Volume 106, No. 11 **June 15, 2009**

Secretary of state offers guidance for closing, switching to used-only

For dealers with cancelled franchise agreements, there are many issues to consider if they intend to convert to used-car stores, and even more if they intend to close. The Illinois secretary of state's office offers the following guide.

Dealership Status Change

Dealers who had their franchise agreement cancelled and need to change their dealership status or business name must contact the the Dealer Licensing Division at (217) 782-7817 for an application and instructions. Dealers must pay a $2 fee and file an application that reflects any necessary changes within 30 days of their franchise agreement cancellation.

If the cancellation requires a dealership name change, it also may be necessary to submit a corrected Certificate of Insurance and Illinois Vehicle Dealer Bond (if one currently is on file). Dealerships also would be required to adjust any business signs to reflect a name change.

If a dealer is registered as a corporation or a LLC, he must notify the Department of Business Services, (217) 782-6961. Corporation or LLC changes can be filed by mail with the application to correct a Dealer's License, to

Illinois Secretary of State
Dealer Licensing Division, Room 069
501 S. 2nd St.
Springfield, IL 62701-1730

Dealership Closing

Dealers who are closing must notify their Vehicle Services Field Representative or the Illinois Secretary of State Department of Police. Closing dealers must surrender their Certificate of Authority, identification card, dealer plates and temporary registration permits.

Closing dealers must submit all transactions for title, title and registration or transfer for vehicles that were sold prior to closing. If a dealer participated in the ERT program, he must notify his ERT vendor and surrender license plates, stickers and any other material that the vendor requests.

Dealers can call the Dealer Licensing Division, (217) 782-7817, if the don't know how to contact their Vehicle Services Field Representative or the Illinois Secretary of State Department of Police.

Revenue Department

Dealerships affected by cancelled franchise agreements also may have to notify the Illinois Revenue Department, (217) 785-3707, for instructions on how to change their tax forms.

Inventory Options

Remaining new-vehicle inventory of

See **Switch**, Page 4

Liquidation Sale ad language matters, says BBB. See Page 2.

Used-car Outlook is online

The latest Chicago Auto Outlook publication examines the area's used-vehicle sales in 2009's first four months. They're down against 2008 numbers, but not as down as new-vehicle sales in the same periods.

The newsletter no longer is printed and mailed, but it can be downloaded from the CATA Web site.

See http://tinyurl.com/CATA-UAO-Q2-09-pdf.

DriveChicago seeks dealer feedback

A periodic survey was sent via e-mail to CATA dealers June 8 to confirm the accuracy of their data on DriveChicago.com and to solicit feedback about the dealers' experiences with and expectations of the Web portal. The 12-question survey takes a few minutes to complete online, at http://tinyurl.com/la3ocm.

DriveChicago.com is owned by the Chicago Automobile Trade Association and has a goal of cultivating car shoppers, guiding them through the selection process and delivering them to CATA member dealers. Note that NO PART of that mission statement contains the phrase "make money." That's what sets DriveChicago.com apart from other dealer inventory

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Better Business Bureau weighs in on going-out-of-business ads

By Patricia Kelly

As we know, Chrysler and GM decided to terminate the franchise agreements of many local dealers. These dealers have no choice but to sell off their inventory as a result.

The BBB has been asked to review advertisements calling for much reduced prices as these dealers sell their stock. Rule 475.380 of the Illinois Motor Vehicle Advertising Rules governs the practice of dealers advertising liquidation sales and other forced sales.

The rule states, "It is an unfair or deceptive act to use any advertising terms such as 'Liquidation Sale,' 'Public Notice,' 'Closing Out Sale,' 'Lost Our Lease Sale,' 'Forced to Vacate Sale' or similar terms used to connote or imply a court-ordered or other forced liquidation of assets, or to induce a belief that upon disposal of the stock of good on hand, the business will cease and be discontinued at the premises where the sale is conducted, unless such is the case."

Therefore, unless a dealer is actually going out of business at the location where the sale is being held, the dealer cannot advertise a liquidation sale or other sale suggesting the store is closing.

Only those dealers who are actually closing their doors forever at the location are able to truthfully advertise such a sale under Rule 475.380. Other dealers remaining in business and purchasing vehicles from the terminated dealers cannot advertise "liquidation sales" because they are not going out of business.

Another Illinois provision concerning liquidation or going out of business sales is the Fraudulent Sales Act, 815 ILCS 350. The Act requires every person conducting such a sale to first obtain a license from the clerk of the city, village, and incorporated town or, in unincorporated areas, the township where the sale is to be conducted. That would be the local municipality where the dealership is located, for the most part.

The Act sets out many requirements necessary to apply for the license, including the reason for the sale and a full description of the inventory. The Act prohibits the seller from adding to the inventory stated on the application. The application also must be signed under oath by the applicant. The license allows for a 60-day period to conduct the sale. The fee is $75. If the inventory is not disposed of in 60 days, there is an opportunity to renew the license.

An important requirement for advertising such sales is that the license number issued by the municipality as well as the expiration date of the license must be posted clearly and conspicuously in all advertisements. The Act is enforceable by the Illinois attorney general's office and the local municipality. Enforcement would involve obtaining a court order stopping a sale without a license. The lack of a license number and expiration date in an advertisement would indicate noncompliance with the Fraudulent Sales Act.

The Fraudulent Sales Act does not apply to any sales directly ordered by any court or referee in bankruptcy. This means that the specific sale being conducted, if ordered directly by the court, is exempt. It does not mean that sales being conducted as a result of a franchise termination are included in the exemption if the court did not order that individual sale.

Dealers must seek legal advice as to the status of their sales in this regard. They should be prepared to substantiate an exemption.

Dealers who must go out of business due to the termination of their franchise agreements by a manufacturer should consider the terms of the Fraudulent Sales Act as well as Rule 475.380, as they conduct and advertise liquidation sales. Implicit in the advertising of a liquidation sale is the requirement that the sale is being conducted under a license from the local municipality.

As such, any advertisements that promote liquidation sales must also clearly and conspicuously disclose the license number and expiration date.

Patricia Kelly is senior counsel of the Better Business Bureau of Chicago and northern Illinois.

Congratulations!

Winners of the 2008 Ford and Lincoln-Mercury President's Award include **Arlington Heights Ford**, **Bredemann Ford in Glenview**, **Buss Ford Sales** (McHenry), **Libertyville Lincoln-Mercury**, **Ogden Lincoln-Mercury** (Westmont), **River Oaks Ford** (Calumet City), **Joe Rizza Ford** (Orland Park), **Terry's Ford-Lincoln-Mercury of Peotone**, **Terry's Lincoln-Mercury** (Orland Park), and **Wickstrom Ford-Lincoln-Mercury** (Barrington).

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full resume to the Editor.

Review past editions dating to 1998 or search by subject at http://cata.drivechicago.com.

Jerry H. Cizek III **President, Publisher**
Erik K. Higgins **Editor, Director of Dealer Affairs**

Government-backed pilot program allows floor plan loans

By Ray Scarpelli Sr.
Metro Chicago NADA Director

After a number of meetings between the NADA and the Obama administration in which NADA urged greater access to floor plan loans, the Small Business Administration (SBA) on May 28 announced it's launching a pilot program that will, for the first time, provide eligible dealers with government-backed lines of credit to finance their vehicle inventory.

The NADA praised the SBA for its efforts to expand its 7(a) loan guarantee program to include wholesale inventory, also known as floor plan loans, as many auto dealers are struggling to survive without access to credit. With the announcement, the SBA set aside an outdated prohibition on the use of 7(a) loan guarantees for floor plan financing. The pilot program runs July 1, 2009, to Sept. 30, 2010. At that time, SBA will consider extending the program.

In early May, the SBA temporarily changed the business size standards to increase dealers' eligibility for the 7(a) loan guarantees. The pilot program will provide a guarantee of up to 75 percent for as much as a $2 million loan for floor plan financing. Many smaller dealers are expected to work with lenders to take advantage of this for their new- and used-vehicle inventory.

In the past year, many banks have exited the inventory financing business and others are not willing to pick up new dealers, said the NADA's John Lyboldt. In some cases, that forced dealerships to close their doors.

"The success and continued operation of thousands of small, family-owned auto dealerships across the country is directly connected to their ability to purchase both new and used vehicles to offer their customers," Lyboldt said.

The NADA continues to work with the Treasury, the Federal Reserve Board and the New York Fed to ensure that TALF funds may be extended to investors who wish to purchase floor-plan asset-backed securities.

Questions on this matter can be directed to RegulatoryAffairs@nada.org.

In late April, the NADA worked with the Chrysler National Dealer Council and GM National Dealer Council to help them set up **bankruptcy assistance** with two law firms. Any dealer affected by the bankruptcy may send an e-mail to chryslerbankruptcy@nada.org or gmbankruptcy@nada.org to request participation information or to submit other questions.

In other legislative and regulatory news . . .

• House Resolution 2743 seeks to restore the state franchise economic rights of GM and Chrysler dealers as they existed prior to each company's bankruptcy.

The bill, whose short title is the Automobile Dealer Economic Rights Restoration Act of 2009, had attracted 77 co-sponsors in the House by June 11, three days after it was introduced by Rep. Daniel Maffei (D-New York).

Maffei said the automakers are buoyed by taxpayer dollars and should negotiate with dealers "in a way that will help to find a soft landing for the workers and communities."

The legislation was referred to the House Committee on Financial Services.

• A federal bill could broaden the FTC's authority over dealers' lending practices. H.R. 2309, the **Consumer Credit and Debt Protection Act**, could radically alter the authority of the Federal Trade Commission when it comes to making rules on consumer debt and credit.

The bill, introduced by Rep. Bobby Rush (D-Ill.), requires the FTC to (1) examine dealers' credit and lending practices to prevent unfair and deceptive practices—even though the agency already has authority to address unfair and deceptive practices; (2) consider adopting rules that would restrict post-sale contract changes, mandate a "cooling off" period in purchase agreements (even for the sale of new vehicles at the dealership); and (3) limit dealers' potential ability to compute their finance income as a percentage of the interest rate.

The law also would give the FTC civil penalty authority for consumer credit or debt practices it deems unfair or deceptive, and it would increase the enforcement remedies of state attorneys general. NADA staff is meeting with House Energy and Commerce staff to work out ways to increase consumer protection while not decreasing dealer viability.

• The FTC has again revised the enforcement deadline for its **Red Flags rule**. The new deadline is Aug. 1, pushed back from May 1. The delay gives financial institutions and creditors, including dealers, even more time to develop and implement written Identity Theft Prevention Programs (ITPP). (This revised deadline revision does not affect the deadline for compliance with the Address Discrepancy Rule, which was Nov. 1, 2008.)

The FTC also released a guide for low-risk entities, which may apply to some ATD members and commercial truck dealers. The guide can be found at http://www.ftc.gov/bcp/edu/microsites/redflagsrule/get-started.shtm. For more info, visit www.nada.org/regulations.

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dealers losing their franchise due to a manufacturer bankruptcy have a couple options to liquidate their inventory.

New to Other Franchise Dealer

Dealers with a cancelled franchise agreement can transfer remaining new- vehicle inventory to another dealership with the appropriate active and valid franchise agreement. The procedures for these transfers are unchanged.

Used to the Public, Auto Auctions

Dealers with a cancelled franchise agreements who want to sell remaining new-vehicle inventory to the public and/or to other non-franchised dealers (through auctions, direct or other) must consider them to be used cars. The used-car box on the application, therefore, must be checked.

To help dealers in these cases, the Vehicle Services Department will allow them to make application using the MCO without first obtaining a title in the dealer's name. Dealers who want to process these vehicles as used with an MCO should write or stamp the word "used" across the face of the MCO document and mark the used box on the application.

It is important that these procedures be followed or the transaction will be returned un-processed. Further questions can be directed to Kelly at (217) 558-6148.

Franczek Radelet, the CATA's labor relations counsel, advises that dealers might be subject to the Worker Adjustment and Retraining Notification (WARN) Act. Illinois dealers with 75 or more employees generally must give workers 60 calendar days' notice before closing or if 50 or more employees are impacted. Notices of less than 60 days can be given under very limited conditions, such as business circumstances not foreseeable when notice would have been required.

Details of WARN are posted on the CATA Web site. The link is on the home page of http:cata.drivechicago.com, among the "Latest News" listings.

House passes 'cash for clunkers' bill, Senate stalls

The U.S. House on June 9 passed its version of the so-called "cash for clunkers" bill that gives $3,500 vouchers to customers who trade in a passenger car that gets 18 miles per gallon for a new one that gets at least 22 mpg. SUV, pickup truck and minivan owners of vehicles that get 18 mpg or less would get a $3,500 voucher if their new SUV, pickup or minivan gets at least 2 mpg more than their old vehicle.

Consumers also could receive the voucher for a leased vehicle.

Under the Senate version, new cars must get at least 24 mpg to qualify for a $3,500 voucher, and voucher allowances would grow to $4,500 if the new car gets at least 13 mpg more than the old car.

The House bill sets aside $4 billion to pay for the vouchers. With auto sales running at their lowest rate in four decades, the Congressional Budget Office estimated the bill could spur sales of about 625,000 vehicles; backers are hoping for 1 million.

If the Senate passes the measure, President Obama said he would sign into law whatever compromise the two chambers reach.

Survey

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portals.

For CATA dealers, it is free to list new- and used-vehicle inventories on DriveChicago.com. Compare that to the costs to list on competitors like Cars.com, AutoTrader.com and Autobytel. All CATA dealers—and only CATA dealers—appear on DriveChicago.com.

Over the past few months, the DriveChicago team has been developing a new inventory management tool and improving the overall quality of the data (new and used inventory) displayed.

"Those improvements," said Kurt Schiele, chairman of the CATA board's DriveChicago Committee, "are starting to bare fruit, and we want input from all dealers so we make DriveChicago.com as useful and powerful a tool as is possible. DriveChicago.com is committed to providing CATA member dealers a valuable resource to cultivate new- and used-car buyers."

Schiele said results of the survey will help the DriveChicago staff make sure correct inventories are displayed, configure the new inventory management tool, and make sure that DriveChicago.com is best meeting the dealers' needs.

Bill adds 'education program' to used-car dealer annual license

A bill before Illinois Gov. Pat Quinn would require used-vehicle dealers to complete an "education program" approved by the secretary of state, to get an annual dealer license.

House Bill 2322 passed both General Assembly chambers unanimously. If Quinn signs the bill, it would take effect Aug. 1, 2009.

To complete the new requirements, at least one individual associated with the used-vehicle dealer—as an owner, principal, corporate officer, director, or member or partner of a limited liability company or limited liability partnership—must pass the course.

The program courses would be provided by public or private entities with an expertise in the area as approved by the secretary of state. Curricula, which have not been developed, must be approved by the secretary of state, in consultation with the attorney general and the Illinois Department of Transportation.

People who pass the program would be given a certificate that must be posted in the principal office of the licensee.