer or salesperson that a vehicle or other product or service
  - i. has sponsorship, approval, performance characteristics, accessories, quantities, components, uses or benefits that it does not have
  - ii. is of a particular standard, quality, grade, style or model if it is not
  - iii. has a particular prior history or usage that it does not have, including a representation that is new if it is not
  - iv. is available for a reason that differs from the fact
  - v. is available if it is not available as represented
  - vi. was available in accordance with a previous representation if it was not
  - vii. is available in quantities greater than is the fact, or
  - viii. will be supplied within a stated period if the supplier knows or ought to know that they will not. [BPCP Act – section 4(3)(a)]

- (b) a representation by a dealer or salesperson
  - i. that the dealer/salesperson has a sponsorship, approval, status, affiliation or connection that they do not have
  - ii. that a service, part, replacement or repair is needed if it is not
  - iii. that the purpose or intent of a solicitation of, or a communication with, a [consumer](#) by the dealer/salesperson is for a purpose or intent that differs from the fact
  - iv. that a [consumer](#) transaction involves or does not involve rights, remedies or obligations that differs from the fact
  - v. about the authority of a representative, employee or agent to negotiate the final terms of a [consumer](#) transaction if the representation differs from the fact
  - vi. that uses exaggeration, innuendo or ambiguity about a [material fact](#) or that fails to state a [material fact](#), if the effect is misleading, or
  - vii. that a [consumer](#) will obtain a benefit for helping the dealer/salesperson to find other potential customers if it is unlikely that the [consumer](#) will obtain the benefit. [BPCP Act – section 4(3)(b)]
- (c) a representation by a dealer or salesperson about the total price of goods or services if
  - i. a person could reasonably conclude that a price benefit or advantage exists but it does not
  - ii. the price of a unit or instalment is given in the representation, and the total price of the goods or services is not given at least the same prominence, or
  - iii. the dealer or salesperson's estimate of the price is materially less than the price subsequently determined or demanded by the dealer unless the [consumer](#) has expressly consented to the higher price before the goods or services are supplied. [BPCP Act – section 4(3)(c)]

14.2.4. A failure to accurately disclose a [material fact](#) to a [consumer](#) is a deceptive act or practice if the outcome is deceptive or misleading, even where the dealer does not have actual or constructive knowledge of the material fact. The VSA defines a [material fact](#) as any information that may have a significant effect on a [consumer's](#) decision to buy a vehicle or the amount to pay for a vehicle, including any defects that may significantly affect the operating characteristics, safety, or useful life of the vehicle. [BPCP Act – section 4(3)(b)(vi)]

### **14.3. Unconscionable act or practice**

- 14.3.1. An unconscionable act or practice is one which results in a transaction that is grossly unfair, one-sided or oppressive to a [consumer](#) based on all of the surrounding circumstances of which the dealer or salesperson knew or ought to have known. [BPCP Act – section 8; Common law]
- 14.3.2. The following are examples of acts or practices that may be evidence of an unconscionable act:
- (a) subjecting a [consumer](#) to undue pressure to enter into the transaction
  - (b) taking advantage of a [consumer](#)'s inability or incapacity to reasonably protect his or her own interest because of the [consumer](#)'s physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of the transaction, or any other matter related to the transaction
  - (c) at the time the transaction is entered into, the total price of the vehicle grossly exceeded the total price at which similar vehicles in similar transactions are readily obtainable by similar [consumers](#)
  - (d) at the time the transaction is entered into, there is no reasonable probability of full payment of the total price by the [consumer](#), and
  - (e) the terms or conditions on, or subject to, which the [consumer](#) entered into the transaction were so harsh or adverse to the [consumer](#) as to be inequitable. [BPCP Act – section 8(3)]
- 14.3.3. If a dealer or salesperson commits an unconscionable act or practice in a transaction with a [consumer](#), that transaction is not binding on the [consumer](#). [BPCP Act – section 10(1)]
- 14.3.4. In order to avoid unconscionable behaviour, dealers and salespeople should always consider any vulnerabilities of the consumer in a transaction, including inexperience or lack of knowledge about purchasing a vehicle, language or cultural barriers to effective communication, or reduced capacity due to age or illness. [VSA best practices]

### **14.4. Burden of proof**

- 14.4.1. If there is an allegation of a deceptive or unconscionable act or practice against a dealer or salesperson, the burden of proof that the dealer or salesperson did not

commit the deceptive or unconscionable act is on the dealer or salesperson.  
[BPCP Act – sections 5 and 9]

## **15. Protection of Privacy**

### **15.1. Introduction**

Dealers and their employees are subject to the *Personal Information Protection Act* (PIPA) in regard to the collection and use of personal information from customers and employees. PIPA controls how personal information may be collected and when it may be disclosed. The British Columbia Office of the Information and Privacy Commissioner is responsible for investigating privacy complaints and enforcing the requirements of PIPA. A violation of PIPA by a dealer or salesperson will be considered by the Registrar when making decisions regarding registration or licensing.

Information about the requirements of PIPA is available from the Office of the Information and Privacy Commissioner at <http://www.oipc.bc.ca>.

### **15.2. Personal information required by the VSA**

15.2.1. Although PIPA requires the protection of personal information, the VSA is authorized to require that a dealer or salesperson disclose personal information collected from a customer or employee where that information is needed for an inspection or investigation. [PIPA – section 18(1)(j) and (o); MDA – section 26; BPCP Act – section 150]

## 16. Important Terms

This part contains definitions of important terms used in the General Guidelines. These definitions are provided solely to assist the reader's understanding of these guidelines. In some cases, they are general interpretations only and are not to be considered legal definitions. Where the definitions are taken from legislation, they are subject to change. A dealer/salesperson should obtain legal advice where necessary to ensure compliance with legal obligations.

<b>APR (annual percentage rate)</b>	means an interest calculation representing an effective rate of interest accruing over a one-year period. The formula for calculating APR is found in the Disclosure of the Cost of Consumer Credit Regulation, under the <i>Business Practices and Consumer Protection Act</i> .
<b>Authorized Spokesperson</b>	means an individual identified by a dealer as having the authority to speak, decide, and act on behalf of the dealer on all matters regarding registration and compliance.
<b>Consumer</b>	means an individual who engages in the purchase, exchange or other <a href="#">disposition</a> of a motor vehicle from a motor dealer for purposes that are primarily personal, family or household.
<b>Demonstrator</b>	means a vehicle that was delivered to a dealer as a new vehicle and has been used exclusively by the dealer for purposes relating to the dealer's business. These purposes include personal use of the vehicle by the dealer or the dealer's salespeople and members of their households, but do not include use of the vehicle for a commercial purpose not directly related to the sale of the vehicle.
<b>Disposition</b>	means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.
<b>Material fact</b>	means any information that may have a significant effect on a consumer's decision to buy a vehicle or the amount to pay

for a vehicle, including any defects that may significantly affect the operating characteristics, safety, or useful life of the vehicle.

**Sale**

means a lease, exchange or other [disposition](#) or supply of a motor vehicle to an individual primarily for the individual's personal or family use

**New vehicle**

means a vehicle that has not yet been registered in any jurisdiction and has been driven only for the purpose of delivery from the manufacturer to the dealer or by the dealer only for the purpose of preparing and offering the vehicle for sale.

**Used vehicle**

means a vehicle that has previously been registered in any jurisdiction