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Inside this issue:

- CNCDA & KPA Compliance Seminar
- Repossessions - Special Protections for Servicemembers
- What's Hot on the Hotline? Vehicle Salesperson Licenses
- 4 New California Training Courses

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

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CNCDA & KPA Compliance Seminar Series — Register TODAY

As a valued KPA client, we wanted to let you know about an upcoming event that can help your dealership.

The California New Car Dealers Association (CNCDA) has partnered with KPA to offer its members an "Essential Steps to a Compliant Service Department" seminar. For CNCDA membership information, please email [Natalie Perry](mailto:Natalie.Perry).

8 Dates & Locations

- May 8 — Glendale, CA
- May 9 — Sacramento, CA
- May 14 — Ontario, CA
- May 15 — Anaheim, CA
- May 16 — San Diego, CA
- May 21 — Santa Clara, CA
- May 22 — Pleasanton, CA

[Register Now](#)

Repossessions – Special Protections for Servicemembers

By Lisa Singer

In March 2019, the United States Department of Justice (DOJ) entered into an \$80,000 settlement agreement with a subprime auto lender in Orange County, California for illegally repossessing vehicles belonging to servicemembers. According to the DOJ's [press release](#), the DOJ began its investigation after receiving a complaint from Private Starks, a servicemember. Private Starks explained that she notified the auto lender that she would be entering the military the following month. Nevertheless, despite having received her notice, the lender repossessed Private Starks' vehicle the next month, during her first day of military training. Because the lender repossessed the vehicle without first obtaining a court order, the DOJ filed a lawsuit against the lender for violating the Servicemembers Civil Relief Act (SCRA) [[50 US Code § 3901 et seq.](#)]. In its press release, the DOJ noted that the Orange County subprime lender had no policies related to SCRA compliance and had previously illegally repossessed another servicemember's car.

News of this settlement made me wonder how many dealership managers are aware of servicemember financial protections. To prevent your dealership from making the same mistakes made by the Orange County lender, this article will provide an overview of the financial protections provided to servicemembers, with a focus on protections relating to repossessions.

Overview of SCRA and California Financial Protections for Servicemembers

The SCRA is intended to protect servicemembers and their dependents from financial harm that may result from a servicemember's call to active duty. Under [50 US Code § 3952\(a\)](#), if:

- a servicemember enters into a vehicle retail installment or lease contract, and
- makes a deposit or installment payment prior to entering military service,

after the servicemember enters military service, a lienholder is prohibited from:

- rescinding or terminating the contract for any breach occurring before or during that servicemember's military service, or
- repossessing the vehicle for such breach without a court order.

A knowing violation of section [3952](#) is a misdemeanor, punishable by fine or imprisonment for not more than one year, or both. In addition, under [50 US Code § 4042](#), a victim of a violation of the SCRA may bring a civil action to "recover all other appropriate relief, including monetary damages." This section also provides for an award of costs and attorney fees.

California has similar laws, which provide even broader protections to servicemembers during their military service and for 120 days afterwards [see [Military and Veterans Code \(MVC\) §§ 407-409](#)]. Section [407\(a\)](#) provides in part:

"(a) No person who has received...a deposit or installment of the purchase price, or a deposit or installment under the contract, from a person...who, after the date of payment of the deposit or installment, has entered into a period of military service, shall exercise any right or option under that contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment due or for any other breach of its terms occurring prior to or during the period of that military service, or for 120 days thereafter, except by action in a court of competent jurisdiction."

California and federal laws provide numerous other financial protections for servicemembers, such as the right to terminate a vehicle lease [[50 USC § 3955](#)] or reduce the interest rate on a debt to a maximum of 6% [[50 USC § 3937](#)]. But, since most dealers assign their RISCs and lease agreements, and do not maintain accounts (collect monthly payments), the remainder of this article will focus only on protections relating to repossessions. Whether a dealer is unable to assign a servicemember's contract to a lender or is required to buy back a contract from a lender, dealers must be aware of these

protections prior to considering repossession of a servicemember's vehicle.

Who Qualifies for Servicemember Protections?

The SCRA protects "servicemembers" who have entered "military service." Servicemembers include members of the "uniformed services" such as the Army, Navy, Air Force, Marine Corps, Coast Guard, members of the National Guard called to active service and members of the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service. Also protected are members of a reserve component of the armed forces or National Guard who are called to active duty. In addition, in some situations, dependents of covered servicemembers are protected. [[50 USC § 3911](#); [10 USC § 101\(a\)\(5\)](#); Military and Veterans Code §§ [800](#), [803](#), [811](#), [409.5](#)] A servicemember is provided with financial protections when s/he enters military service, which generally means active/full-time duty, including training [[10 USC 101\(d\)](#)].

What is the Process for Obtaining a Court Order?

If a dealership wants to repossess a vehicle sold or leased to a customer entitled to servicemember financial protections, the dealership must first file a complaint in court against the customer. During the court hearing, the judge will select one of the following options described in [MVC § 407\(b\)](#):

- order the repayment of some or all prior installments or deposits, as a condition of terminating the contract and returning the vehicle to the dealer; or
- order a stay of proceedings as the court deems just, unless in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of the military service; or
- make any other disposition of the case as may be equitable to conserve the interests of all parties.

DMV Requirements

Once a vehicle is repossessed, the dealer must comply with the DMV's registration procedures for repossessed vehicles. These procedures are set forth in the DMV's [Vehicle Industry Registration Procedures Manual](#), in sections 11.135, 11.140 and 11.145. In addition to the usual transfer documents, a [Certificate of Repossession](#) form (REG 119) will be required to transfer the vehicle. In January of this year, the DMV revised this form. The new version requires the party signing the form to certify, under penalty of perjury, that "the repossession was conducted in accordance with the requirements of California Military and Veterans Code §§ [407](#), [408](#), [409.1](#) and [409.3](#) and with the requirements of §§ [3952](#), [3953](#) and [3958](#) of Title 50 of the United States Code." If the dealership wrongfully repossessed a vehicle from an active duty servicemember, REG form 119 should serve as a reminder (or notice) of the federal and state protections for servicemembers and hopefully prevent the dealership from processing the DMV paperwork necessary to transfer the repossessed vehicle.

Questions?

If a servicemember has breached a vehicle retail installment or lease contract, we recommend retaining knowledgeable counsel to help navigate the financial protections for servicemembers. Hotline subscribers are welcome to call our Compliance Hotline with any questions: (800) 785-2880 or send an email to questions@autoadvisory.com.

What's Hot on the Hotline? Vehicle Salesperson Licenses

by Robert Ebin

Recently, we have been receiving quite a few calls on the Hotline about whether a person working for a dealership falls under the definition of a salesperson. With rapid advances in technology, dealerships today have the ability to reach out to customers on many different platforms and through more mediums than ever before. At first blush, determining who is and who is not a vehicle salesperson may appear as a relatively simple task. However, because dealers today utilize Business Development Centers (BDCs), call centers, and the like in order to increase vehicle sales, the determination of whether someone is a

salesperson is more difficult than one might think.

The Law

[California Vehicle Code section 11800](#) provides that it is unlawful for any person to act as a vehicle salesperson without having a license or temporary permit from the DMV. Similarly, employment by a dealer of an unlicensed salesperson is strictly prohibited. [[Vehicle Code § 11713\(h\)](#)].

Dealers are required to prominently display unexpired salesperson licenses (or true and exact copies thereof) at the dealership where the vehicle sales occur. [[Vehicle Code §§ 11713\(h\); 11812\(a\)](#)]. Dealers are also required to notify the DMV within 10 days of commencing or terminating a salesperson's employment by mailing [DMV form OL 16A](#) to the DMV's Occupational Licensing Department.

The definition of a vehicle salesperson is very broad. It includes a person who:

1. Is employed as a salesperson by a dealer... or who, under any form of contract, agreement, or arrangement with a dealer, for commission, money, profit, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates, or attempts to negotiate, a sale or exchange of an interest in a vehicle... and/or
2. Induces or attempts to induce any person to buy or exchange an interest in a vehicle required to be registered, and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

[[Vehicle Code § 675\(a\)](#)]. Note the use of the qualitative phrases "attempts to induce" and "expects to receive," which are intended to broaden the definition.

The definition of a salesperson also includes one who manages a dealership or who supervises vehicle salespersons employed by a dealer. [[Vehicle Code § 675\(a\)\(3\)](#)].

Who Is Required to be Licensed as a Salesperson?

In looking at all the different facets of the vehicle salesperson definition, certain employees at a dealership tend to fall squarely within the definition. These would include:

- Salespersons;
- Closers;
- Assistant sales managers;
- F&I managers;
- Sales managers;
- Finance directors;
- General sales managers;
- General managers; and
- Any other dealership employee who supervises salespersons or who participates in the sales process.

Even though a service advisor might not work in the sales department, if s/he sells, or participates in the sale of vehicles, then the employee would also be considered a salesperson.

But what about those who work at a BDC or call center? Or how about a delivery specialist who is there to teach a customer about the features of the new vehicle before driving off the lot? These more recently created positions were not directly contemplated when Vehicle Code section 675 was last amended in 1994, and accordingly, there is no true silver bullet answer.

However, one crucial factor to consider is how that person is compensated. If any compensation paid to them is contingent on the sale of a vehicle (i.e. a commission), then the conservative and recommended approach would be to get them licensed as a vehicle salesperson and for the dealer to follow the display and DMV notification rules.

For example, consider a person who works at a BDC for the dealership where his or her job is customer outreach with the goal of getting the customers into the dealership. S/he is paid a flat hourly wage, plus a bonus every time a customer that s/he contacted ends up purchasing or leasing a vehicle. Since the bonus is contingent on the sale of a vehicle, the employee likely would fall under the section 675(a)(2) definition of a vehicle salesperson,

which requires a license from the DMV.

Even if the BDC employee does not receive a commission, if the employee is not licensed as a salesperson, you must ensure that the employee does not engage in any sort of sales negotiations with customers. We highly recommend that the dealer provide a script for him or her to use when contacting customers, and that the script be reviewed and approved of by counsel to make sure the employee is not “selling.”

Note: if these employees are not licensed salespeople and your dealer pays them a flat fee for each vehicle sold and insists that this is not a commission (and therefore does not trigger the salesperson licensure requirement), such compensation may trigger California’s piece rate pay laws. In this instance, we recommend consulting an employment attorney to discuss further.

And some more food for thought - a practical solution may be for all dealership employees who interact with customers and potentially engage in “selling” to obtain sales licenses. That way, the dealership can pay a commission for their referrals or contributions to vehicle sales and encourage them to keep on selling. The licensing process is not that expensive or resource intensive, and could be great for moral and employee retention.

Bird Dog Fees

Especially now, when the competition is stiff, everyone wants to generate additional foot traffic at their dealerships. Some dealers may generate leads by paying “bird dog,” or referral fees. There is no California law that directly prohibits these fees, and paying money to third parties solely to get people to visit the dealership is generally acceptable. However, as we have seen above, a line is crossed where payment of this fee is contingent on the dealership leasing or selling a vehicle.

For example, it would be impermissible for a dealer to offer a referral fee to a customer who refers a friend or relative who purchases a vehicle. Because of the broad definition of vehicle salesperson, when you pay a bird dog fee to someone who refers a customer to your dealership (and that fee was contingent on a vehicle sale), the recipient of the fee would be considered a vehicle salesperson and would require licensure. California also requires that the salesperson be employed by the dealership paying the fee and prohibits the salesperson from working at any other dealership (subject to the limited exception discussed below).

You can also pay a commission/referral fee to another licensed dealer (including an autobroker pursuant to a bona fide brokering agreement and so long as the fee is properly disclosed on the sale contract).

“Common Controlling Ownership” Exception

Although California law prohibits salespersons from working at multiple dealerships, an exception applies to dealerships having “common controlling ownership.”

[Vehicle Code section 11806\(g\)](#) instructs that dealerships have common controlling ownership when “more than 50% of the ownership interest in each dealer are held by the same person or persons...” Let’s take a quick look at a few examples to illustrate this point:

- *Example 1:* Husband and Wife together own 100% of Dealer 1 and 100% of Dealer 2. Dealers 1 and 2 would fall under common controlling ownership.
- *Example 2:* Father owns 75% of Dealer 1, 75% of Dealer 2, and 25% of Dealer 3. Son owns 25% of Dealer 1. Daughter owns 25% of Dealer 2. GM owns 75% of Dealer 3. In this instance, Dealers 1 and 2 would fall under common controlling ownership, but not Dealer 3.
- *Example 3:* Father owns 50% of Dealer 1 and 50% of Dealer 2. Son owns 50% of Dealer 1. Daughter owns 50% of Dealer 2. In this instance, there is no common controlling ownership between Dealers 1 and 2 because Father only owns 50% of each, and the statute requires “more than 50% ownership interest in each dealer...”

With the increased number of dealership groups today, this exception is more applicable than ever, as dealerships that fall under the common controlling ownership exception are able to share their sales staff. This would also allow for cross-store payment of commissions. Be sure, however, that a true and exact copy of each salesperson’s license

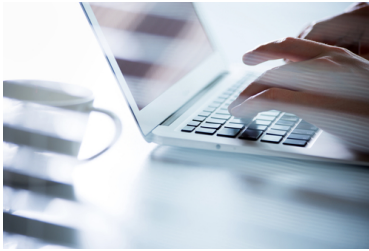
is posted at each store. Also, remember that the DMV must receive a separate completed [DMV form OL 16A](#) for each store at which the salesperson works.

Questions?

If you have any questions regarding this, 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.

KPA Releases New Online Interactive Trainings for California Dealers

By Lisa Singer



I've been providing onsite compliance seminars and legal workshops at dealerships since 1995. Many dealers request annual training, in order to stay abreast of the latest issues alleged by plaintiffs' attorneys and regulatory agencies. Although the training agenda has changed over the years, one thing that hasn't changed is the difficulty of scheduling the training. After all, when is a convenient time for an entire department to stop selling cars in order to

attend a seminar? Never! Plus, it's so unfortunate when days or weeks after the training, there's turnover and new employees need to be trained.

To help alleviate these problems, KPA recently released four new online trainings for California dealers. These trainings address some of the most common compliance issues faced by dealers:

1. Proper Completion of the LAW®553 Retail Installment Sale Contract,
2. Spot Deliveries and the Seller's Right to Cancel,
3. The Single Document Rule and
4. Used Vehicle History Disclosures.

Although these topics may not exactly sound riveting, I must applaud KPA's content development team. They did a truly fantastic job of making the trainings interesting and interactive. Each training addresses compliance issues that are the focus of recent litigation trends and regulatory enforcement activity. Plus, each includes several questions along the way and a knowledge assessment test at the end. The trainings vary in length from approximately 10 to 30 minutes.

Below is a brief description of the new trainings along with some of the items that are covered:

1. Proper Completion of the LAW®553 Retail Installment Sale Contract (RISC)

- Federal Truth-in-Lending Disclosures
- Deferred downpayments
- Backdating
- Disclosure of optional items
- Tire fees and other payments to public officials
- Trade-in vehicles and overallowances

2. Spot Deliveries and the Seller's Right to Cancel

- When is spot delivery appropriate?
- Contractual requirements for financed sales and leases
- Notice of Contract Cancellation (10-day letters)
- Effective communication with customers
- Handling a trade-in
- Rewrites

3. The Single Document Rule (SDR)

- SDR for financed vehicle sales
- SDR for vehicle leases

- Examples of agreements that violate the SDR
- Proper use of the “blank box” on retail installment sales contracts and leases
- Attachment and integration
- Incorporation by reference

4. Used Vehicle History Disclosures

- Prior damage
- Demonstrators
- Rentals
- Service loaners
- Branded vehicles
- Odometer discrepancies
- Open recalls

For information regarding how to access the online trainings, please contact KPA at **866.356.1735**

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