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## Questions? Contact the Compliance Hotline!

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

Phone: (800) 785-2880, Select Option 4 | Email: [questions@autoadvisory.com](mailto:questions@autoadvisory.com)

## Unwinds and Rollbacks...What's the Difference?

*by Hao Nguyen*

When I took my first hotline call from a dealer asking about a vehicle “unwind,” I was very confused. He described an unwind to me as the dealer taking the vehicle back from the customer after he “rolled it off the lot.” Up until then, I spent significant time reading the DMV registration manual and I believed he was describing what the DMV identifies as a “rollback.” I asked my superior at the time, and he said, “Oh right. The DMV calls a ‘rollback’ what a dealer typically calls an ‘unwind.’” To make things more puzzling, the DMV has its own definition of an “unwind,” which registration professionals commonly refer to as “voids.” In the words of one of the greatest thespians of a generation, Gary Coleman, “What’chu talkin’ ‘bout, Willis?” After some mental gymnastics, I finally understood why the DMV has two definitions for what basically sounds the same thing. The DMV views a “rollback” and an “unwind” very differently and this difference is significant when it comes to reporting the vehicle’s status. We’ll spend some time navigating through this maze.

### Rollbacks

A dealer sells (or leases) a vehicle to a customer. The contract is completed, and the customer drives the vehicle home. Regardless of whether the contract is funded (if it is financed or leased), the deal has been fully consummated, and the vehicle is operating on a temporary Report of Sale. Barring a repossession, the vehicle is returned to the dealer for whatever reason. This is what the DMV refers to as a rollback (although many industry professionals call this an “unwind”). Specifically, a **rollback** is “a transfer of ownership from the buyer back to the dealer.” Rollbacks occur when the customer takes delivery of the vehicle, operates it *causing registration fees to be due*, and the transaction is rescinded for

whatever reason.

#### *Procedures in a Rollback*

When the vehicle is returned to the dealer in this situation, the dealer should *not* void the Report of Sale. All fees due, including any transfer fees, are payable upon the date of the first retail sale and must be submitted to the DMV within 20 days (new vehicle) or 30 days (used vehicle) of the vehicle sale date to avoid any late penalty. Note: If a certificate of title has been issued to the first buyer, the rollback procedures do not apply. Rather, the rollback must be handled as a transfer from the first buyer to the dealership.

#### **New vs. Used Designation in a Subsequent Sale of New Vehicle Rollbacks**

Questions arise regarding what the status of the vehicle is when the vehicle is contracted the second time around. In a VIN memo, the DMV cleared up the confusion. A dealership can sell a vehicle as *new* in a subsequent contract if financing is rejected on the first contract, but the financing is successful on the second contract for the same vehicle and the same purchaser. The same applies even if the financing company is different. In other words, if a dealer rewrites a contract and does not add a new party to the deal, the vehicle can still be listed as new on the second contract.

If a party is removed from a two-party contract (i.e., a co-buyer is removed) then the vehicle is still designated as new on the rewritten contract. Alternatively, if the second contract adds another party, or there is a new purchaser entirely, the vehicle must be reported as a new vehicle rollback and the second contract must designate the vehicle as *used*. Logically speaking, this is because if a party is added, they did not receive the same disclosures as the existing person on the contract. Therefore, to the newly added party, the vehicle is used and must receive the required disclosures.

#### *Sale of a New Vehicle Rollback*

When the new vehicle rollback is sold to a second buyer, a new co-buyer is added to a rewritten contract, or the vehicle is registered to the dealer, the subsequent sale requires the following:

- 1) Application for Title or Registration (REG 343) with the second buyer as registered owner
- 2) Used vehicle Report of Sale (REG 51) in the second buyer's name
- 3) Application for Registration of New Vehicle (REG 397) in the first buyer's name
  - Note: No smog certification is required provided that the REG 397 is submitted
- 4) A Vehicle/Vessel Transfer and Reassignment Form (REG 262) from the first buyer to the dealer
- 5) Lien Satisfied (REG 166) for the first buyer, if applicable
  - Note: A lien satisfied is not required if financing was *not* approved for the first sale, or the lienholder remains the same for the second buyer
- 6) Statement of Facts (REG 256) containing the following:
  - Name of person who returned the vehicle and date returned
  - Reason vehicle was returned
  - Whether vehicle was voluntarily or involuntarily returned by the buyer
  - If the vehicle was sold under a conditional sales contract, chattel mortgage, etc.
  - If a trade-in was returned to the buyer, if applicable
  - If the down payment was returned and whether it was a cash down payment or cash in addition to the trade-in
- 7) Registration fees based on the first buyer's purchase price and date of sale, plus transfer fee for the transfer to the second buyer
- 8) If the dealer returns all license fees collected from the first buyer, the prorated vehicle license fees may be collected from the second buyer

#### *Sale of a Used Vehicle Rollback*

In addition to basic transfer requirements, the following must be submitted to the DMV:

- 1) A Statement of Ownership (REG 101) form in the name of the second buyer that includes the name of the legal owner (lienholder), if appropriate
- 2) Lien Satisfied (REG 166) for the first buyer, if applicable
  - Note: A lien satisfied is not required if financing was *not* approved for the first sale, or the lienholder remains the same for the second buyer
- 3) Statement of Facts (REG 256) containing the following:
  - Name of person who returned the vehicle and date returned
  - Reason vehicle was returned

- Whether vehicle was voluntarily or involuntarily returned by the buyer
  - If the vehicle was sold under a conditional sales contract, chattel mortgage, etc.
  - If a trade-in was returned to the buyer, if applicable
  - If the down payment was returned and whether it was a cash down payment or cash in addition to the trade-in
- 4) A Vehicle/Vessel Transfer and Reassignment Form (REG 262) from the first buyer to the dealer
  - 5) Two Used Vehicle Report of Sale (REG 51) forms – one for the first buyer and another for the second buyer
  - 6) A smog certificate, if applicable
  - 7) Two transfer fees and any other fees due

### Unwinds

A customer is about to go on a month-long vacation but wants to complete the paperwork before he leaves. The dealer and the customer complete the contract and DMV registration paperwork, and all that is left is for the customer to take delivery of the vehicle. The customer is already en route to the airport and says he will pick up the vehicle when he returns, so the vehicle sits in the dealer's bullpen awaiting delivery. A few days later, the customer has a change of heart and no longer wants the vehicle. Now, what? [Vehicle Code § 5901\(d\)](#) states that "[a] sale is deemed completed and consummated when the purchaser of the vehicle has paid the purchase price, or, in lieu thereof, has signed a purchase contract or security agreement, and has taken physical possession or delivery of the vehicle." Therefore, this contract has never been consummated because the customer never took physical possession or delivery of the vehicle. According to DMV, an unwind occurs when "the retail customer (buyer) does not take possession of the vehicle and the vehicle does not leave the dealership, so the transaction is voided."

#### *Procedures in an Unwind*

Commonly referred to by dealers as "voids," the procedure is not as comprehensive as a rollback. The dealer should do the following on these kinds of transactions:

- 1) Mark all copies of the original Application for Registration of New Vehicle (REG 397) "VOID"
- 2) Complete a Statement of Facts (REG 256) stated the circumstances and that the vehicle:
  - Never left the dealer's possession; and
  - Was not operated on the operating copy of Application for Registration of New Vehicle (REG 397).
- 3) Retain all copies of the voided REG 397 and the REG 256 with the dealer's copy at the dealer's primary business location so it is available in case of an audit
  - Note: Do not submit any documents to the DMV when these unwinds occur

The odometer mileage disclosure for unwinds may be disclosed using a Vehicle/Vessel Transfer and Reassignment Form (REG 262).

### Questions?

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## **What's Hot on Hotline? Unlicensed Customers - The Stevie Wonder Principle Revisited** *by Robert Ebin*

We have recently received several calls on Hotline about whether a dealership can sell a vehicle in California to an unlicensed driver. Although this is not a novel topic, it is one that deserves revisiting considering the uptick in calls. Accordingly, this article will discuss the issues dealers must tackle when faced with an unlicensed potential customer, or one with a purported out-of-state or foreign driver's license.

### Unlicensed Drivers

There is no California law that directly prohibits the sale of a vehicle to an unlicensed

individual or an individual with an expired license. A vehicle can legally be sold to any person assuming that the person is not an OFAC match. The transaction must still also comport with the dealer's red flags policy. A quick point about red flags—even if a customer is unlicensed, the customer should still have a valid government issued form of identification for the transaction to proceed (i.e., a passport, ID card, etc.), and an expired driver's license should not be considered a valid form of identification.

With that said, Stevie Wonder, a famous musician who is also famously blind, assuredly does not have a driver's license. And although there is nothing inherently illegal in selling a vehicle to Stevie Wonder, without knowing anything about the law, logically, you would not want him driving the vehicle off the lot (i.e., The Stevie Wonder Principle). Doing so can, in fact, expose the dealer to liability associated with negligent entrustment.

Even though Stevie Wonder is an extreme example, we use him because he is memorable. However, the point should be made that most dealers will not be encountering Stevie Wonder as a customer. Instead, most dealers will come across situations where a customer's license is expired, or perhaps an elderly or disabled customer who can no longer drive wants to purchase a vehicle to be used to drive him or her around.

### **Negligent Entrustment**

California [Vehicle Code § 14606](#) provides:

A person shall not employ, hire, knowingly permit, or authorize any person to drive a motor vehicle owned by him or her or under his or her control upon the highways unless that person is licensed for the appropriate class of vehicle to be driven.

In other words, if you knowingly let an unlicensed driver test drive one of your vehicles, you are breaking the law. However, since the statute specifically uses the terms "owned" and "under his or her control," a perceptive person could astutely point out that the once a sale is finalized and the vehicle is delivered, technically the dealer is neither the owner of the vehicle nor is the vehicle still under the dealer's control. Admittedly, the law is a bit of a head scratcher, as it apparently prohibits the dealer from allowing an unlicensed driver to test drive a vehicle but does not seem to prohibit the dealer from selling and delivering a vehicle to that same unlicensed driver.

With that said, as many of you who have had dealings with members of the California plaintiff's bar would suspect, rest assured that if you sell and deliver a vehicle to an unlicensed driver and that driver hurts someone when driving that vehicle, your dealership will be sued under some negligent entrustment theory. And the costs in trying to defend the dealership in one of these cases could be staggering. As such, adopting a policy of requesting a valid driver's license for both test drives and sales deliveries would benefit the dealer.

### **Delivering the Vehicle in an Unlicensed Driver Sale**

The dealership should only allow a licensed driver to drive the vehicle off the lot. If a vehicle is sold to an unlicensed customer, the dealer should consider obtaining a signed REG 256 Statement of Facts by the customer making the following assertions:

- The customer is not a licensed driver;
- The customer agrees not to operate the vehicle until obtaining a valid driver's license;
- That the customer authorizes the dealership to deliver the vehicle to [NAME OF LICENSED DRIVER].

Furthermore, we recommend that the dealer obtain a copy of the driver's license of the person who is taking delivery of the vehicle and keeping that copy in the deal file.

### **International Driver's Permits and Out-of-State Licenses**

An International Driver's Permit (IDP) is a translation of an official driver's license issued by another government. The IDP itself is neither a valid form of identification nor proof that someone can legally operate a motor vehicle. Accordingly, a customer who only presents an IDP that is not accompanied with an official valid foreign driver's license should be considered, and treated, as an unlicensed driver. You should also be suspicious about a

customer presenting only an IDP as a form of identification, as a government issued photo identification is likely required for OFAC and red flags compliance. It is important to also note that many dealers still ask about an “international driver’s license.” There is no such thing and you should refuse to do business with any customer who tries to pawn one off as a form of identification. For further discussion about IDPs and international driver’s licenses scams, please refer to this [article](#) written by the FTC.

Regarding out-of-state driver’s licenses, California allows non-resident visitors over the age of 18 with a valid driver’s license issued by another state to operate a vehicle in California. However, if that customer has established residency in California, he or she has 10 days from that date to obtain a California driver’s license. [Vehicle Code §§ [12502](#), [12505\(c\)](#)]. Accordingly, when a customer only presents an out-of-state driver’s license, you should inquire why and cross-check the customer’s response against the information you received on the credit application. If, for example, the customer presents an out-of-state license but claims to have lived in California for the past two years, red flags aside, you should also treat the customer as an unlicensed driver.

### **Finance Companies**

Be aware that finance companies tend to impose different obligations on dealers regarding identification and license requirements for customers. Before rolling a deal, you will want to check if it is acceptable to the lender to sell a vehicle to an unlicensed customer.

Anecdotally, we have heard that a few lenders have conveyed that they will not buy a contract unless the customer has a valid driver’s license for fear that the deal may be a straw purchase. Although a dealer must always be wary of straw purchasers, as touched on above, there are many valid reasons why an unlicensed person may want to purchase a vehicle. For example, someone who can no longer drive due to age, disease, or disability (but still has the wherewithal to purchase a vehicle) may want a vehicle to have a driver or family member drive him or her around. I reiterate, there is no California law that prohibits the sale of a vehicle to an unlicensed customer, and a lender that tells you otherwise is mistaken. With that said, it may be a wise business decision to fall into line with a lender’s requirements rather than argue about the correct recitation of California law.

With respect to leases, [Vehicle Code § 14606](#) makes it impermissible to deliver a vehicle to an unlicensed driver. Double check with the lender to see if it will allow a lease to be delivered to a customer with an out-of-state or foreign driver’s license.

### **Minors**

As a reminder, [Vehicle Code § 15500](#) prohibits an unlicensed minor from purchasing or leasing a vehicle. Generally, we advise dealers not to contract with unemancipated minors in any way absent a parent (or someone who is the age of majority) as a co-signer. For a further discussion, please see our article called “Vehicle Sales to Minors” in the [March 2019](#) issue of Transmission. However, in the off chance that such an occasion arises where an unlicensed, unaccompanied minor comes in the showroom, please kindly decline his or her business.

### **Questions?**

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