



## **Registrar targets deposit offenders:**

### **New dealer directive clarifies “best practices”**

The Registrar of Motor Dealers has issued a new directive governing deposits as a condition of a dealer licence - Directive 13.

“It is unfortunate that a very small minority of salespeople and/or dealers undertaking unfavourable practices regarding deposits generate so many consumer complaints; negatively impacting the entire industry’s image” said Ian Christman, the VSA's Deputy Registrar and the Director of Licensing. "About one quarter of all consumer complaints investigated by the VSA concern deposits."

This new directive outlines procedures for deposits and partial payments that are already “best practices” at most dealerships; those that recognize that clarity about the terms and conditions of a deposit is not only the law, but it protects both the dealership and the consumer and makes good business sense.

Christman said: “While some complaints are unfounded, others expose a pattern of abuse of consumers. It is unfair to the vast majority of dealers and salespeople who have worked so hard over these many years to raise the level of professionalism in the industry and foster good relations with their customers to allow this to continue. To ensure a level playing field and equality and uniformity in the VSA’s interaction with the industry, it has become necessary to take this step; which in fact is focused on the few offending persons. Enforcement of this Directive – which is really no more than stating existing law - is a priority.”

Dealers, their front office staff and salespeople should visit the VSA web site [www.vehiclesalesauthority.com](http://www.vehiclesalesauthority.com) and read Directive 13 in its entirety.

The taking of a deposit is often part of an agreement to purchase a vehicle or is a separate agreement generally: (i) to hold a vehicle; (ii) to locate a vehicle; (iii) to bring in a vehicle; and/or (iv) to arrange financing for a vehicle - an agreement for services. If there is a written purchase agreement, the Motor Dealer Act Regulation requires motor dealers to detail the terms and conditions under which a deposit is refundable.

#### **Consumers MUST be given deposit details in writing**

At a minimum, the taking of a deposit requires a motor dealer to set out in writing:

- clearly distinguishing a deposit from a partial or down payment;
- clearly stating the purpose for which the deposit is taken;
- clearly stating the amount of the deposit;
- clearly stating when the deposit will or will not be refundable;
- clearly stating any other agreed to terms such as whether a deposit will be credited towards the purchase of a vehicle; and
- provide the consumer with a copy of the deposit agreement.

NOTE: The enforceability of an agreement is determined by a review of the whole agreement. Complying with the above points does not necessarily create an enforceable agreement.

Under the *Business Practices and Consumer Protection Act*, the taking of a deposit is a consumer transaction and must therefore meet the requirements of that Act. The terms and conditions of the giving and the taking of a deposit must therefore be clear and unambiguous regarding the material facts and all material facts must be stated to the consumer.

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## **Deposits /2 . . .**

Failing to do so is a deceptive act or practice under this statute. 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 dealership cannot deliver on its promise.

***If money is taken as a deposit, or if nothing is said about the purpose of taking the money, and the motor dealer later claims it was for a partial or down payment, this is a deceptive act or practice under the Business Practices and Consumer Protection Act. This may also be an unconscionable act or practice under that same Act.***

British Columbia law (the Business Practices and Consumer Protection Act) states that where a consumer alleges a deceptive or unconscionable act or practice, the onus is on the motor dealer to prove that their conduct was not deceptive or unconscionable. It is therefore in the interest of the consumer and the motor dealer to properly document any agreement regarding a deposit. If there is no documentation; there is little evidence for the motor dealer to meet its burden of proof if a challenge arises.