



Profitable Ideas for Automobile Dealers

Liability for Selling Vehicles Subject to Open Recalls

Edited by Vawter, Gammon, Norris & Co., P.C.

We invited Ronald L. Coleman of Davies Pearson, P.C., to submit the following article. Ron addressed our group, the National Alliance of Auto Dealer Advisors (NAADA) at a recent meeting. If you have any questions regarding this article or would like to speak with Ron, please let us introduce you to him.

The number of recalls in the last few years is staggering. In the last year and a half, more than 100 million vehicles have been recalled. Because of the liability automobile dealers can face for selling unsafe vehicles, some dealers have elected to implement disclosures and waivers to limit liability while other dealers have elected to stop selling vehicles subject to open recalls all together. For example, AutoNation recently announced that it will not sell any vehicle, new or used, with an open safety recall.

The law is clear that dealers cannot sell a new vehicle that is subject to a safety recall until the defect is corrected and that manufacturers must compensate dealers for new vehicle inventory that cannot be sold due to a recall. It is also important for dealers to review their franchise agreements as manufacturers place additional obligations on dealers as to how they must handle recalls.

The law with regard to used vehicles is much less clear. While there is no state or federal law that expressly prohibits dealers from selling a used vehicle subject to a recall, dealers cannot sell vehicles that are “unsafe.” In addition, consumers can raise a number of additional claims if they believe misconduct has occurred.

Due to the increased media attention to factory wrongdoing and the associated safety recalls, it is more important now than ever before for dealers to take precautions to protect themselves. While it may be impractical for dealers to stop selling used vehicles subject to open recalls, dealers can implement new policies to limit liability.

1. Dealers should adopt a policy that, before any vehicle is sold, a search is conducted to determine whether there is a safety recall. The search can be conducted on the following website: <https://vinrcl.sfercar.gov/vin>.
2. If the vehicle is a brand that the dealer represents, the unremedied safety recall should be remedied prior to resale.



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3. If it is determined that the vehicle is subject to a safety recall, a signed disclosure should be obtained from the customer. Among other information, the disclosure will inform the customer of the recall and allow the customer to make an informed decision. The disclosure can then be used to protect dealers should any issues arise in the future.

If a vehicle is subject to a manufacturer “stop sale” or a “stop drive,” additional considerations are necessary and dealers should consult with their legal counsel before proceeding.

If you have questions about automobile dealer recall liability, please contact any member of the team at Vawter, Gammon, Norris and Company, P.C.

The above information is for informational purposes only and is not legal advice. Dealers should contact their legal counsel if they have any questions or would like assistance implementing a disclosure for used vehicles subject to recalls.



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