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Monday-Friday, 9 a.m.-5 p.m. (PT)

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Take Survey

Proper Use of Dealer Plates
by Robert Ebin

Have you ever watched a movie where you think the story is going one way, but then seemingly out of nowhere, it transforms into something completely different? Well, recently, I was having a discussion that went on for some time about service drive practices and procedures. Then, just as I thought the discussion was concluding, I was informed that this dealer occasionally gives service loaners to customers that are dealer

plated. Oh, how quickly a service drive discussion was transformed into one about the proper use of dealer plates. California law strictly regulates the use of dealer plates, and this article will discuss who can drive a dealer-plated vehicle and under what circumstances.

Who Can Use Dealer Plates?

Dealer Principals (Owners)

Dealer principals who are reflected on DMV records as sole owner, general partner, manager of an LLC, or corporate officer may use a dealer-plated vehicle for any purpose, business or pleasure, provided that he or she is *"actively engaged in the management and control of the business operations of the dealer*." [13 CCR § 201.00(b)(1); see generally Vehicle Code § 11715].

Any licensed driver may also drive a dealer-plated vehicle for any purpose so long as the dealer principal (i.e., licensee) is physically in the vehicle as well. [13 CCR § 201.00(c)]

Here are some examples of proper use of dealer plates by a dealer principal:

- Dealer takes a trip with her family;
- Dealer principal driving the vehicle to run personal errands;
- Friend driving the dealer principal home from a football game.

Here are some examples of unlawful use of dealer plates:

- A dealer's son taking the vehicle down to Mexico with his friends for spring break;
- A dealer's husband (the wife is the licensee) driving the car as his personal vehicle;
- A dealer's friend taking the vehicle by himself to run errands for the dealer.

Licensed Driver in Immediate Household of Dealer Principal

Contrary to what some may believe (and as seen in the unlawful use examples above), family members of the dealer generally cannot use dealer-plated vehicles without the licensee riding in the car with them. An exception applies where a licensed driver who regularly resides in the immediate household of the dealer is driving the dealer-plated vehicle to pick up the licensee. [13 CCR § 201.01(c)(1)]. Note that the licensed driver need not be related to the dealer principal so long as that driver regularly resides in the dealer's house. The exception also does not necessarily apply to a dealer principal's family member if that family member does not regularly reside in the dealer principal's household. For example, a dealer's adult son who lives in his own house with his wife and kids would not be considered a regular resident in the licensee's immediate household.

For a more anecdotal example: A few years ago, a dealer's daughter used a dealer-plated vehicle to drive to a festival. While there, the vehicle was stopped by an officer because the officer noticed that the daughter seemed too young to be a dealer principal and inquired about the use of the vehicle. The lesson here, though some of you may have believed otherwise, is that police officers in California are on the lookout for dealer-plated vehicles, so you had better be using the dealer plates correctly.

GMs, Sales Managers, and Business Managers

General, Sales, or Business Managers may operate a vehicle on dealer plates so long as 1) they are actively engaged in the management and control of the dealer's business operations; and 2) there is no other sole owner, general partner, manager of an LLC, or corporate officer/director who is acting in the capacity of the dealer principal. [13 CCR § 201.00(b)(2)]. Be advised that we have also heard stories of dealer-plated vehicles receiving citations when the driver is determined not to be in a managerial or control position at the dealership.

Dealer Employees

California Code of Regulations states that: "A licensed driver who is an employee of a dealer…may drive a vehicle with special plates when that employee is acting within the

course and scope of his or her employment." [13 CCR § 201.00(d)].

If, as a part of his or her employment, a salesperson rents or leases the vehicle from the dealership, he or she can also operate the vehicle on dealer plates for the purposes of display or demonstration. [Vehicle Code § 11715(d)]. Dealers who permit licensed salespersons to use a dealer inventory vehicle for purposes of display or demonstration and operate it on dealer plates should ensure that there is a signed "demonstrator agreement" between the dealership and salesperson. The salesperson should also print out a copy of Vehicle Code § 11715(d) and keep it in the vehicle along with a copy of the demonstrator agreement. The vehicle should also be kept "showroom" ready and in public view at all times. Dealers are well-advised to have competent counsel review any demonstrator agreement.

Here are some examples of proper use by a dealer employee:

- Office manager taking dealership deposits to the bank;
- Employee driving the vehicle from one lot to another;
- Salesman using the vehicle for demonstration or display purposes.

Here are some examples of unlawful use:

- Office manager taking children to school in the vehicle before going to the bank to make deposits;
- Employee using the vehicle to run personal errands;
- Salesperson taking an assigned, but not rented or leased, vehicle to the beach;
- Salesperson taking the dealer-plated vehicle to Taco Bell for lunch (and having a DMV investigator behind him in the drive-through. True story from one of our auditors' DMV days.).

Prospective Buyers

A prospective buyer can test drive a dealer-plated vehicle with a salesperson from the dealer. Additionally, a prospective buyer can, for up to seven days, test drive a dealer-plated vehicle without a salesperson present (i.e., an extended test drive). If the prospective buyer is on an extended test drive, he or she must carry a letter of authorization from the dealer identifying the vehicle, the duration of the test drive (i.e., when the vehicle left the dealer and when it is slated to be returned), and the person(s) authorized to operate the vehicle. [13 CCR § 201.00(f)(2); Vehicle Code § 11715(a)]. This letter should be kept in the vehicle's glove box. We also strongly recommend that the prospective buyer sign a borrowed car agreement (BCA) before taking the dealer-plated vehicle for an extended test drive.

Accordingly, a prospective buyer, for example, can use a dealer-plated truck to see how it handles on the windy roads leading up to her residence. However, a customer who resides in Arizona cannot purchase a vehicle in California and drive it back to Arizona on dealer plates to have it registered there. This last example is not a permitted use of special plates and will not help avoid any California sales tax liabilities because the vehicle was still delivered to the customer in California.

When Should You Use Dealer Plates?

Unregistered Vehicles

Dealer plates must be used when operating a vehicle in dealer inventory that does not have current registration.

Currently Registered Vehicles

Vehicles that are currently registered need not have dealer plates *if:* 1) the dealer owns the vehicle; 2) the vehicle has current California registration and registration tags (we also recommend that the vehicle have a front and rear plate); 3) the Notice of Transfer and Release of Liability is signed by the prior owner and submitted to the DMV within five (5) calendar days of the transfer; and 4) a copy of the Notice of Transfer and Release of Liability is affixed to the lower right corner of the windshield (as you would a Report of

Sale). [Vehicle Code § 11715(e)(2)]. You should also be sure to check with your flooring lender before using a vehicle in this manner.

Vehicles That Cannot Be Operated with Dealer Plates

Special plates cannot be used on work and service vehicles owned by the dealer. These would include tow cars, parts delivery and pickup vehicles, and service loaners. Dealer plates also cannot be used on vehicles owned by the dealer that are rented or leased to individuals other than licensed salespersons in the course of their employment. [DMV Vehicle Industry Registration Procedures Manual Chapter 2.090]

Additional and Replacement Dealer Plates

If you need additional dealer plates, you need to complete and submit an Application for Occupational License Special Plates, Stickers, and Registration Cars, and Duplicate License (OL22) to the Occupational Licensing Unit along with the applicable fee. You should use the same process and OL22 form to request replacement plates.

Can Dealer Plates Be Used When Taking a Vehicle Out of State?

Dealer plate laws vary from state to state, and therefore, each state can determine whether to accept California dealer plates. We have never heard of another state refusing to accept a California dealer plate, and in fact, we have had reports from numerous dealers who routinely use their special plates on vehicles for out-of-state ski trips or family vacations without incident. If you are planning on taking a dealer-plated vehicle to another state and want to play it extremely safe, it never hurts make an inquiry with that state's DMV beforehand.

Questions?

If you have any questions regarding this issue, or any other situation that may arise in your sales or service departments, hotline clients are invited to contact us at (800) 785-2880 (then press "4" for hotline) or hotline@autoadvisory.com.

What's Hot on Hotline? Damage Disclosure on New and Used Vehicles

by Hao Nguyen

Tell me if this is familiar: You're on your cell phone and notice that it's not functioning the same way it did when you bought it six years ago. Your phone is significantly slower and smaller than anything else that's on the market today, and you believe you're due an update. You go to the local electronics store and purchase the best cell phone money can buy. You probably don't need that specific top-of-the-line model, but you rationalize the purchase by telling yourself that you will probably use it for another six years. Once out of the box, the phone is gorgeous. When the light hits it at a certain angle, the phone shimmers, and you cannot wait to turn it on. Then, reality sets in and you realize that you didn't purchase a protective case for it yet! Back in the box it goes until you do. That was me six years ago (my iPhone 6, still chugging along!) and I think about this whenever I get a call on hotline about damage disclosure, which has been frequent recently. Unfortunately (or fortunately), there is no protective case for the vehicles in your inventory, and chances are that they will suffer some kind of damage before they are sold and long after they roll off your lot.

Some examples we've heard on hotline:

- An employee was moving a Lexus ES350 on the lot and hit a Bobcat Loader that was on-site doing renovation work on a portion of the dealership.

- After a test-drive, an employee was trying to park the test-drive vehicle when she hit a BMW 5-series on display when trying to back the vehicle into a parking stall.

- A dealership took delivery of an Audi R8, which the shipping company dropped off in the shared center lane of a large street. An employee drove it from the street into

the showroom only to find that the driveway was too steep and caused significant damage to the exhaust system.

Whether the vehicle sits in the showroom or is outside at the mercy of Mother Nature, it is open season on the vehicle until it's sold. When a vehicle is damaged, do you have to disclose it? Let's rephrase the question: If you or a loved one was purchasing a vehicle, would you want to know if there was any damage to the vehicle? So, our most conservative position is yes, disclose as much as you possibly can. However, by the laws of California, you are granted some leeway in disclosing damage, and new and used vehicles are treated differently. Let's take a closer look.

Damage to New (or Previously Unregistered) Vehicles

Damage to new vehicles occurs more often than you may think. It ranges from minor superficial scratches from moving vehicles around the showroom to more substantial suspension damage from offloading the vehicle from a delivery truck. Vehicle Code § 9990 accounts for both of these situations.

The law requires that before selling a new or previously unregistered vehicle (demonstrator or brass hat), the dealer must notify the customer in writing if the vehicle has sustained "material" damage that has been repaired or any damage ("material" or not) that has not been repaired. [Vehicle Code §§ 9991 and 9992].

The question remains, "What kind of damage is considered 'material'?" Section 9990 states that damage sustained by a motor vehicle is considered material if it falls under one of the following situations:

1. The damage requires repairs that are valued at more than 3% of the MSRP of the vehicle (calculated at the repairer's cost) or $500, whichever is greater. If the repairs use new OEM equipment, parts, or accessories that are bolted or otherwise attached as a unit to the vehicle (hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments, etc.), these parts can be excluded from the damage calculation, excluding the cost of refinishing and repainting this components;
2. Any damage having a cumulative repair or replacement value which exceeds 10% of the MSRP of the vehicle;
3. The damage, regardless of repair cost, was to the frame or drive train of the motor vehicle;
4. The damage, regardless of repair cost, occurred in connection with a theft of the entire vehicle; or
5. The damage, regardless of repair cost, was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

This material damage can be disclosed to the customer using the latest Reynolds and Reynolds form LAWCA-DMGDSCL-N.

Damage to Used Vehicles

Damage disclosure for used vehicles, unlike new and previously unregistered vehicles, is a "gray area." There are no California or federal laws in place that state a dealership must disclose prior damage to a used vehicle, but there are plenty of reasons for the disclosure to take place. Therefore, complete and accurate disclosure is a position that we take wholeheartedly.

Courts often assume that dealers have prior knowledge if a lawsuit over damage to a used vehicle comes into their courtroom. Dealers stand on uneven ground relative to the consumer when it comes to the ability to get prior damage information. They have a plethora of options available to them to seek this historical information out. Additionally, dealers are held to a higher standard because it is their business to purchase and sell motor vehicles to the public. Courts also typically hold dealers as experts who "should have known" that a used vehicle had prior damage due to customary vehicle inspection practices. In this respect, the scales of justice usually tip in favor of the consumer long before opening arguments are made.

Though California defines “material” damage when it comes to disclosure for new vehicles, it has not taken a similar definition for used vehicles. Therefore, we should paint with broader strokes in this regard. By this I mean that dealers should deem any damage “material” if it could be reasonably viewed as damage (or repaired damage) that is so important as to be a determining factor in deciding whether or not a customer would purchase the used vehicle. Talk about a moving target: What may be considered “material” to one customer could be something entirely different to another customer (thinking back to the "you purchasing a vehicle for yourself or a loved one" example would probably make everything "material"). Therefore, we conservatively suggest that you disclose any known damage to the used vehicle. Reynolds and Reynolds form LAWCA-DMGDSCL-U should be used for this disclosure.

Whether it is damage to a new or used vehicle, some dealers have gone above and beyond to include the repair order of vehicles with prior damage to show that it took steps to repair the vehicle. It also shows transparency, builds the customer’s trust, and demonstrates the value added by the dealer to the used vehicle. Additionally, it potentially reinforces the idea that this is all the damage the dealer knew about. A best practice would be to have the customer sign the last page of the repair order.

An article on damage disclosure on used vehicles is not complete without reminding dealers that they are required to obtain a National Motor Vehicle Title Information System (NMVTIS) report from an approved provider before the used vehicle is offered or displayed for sale.

Employee Representations Regarding Vehicle History

Dealers use reputable services to check a used vehicle’s history, such as CarFax and AutoCheck. However, the process is not infallible. These third-party providers are only able to provide a clear history of the vehicle if the damage and repairs are reported (and sometimes this is not even the case). Additionally, sometimes the damage is not reported immediately, and even if it is, it can take months to appear on the report. This means that when you run the CarFax or AutoCheck on a used vehicle prior to selling it to a customer and the customer runs the same report at a later point in time (when he or she sells it or trades it in), there is a possibility that you both will have different information about the same vehicle!

This is why it is imperative that A) the customer knows that additional vehicle history or prior accident information can be added to these reports at a later time after the dealer runs the check, and B) your employees do not make any representations or guarantees to the customer that the used vehicle has never sustained damage or has never been in an accident. Vehicle Code § 9993 states that the dealer cannot make any untrue or misleading statement about a vehicle to a prospective purchaser. That is why disclosures covering these situations were added to the Used Vehicle History Disclosure form. [We spoke of this in a May 2018 article titled, “Best Practices to Avoid Claims Regarding Prior Accident Damage.”] The latest Reynolds and Reynolds form LAWCA-UVHD-EX19 has this disclosure. One final point about CarFax and AutoCheck: Plaintiffs usually claim that they did not fully read these reports when they received them, or that it wasn’t clear that they were provided the reports. We recommend that you have the customer initial next to each entry within the report to show that the customer has acknowledged the prior events.

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