

Directive 13

Deposits

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.

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. Failing to do so is a deceptive act or practice under the *Business Practices and Consumer Protection Act*.

A blanket statement that a deposit is “non-refundable” is ambiguous and misleading, contrary to the *Business Practices and Consumer Protection Act*. There are situations in which a deposit will be refundable; such as when a dealer 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 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: the *Business Practices and Consumer Protection Act*. 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.

Therefore, 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.