

*Driving
the Future*

Financial Considerations When Buying or Selling a Dealership



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AI'S TAKE ON DETERMINING PURCHASE PRICE OF A DEALERSHIP

By Erin K. Tenner, Esq.
June 2023

AI just passed the California bar exam. Below in black are ChatGPT's responses to a question I asked it and my analysis, in red, of its answer for your reading enjoyment. While it did better on this than I thought it would, I would not let it represent me if I were buying or selling a dealership!

Question: Explain how the purchase price of an auto dealership is calculated **in simple terms:**

ChatGPT:

Certainly! The purchase price of an auto dealership is typically calculated based on several key factors. While the specific details can vary, here are some common elements considered in the calculation:

1. Valuation of Assets: The dealership's assets, such as the inventory of vehicles, equipment, real estate (if owned), and any other valuable assets, are assessed for their worth. This valuation helps determine the base value of the dealership. **It is actually goodwill that helps determine the base value of a dealership. Assets are typically a minor portion of the purchase price compared to goodwill.**
2. Goodwill: Goodwill refers to the intangible value associated with the dealership's reputation, customer base, and relationships with manufacturers or suppliers. It reflects the dealership's brand value and the potential for future business. Goodwill is usually calculated as a percentage of the dealership's revenue or earnings. **Goodwill for a dealership is never calculated as a percent of revenue or earnings of the business as a whole. Rather, it is a multiple of net income (revenue or earnings minus expenses) after adjustments for extraordinary expenses or income.**
3. Financial Performance: The financial performance of the dealership is crucial in determining its value. Factors like revenue, profit margins, and growth trends are considered. A dealership with strong financial performance **may** have a higher purchase price than one with weaker performance. (emphasis added) **"May" is the operative word here. Although generally buyers are willing to pay more for a dealership that is doing well, if a buyer can see room for improvement, they are often willing to pay a higher multiple than if the dealership is performing at its maximum capacity. This is because in reality, buyers typically do not adopt the means and methods of the seller. More often they have their own systems in place which may not always produce better results, especially when purchasing a highly efficient dealership.**

4. Market Conditions: The overall market conditions, including demand for auto dealerships and industry trends, play a role in determining the purchase price. If the market is competitive and there is high demand for dealerships, the price may be higher. **This is generally true. The real estate market can also have an impact. For example, if rents are skyrocketing and a buyer can assume a long-term lease with a fixed rent, they may be willing to pay more for the dealership.**

5. Location: The location of the dealership can also impact its value. Dealerships in prime locations, with good visibility and access to a large customer base, tend to have higher prices compared to those in less desirable areas. **Generally, yes, but this is not always true. While good visibility and access to large customer base will always impact value, being in an auto mall may be more valuable than being on a busy street or freeway because people shop around. If there are a lot of other dealerships around, it provides opportunity to expand the customer base of every dealer in the auto mall.**

6. Negotiations: The purchase price can also be influenced by negotiations between the buyer and the seller. Factors like the buyer's perceived value, potential synergies, and terms of the deal (such as financing arrangements) can affect the final price. **This is mostly true. I have all too often seen buyers agree to sell for far less than what I know they can get. Yet, if they are happy, who am I to make them hold out for more? I have seen clients wait years to get their price, and I have seen them jump on an offer that could have been tripled if they had given it some time.**

It's important to note that calculating the purchase price of an auto dealership can be a complex process, involving financial analysis, market research, and negotiation skills. It's advisable to consult with professionals such as accountants, business brokers or appraisers who specialize in dealership valuations to ensure a fair assessment. **The only people who really specialize in dealership valuations are people who are either appraisers, or who are certified to do valuations. Anyone else is estimating or guessing. The truth is most people don't get appraisals before selling or buying a dealership. Most rely on their attorneys and accountants who have been involved in buy/sells, or on publications that report Blue Sky multiples, to get a feel for what the number should be and use the number they feel comfortable with for blue sky/goodwill.**

My simple answer to how the value of a dealership is calculated is this: Net income is adjusted for extraordinary income and expenses and then multiplied by a goodwill multiplier to determine the goodwill price. Fixed assets, parts and accessories, and new and used vehicle inventory costs, and work in progress cost are added to determine purchase price. Some contracts and prepaid expenses may also be assumed.

This article is not intended to be legal advice with respect to any particular matter. Readers should consult with a corporate transactional attorney before taking any action affecting their interests.

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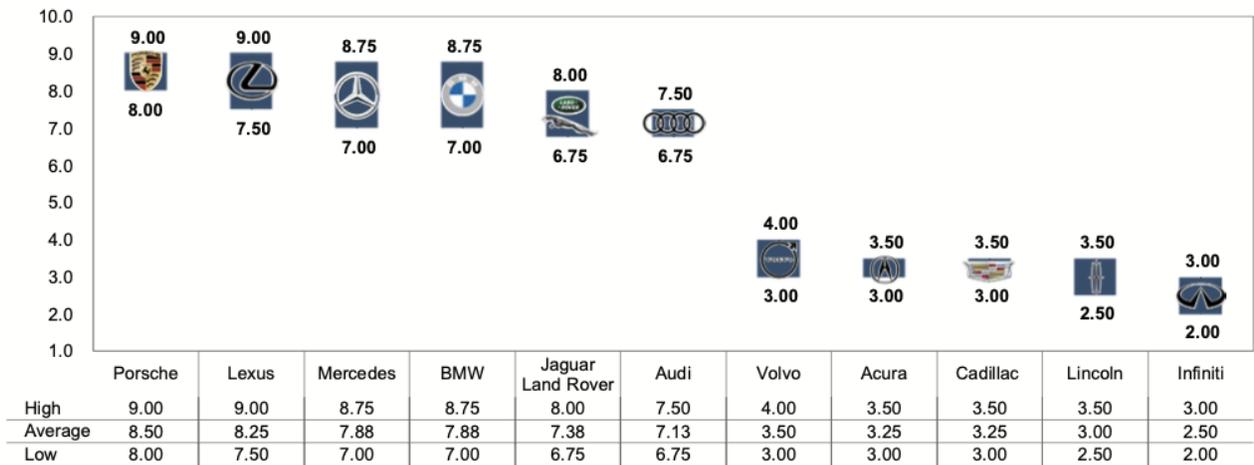
Chart 43 | Kerrigan Advisors' Third Quarter 2023 Blue Sky Multiples & Analysis: Non-Luxury



Franchise	Buyer Demand	Change in Sales* First 9 Mos. 2023 vs. First 9 Mos. 2022	Sales Per Franchise TTM Sep-2023	Buy/Sell Market Share First 9 Mos. 2023	Estimated Days' Supply As of Sep-2023	OEM's Moody's Credit Rating	Multiple Outlook
TOYOTA	High	+2.3%	1,520	4.9%	33	A1	Positive
SUBARU	High	+16.5%	976	2.7%	45	Not Rated	Positive
HONDA	Improving	+31.6%	1,018	4.5%	30	A3	Positive
KIA	High	+16.7%	999	6.1%	35	Baa1	Positive
HYUNDAI	High	+12.7%	947	5.1%	56	Baa1	Steady
CHEVROLET	Average	+18.2%	586	13.1%	57	Baa2	Steady
FORD	Declining	+9.9%	639	14.0%	88	Ba1	Negative
JEEP RAM	Declining	-1.1%	615	12.7%	117	Baa2	Negative
NISSAN	Declining	+28.3%	765	4.0%	70	Baa3	Negative
MAZDA	Improving	+26.6%	648	3.4%	73	Not Rated	Steady
BUICK GMC	Low	+23.0%	370	10.4%	73	Baa2	Steady
VW	Low	+0.2%	471	2.8%	63	A3	Steady

Source: Kerrigan Advisors' Analysis, Automotive News, Moody's, The Banks Report
* Red indicates underperformance of the industry, and green means overperformance of the industry. In the first nine months of 2023, the industry was up 14.1%.

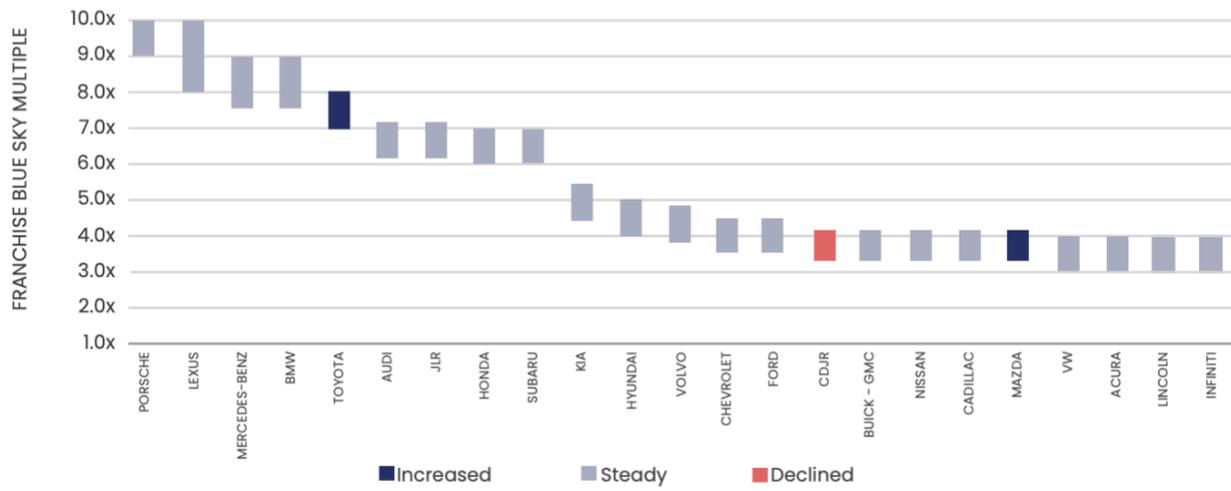
Chart 44 | Kerrigan Advisors' Third Quarter 2023 Blue Sky Multiples & Analysis: Luxury



Franchise	Buyer Demand	Change in Sales* First 9 Mos. 2023 vs. First 9 Mos. 2022	Sales Per Franchise TTM Sep-2023	Buy/Sell Market Share First 9 Mos. 2023	Estimated Days' Supply As of Sep-2023	OEM's Moody's Credit Rating	Multiple Outlook
	High	+14.7%	392	0.6%	74	A3	Positive
	High	+12.9%	1,166	0.4%	46	A1	Positive
	High	-0.3%	914	1.1%	60	A2	Steady
	High	+10.3%	1,017	1.5%	63	A2	Steady
	High	LR +17.9% Jag -8.3%	LR 316 Jag 44	0.2%	LR 54 Jag N/A	Ba3	Steady
	Improving	+26.4%	730	0.9%	71	A3	Steady
	Low	+27.6%	432	0.2%	108	A2	Steady
	Low	+48.1%	510	1.7%	62	A3	Steady
	Improving	+15.9%	266	1.7%	46	Baa2	Steady
	Low	-5.5%	126	1.7%	124	Ba1	Negative
	Low	+47.8%	306	2.3%	113	Baa3	Negative

Source: Kerrigan Advisors' Analysis, Automotive News, Moody's The Banks Report
* Red indicates underperformance of the industry, and green means overperformance of the industry. In the first nine months of 2023, the industry was up 14.1%

HAIG PARTNERS NATIONAL AVERAGE BLUE SKY MULTIPLES



Source: Haig Partners

OVERVIEW OF GM POLICY FOR CHANGES IN OWNERSHIP AND MANAGEMENT (CURRENT AS OF AUGUST 2023)

The purpose of this GM Bulletin 04-09, dated April 23, 2004, is to state GM's written policies as they relate to GM dealership ownership and/or management changes, and this Bulletin supersedes GM Dealer Bulletin 01-17, dated October 1, 2001.

The success of GM Dealers, and ultimately GM itself, rely very heavily on sales performance, customer satisfaction, and ultimately customer acceptance of GM products. Therefore, the quality of the GM Dealer network is critical to the success of GM and the GM Dealer network as a whole. It is for that reason GM has developed these best practices to use in the evaluation of Dealer proposals for changes in ownership and/or management.

The objective of this bulletin is to review these policies and explain both their usage and how they are to be uniformly applied. These policies are designed to assure that GM customers receive quality and convenience in both their sales and service experiences at GM dealers.

A proposed change in ownership or management at a GM dealership requires consideration and weighing of many factors. The weight and importance of these factors vary, depending upon many issues. These include, but are not limited to, the size and expense structure of the dealership opportunity under review. It is impossible to anticipate every issue which may arise in connection with the review of such proposed changes, and factors other than those contained in this Bulletin may have a substantial impact on the outcome of GM's review of a proposal. There is no precise formula or abstract calculation which can be used to make the determination; the application of business judgment is essential.

This Bulletin addresses only the GM policies applicable to proposed changes to the ownership and management structure of GM dealerships. Dealer ownership changes are often accompanied by independent requests for dealership relocation, or proposed new dualling arrangements or other network planning considerations. These requests should be evaluated separately in light of the applicable dealer network plan, and GM policies concerning those issues.

Of course, these policies must be applied consistent with any applicable law.

Dealer Bulletin Number 04-09

Section I. POLICIES APPLICABLE TO ALL PROPOSED OWNERSHIP/MANAGEMENT CHANGES

I.A. CAPITALIZATION AND SOURCE OF FUNDS

MINIMUM INVESTMENT:

When considering the minimum investment required for a dealer change proposal, Dealer's total investment must be equal to or greater than the Net Working Capital Standard, plus the net cost of all fixed (includes land and facilities less depreciation and any applicable mortgages) and other assets.

NET WORKING CAPITAL STANDARD:

The Net Working Capital Standard is established by General Motors as a minimum working capital necessary for each Dealer to adequately conduct dealership operations and should be provided by the owners through capital stock/ownership interest, other investment and earnings. Dealers who have actual net working capital equal to the Standard established should have sufficient net working capital to effectively operate through normal variation in the business cycle, provided its management prudently maximizes the use of those funds.

The Net Working Capital Standard will be computed for an individual dealer change by taking into consideration the factors listed below and will be set forth in the Capital Standard Addendum to the GM Dealer Sales and Service Agreement ("Dealer Agreement"):

1. The Sales and Profit Forecast prepared by the incoming dealer. In preparing the forecast, the incoming dealer must take into consideration and address the incoming dealer's obligation to achieve satisfactory sales performance under the Dealer Agreement;
2. The opportunity available in the dealer's Area of Primary Responsibility;
3. Financial operational requirements of similar dealers based upon applicable composite financial reports; and
4. Outgoing dealer's current standard, if outgoing dealer's operation is:
 - a. Satisfactorily performing its obligations under the Dealer Agreement, and
 - b. The incoming dealer's Dealer Sales and Profit Forecast does not reflect a material change from the satisfactory sales performance achieved by the current dealership operation.

ACTUAL NET WORKING CAPITAL:

The actual dealer net working capital, as defined by General Motors, is equal to the sum of Total Current Assets plus Driver Training Vehicles, Lease and Rental Units and Total Accumulated LIFO Writedown (if applicable) minus Total Liabilities, excluding those listed below.

Those liabilities which are not subtracted are:

1. Long term notes payable which are qualified long-term debt. Qualified long-term debt is defined by the following criteria:
 - a. The note must be payable to an owner of Dealer,
 - b. Principle payments must be restricted to be paid only from profits, and,
 - c. The amount of qualified long-term debt that can be excluded is limited to 50% of the Net Working Capital Standard.

This exception is made because an owner would be less inclined to collect on a note payable at maturity than an outside creditor when payment of such a note may place the dealership in financial jeopardy.

2. Long term notes payable (mortgages) secured by real property.

This exception is made because dealers are not required to own land and buildings that are used for dealership operations. Many dealers, however, elect to acquire and hold title to all or a portion of such real property, thereby investing a portion of the total equity capital in land and buildings that would otherwise be available for working capital purposes.

MINIMUM OWNERSHIP REQUIRED FOR DEALER OPERATOR:

To qualify to be newly named in Paragraph Third as a Dealer Operator, an individual must personally and directly own an unencumbered voting ownership interest of at least 15% of the Dealer. For the purposes of this document, "unencumbered" means that the Dealer Operator's ownership interest, whether it be in the form of stock shares or other ownership rights, not be encumbered by any legal rights or restrictions by others and may not be borrowed funds.

UNENCUMBERED FUNDS:

It is a General Motors policy that the proposed owners of the dealership will make available sufficient unencumbered funds to enable the proposed dealership to meet a minimum of 100% of the Net Working Capital Standard.

(Actual equity and/or borrowed capital in excess of the Net Working Capital Standard amount may be required to provide funds for fixed and other assets.)

The exceptions to this policy, which may be considered by General Motors, are:

1. In the event the applicant(s) do not have sufficient unencumbered funds to provide for the minimum investment, including the total Net Working Capital requirements, General Motors may consider a proposal involving corporate borrowing as a portion of their investment, provided:

a. Long Term Debt of the Dealer Company may not exceed 42.5% of the Total Capital Investment.

TOTAL CAPITAL INVESTMENT equals the sum of the proposed Dealer Company's Net Worth (including LIFO, if applicable), and Long-Term Debt.

b. The total of borrowed and unencumbered funds must equal or exceed the sum of the Net Working Capital Standard plus the cost of fixed and other assets;

c. Repayment obligations must be reasonable and in line with anticipated profit results from Sales and Profit Forecast; and

d. Stock or ownership rights of Dealer Company cannot be pledged or surrendered to obtain borrowed funds.

2. Personal borrowing used to obtain investment funds:

- a. Must be secured by personal assets outside of investment in the dealership and be in an appropriate relationship to these assets. If the loan is unsecured, it should not exceed 50% of the value of the applicant's total net worth outside the investment in the dealership;
- b. Repayment of principal and interest is reasonable and in line with applicant's resources including anticipated income from the dealership; and
- c. Dealership assets, ownership rights or stock may not be pledged or surrendered as a security for the loan.

3. Qualified Long Term Debt is money borrowed by the Dealer Company from an owner/investor of the Dealer Company, and the loan is to be repaid by the Dealer Company from Dealer Company profits. The Dealer Company's borrowing (long term debt) permitted under Paragraph 1 may be considered all or partially "qualified" if it complies with the following criteria, which are also described in the Capital Standard Addendum:

- a. The note must be payable to an owner of the Dealer Company;
- b. Principle payments must be restricted to profits; and
- c. The qualified long term debt may not exceed 50% of the Net Working Capital Standard.

SALES AND PROFIT FORECAST:

A detailed Sales and Profit Forecast must be prepared in support of a proposal and must:

1. Be completed by the proposed Dealer Operator;
2. Be reasonable and attainable;
3. Reflect any changes contemplated by the proposed Dealer Operator in dealership operations; and
4. Take into consideration and address the incoming dealer's obligation to achieve satisfactory sales performance under the Dealer Agreement.

PRO FORMA BALANCE SHEET:

A specific pro-forma balance sheet must be prepared in support of a proposal and must:

1. Be completed by the proposed Dealer Operator.
2. Accurately reflect the "first day" condition of the operation's financial structure.
3. Reflect the net working capital requirements and meet 100% of the expected capital needs of the operation as contemplated by the Sales and Profit Forecast.

I.B. PERSONAL BACKGROUND AND EXPERIENCE

Personal background requirements for dealer candidates are set forth in the Standard Provisions of the Dealer Agreement. The requirements are specified in Article 2. Dealer Operator.

A proposed GM Dealer Operator must have experience or educational background that demonstrates he/she:

1. Is competent in business;
2. Is an effective manager.
3. Has a caring attitude toward customers.
4. Has a successful record as a merchandiser of automotive products and services, or has otherwise demonstrated the ability to successfully manage a dealership.

The experience necessary may vary with the market opportunity and potential available to a dealer location.

Applicants for a Dealer Operator, successor Dealer Operator, financial investor or Executive Manager of a GM dealership must have established a personal and business reputation and background that will not negatively impact the reputation of the dealership company, or GM. All applicants will need to complete an application regardless of their status as investor in any dealer company.

I.C. CRIMINAL OR CIVIL LEGAL PROCEEDINGS

Because the reputation of GM and the dealer network is dependent upon the personal qualifications of GM dealership owners and operators, GM has set the following policies relative to criminal or civil legal proceedings involving the proposed owners or management of a GM dealership. For purposes of this section, an "Affiliated Business Entity" is any corporation, partnership or other business entity where a proposed Dealer Operator, successor Dealer Operator, financial investor or Executive Manager is or was a majority owner, officer or principal manager.

1. General Motors will not approve any proposed Dealer Operator, successor Dealer Operator, financial investor or Executive Manager who has been convicted or plead guilty in a court of original jurisdiction of any felony, or who has pending against him/her at the time of his/her application any charges or indictments that could result in a felony conviction. General Motors may consider exceptions to this policy in its sole business judgment where the applicant has received a formal pardon and/or expungement of any such felony conviction or plea.
2. General Motors will not approve any proposed Dealer Operator, successor Dealer Operator, financial investor or Executive Manager if an Affiliated Business Entity has committed any crime that resulted in a felony conviction against the Affiliated Business Entity, or a felony charge or indictment that remains pending at the time of the application. General Motors may consider exceptions to this policy in its sole business judgment where the Affiliated Business Entity has received a formal pardon and/or expungement of any such felony conviction or plea.
3. If a proposed Dealer Operator, successor Dealer Operator, financial investor, Executive Manager or Affiliated Business Entity (i) has been convicted or found guilty of a misdemeanor or an unfair or deceptive business practice, whether civil or criminal in nature, (ii) has entered into a settlement arising from such charges, or (iii) has pending against them at the time of the application such charges or allegations, General Motors will request an explanation from the applicant and will review other relevant matters, including but not limited to the findings of any applicable state or federal authority. If the facts are such that GM determines, in its sole business judgment, that the matter will not adversely affect the reputation of GM, GM's dealer

network, or the relationship between GM and the proposed dealership company, then GM may elect to approve the applicant's proposal.

I.D. SPECIAL OWNERSHIP (TRUST/HOLDING COMPANY)

Occasionally, General Motors receives requests from a Dealer requesting authorization to have some of the ownership interest in the dealer entity held by or assigned or transferred to a trust or holding company. The holding of ownership interest in the dealer entity by such groups could create operating problems and other difficulties in the dealer company's business operations, due in part to the conflict between trustees in case of a trust or holding company owners not fully familiar with the automobile business and desiring maximum short term returns as opposed to maintenance of long term gains and objectives. Such types of ownership would, in many instances, be inconsistent with the intent and purpose of the successor and replacement dealer provisions of the Dealer Agreement.

For reasons such as these, it is General Motors operating policy to review each proposal involving a transfer of ownership interest into a trust or a holding company on a case-by-case basis. In the case of a Trust, General Motors will evaluate the proposed Trustee consistent with Section B above. In addition, General Motors will evaluate the proposed Beneficiaries for consistency with the successor and replacement dealer provisions of the Dealer Agreement, taking into consideration the age and relationship of the beneficiary/ies to the Dealer Operator and/or Grantor of the Trust.

Trust: Neither the actual nor the beneficial ownership interests in the dealership held by the trust or any other owners, will be changed without the express and prior specific written approval of GM. GM's approval will be

evidenced solely by means of a replacement "Dealer Statement of Ownership" and a special trust letter of understanding duly signed on behalf of, and accepted by, GM. Once a transfer of shares to a trust has been approved by GM, the following events shall require additional prior written approval by GM:

1. The trust transfers the shares to the current beneficiary/(ies) of the trust or to anyone other than the current beneficiary/(ies).
2. The trust terminates and the shares are transferred to the current beneficiary/(ies) of the trust or to anyone other than the current beneficiary/(ies).
3. The trust is amended to change the beneficiary/(ies) of the trust.
4. The trust is amended to change the trustee/(s) of the trust.

Holding Company: The composition of ownership interest in the holding company cannot be changed without the express and prior written approval of GM. GM's approval will be evidenced solely by means of a replacement "Dealer Statement of Ownership" and a special holding company letter of understanding duly signed by the dealer company and accepted by GM.

It is further provided that these requirements, along with the provisions of the Dealer Agreement pertaining to successor and replacement dealerships and termination, be made clear to all proposed holding company investor(s) or trustee(s) of a proposed trust.

I.E. OTHER CONSIDERATIONS

When reviewing applications for a proposed Dealer Operator, successor Dealer Operator, financial investor or Executive Manager, General Motors will also give consideration to the following additional items:

CUSTOMER NEEDS

The proposal must be responsive to the fundamental needs of GM customers, particularly their need for:

1. Convenient and accessible location.
2. Adequately sized and structured facilities.
3. Prompt and effective sales and service.
4. Promoting and preserving competition.

GENERAL MOTORS NEEDS

The following address certain specific needs at any particular dealership location and should be balanced against the unique qualifications of the proposed candidate(s) and these may include:

1. Customer satisfaction.
2. Effective sales performance.
3. Facility appearance that promotes and preserves the image of the General Motors Brand(s).
4. Land and Facilities (size, location and channel strategy).
5. Maintain uninterrupted representation.
6. Diversity considerations

I.F. MISREPRESENTATION

The relationship between General Motors and its dealers requires full and complete disclosure in connection with a variety of matters. Therefore, any false, incorrect or misleading statement or omission, whether intentional or unintentional, in the information submitted to GM by a proposed Dealer Operator, successor Dealer Operator, financial investor or Executive Manager in connection with an Application for a Dealer Agreement or any related application or proposal package materials shall be grounds for rejection of the application; or for termination of any subsequently executed Dealer Agreement.

I.G. DEALER SALES AND SERVICE AGREEMENT ("DEALER AGREEMENT")

GM will not approve any proposed Dealer Operator, successor Dealer Operator, financial investor or Executive Manager unless the proposed dealership corporation can demonstrate it is presently able to fulfill all of the terms of, and meet all the requirements of, the then existing standard Dealer Agreement for GM.

Section II. POLICIES FOR MULTIPLE DEALER INVESTORS/OPERATORS

In addition to the requirements outlined in Section I, the following additional policies apply to proposed changes in GM dealership ownership or management involving a Multiple Dealer Investor or Multiple Dealer Operator as defined below:

II.A. DEFINITIONS

A Multiple Dealer Investor (MDI) is a person who holds, or is applying to hold, an ownership interest in more than one GM dealership.

A Multiple Dealer Operator (MDO) is a person who has, or is applying to have, an ownership interest in more than one GM dealership and who is named, or is applying to be named, as Dealer Operator in more than one GM dealership.

II.B. NUMBER OF DEALERSHIPS

General Motors in its sole business judgment may refuse to approve an MDI/MDO if it would result in the proposed MDI/MDO owning or having an investment in an unreasonable number of GM dealerships.

II.C. MULTIPLE DEALER OPERATOR

An investor may apply to be named as Dealer Operator at any GM dealership at which the investor owns a minimum 15% of the record and/or beneficial ownership of the Dealer Company. Should the investor wish to be named as Dealer Operator at more than one dealership location (MDO), execution of a Multiple Dealer Operator Addendum, including the designation of a qualified Executive Manager(s), is required at all dealership locations, with the following exception: The MDO has the option of running the day-to-day operations of one of his/her GM dealerships or designating separate Executive Managers at all of his/her GM dealerships.

MDO applicants must comply with selection criteria applicable to all Dealer Operator candidates, and must be able to meet all of the performance, operational and other requirements set forth in the Dealer Agreement.

It is strongly suggested that prospective Multiple Dealer Operators and Investors establish adequate successor arrangements at all dealerships in which they are involved. These arrangements will serve to facilitate any dealership transition in the event of death or incapacity of the Multiple Dealer Operator.

II.D. EXECUTIVE MANAGER CRITERIA

Executive Manager applications must be submitted for review as part of a Multiple Dealer Operator proposal. Each Executive Manager must:

1. Have and demonstrate sufficient experience and competence to meet all of the qualifications of a Dealer Operator other than the personal financial and dealership investment qualifications.

2. Exercise full managerial authority and responsibility for the dealership operations on a day-to-day basis.
3. Have permanent residency in the APR of the dealership location and devote full time to operating the GM dealership.
4. An executive manager may only have responsibility for one dealership. Any change in an Executive Manager must have the prior approval of GM. Such approval will be reflected by the execution of a new and superseding Multiple Dealer Operator Addendum.

II.E. DEALER SALES AND SERVICE AGREEMENTS REQUIREMENTS

The Dealer Agreement establishes requirements regarding sales performance, customer satisfaction and working capital. A dealer is achieving satisfactory performance of its sales obligations if its Retail Sales Index (“RSI”) is equal or greater than 100. For customer satisfaction, Dealer agrees to conduct its dealership operations in a manner which will promote customer satisfaction with the purchase and ownership experience. In assessing customer satisfaction performance, GM compares the dealer’s performance to the average performance of other same line-make dealers in the Region. A dealer is achieving satisfactory performance of its customer satisfaction obligations if its PDS and SSS ratings are at or above the region averages. The Dealer Agreement also establishes the minimum net working capital requirement for each dealership that must be maintained, and each dealership is expected to operate its dealership operations profitably.

If an applicant is proposing to be named as Dealer Operator and/or an investor in a GM dealership, GM will review the performance of all existing GM dealerships where the candidate is a dealer operator and/or investor. GM will review all the dealerships’ performance with respect to sales, customer satisfaction, net working capital, and profitability.

If one or more of the existing GM dealerships are not meeting all of the standards under the Dealer Agreement as set forth above, GM will exercise its business judgment in deciding whether to approve the applicant. In making this business judgment, GM will make an assessment of the applicant’s dealership portfolio performance. This portfolio assessment will include a review of the sales performance, CSI performance, working capital, and profitability of these dealerships, as well as an assessment of the overall portfolio performance.

In assessing a proposal, GM also will consider any other relevant considerations. These relevant considerations may include, for example, the trend in dealership performance for other GM dealerships, length of time of the applicant’s ownership and/or performance as dealer operator in other GM dealerships, GM’s dealer network plan, the proposed alignment of line-makes, any circumstances beyond the control of the applicant concerning the performance of other GM dealerships, and diversity considerations. Where applicable, GM may also take into consideration the performance of any non- GM dealerships.

NON-GM DUAL POLICY STATEMENT DEALER BULLETIN NUMBER 01-19

The purpose of this Bulletin is to reiterate GM's policy that non-GM products should not be sold or serviced at GM dealerships, and to request your support and cooperation in adhering to this important policy. GM brands are not commodities, and both dealers and GM must be focused on the various elements necessary to increase customer awareness of our products in order to grow our brands. This policy is a very high priority for us and it's important that we take the opportunity to periodically review this important matter with you.

It has been our experience that when a GM dealer assumes responsibility of representing non-GM product lines within a GM facility, the results are frequently diminished sales and service performance for General Motors. Obviously, any decision that results in a decrease in GM sales or service would not be a sound decision, and for obvious reasons less than effective representation is unacceptable.

General Motors has made a significant investment in its brands, and our ability to continue to support our brand building efforts depends in large part on your commitment to GM products. In this increasingly competitive market, a focus on GM products is a critical factor in accomplishing our collective objective to profitably grow our business. The key to our success is working together, and to avoid confrontation. However, GM will take the necessary steps to maintain its non-GM Dual Policy.

Effective October 1, 2001, GM will only offer the benefits/privileges set forth in the attachment to this bulletin to those GM dealers whose conduct is consistent with the policy set forth in this letter. Therefore, any GM dealer that has added or adds a non-GM line-make to its GM Dealership Premises without GM's written approval will not be eligible for such benefits/privileges. Any GM dealer that has a non-GM line-make approved by GM would remain eligible for such benefits/privileges, but we would like to work with those dealers in accomplishing GM's Dealer Network Plan for that location. This position is intended to underscore the importance of our unauthorized non-GM dualling policy. Any GM dealer that wishes to represent another manufacturer is advised to establish a distinct dealer company for any non-GM brands, and to locate those brands independent of the GM Dealership Premises.

GM remains committed to working with its dealers in providing the most effective sales and service representation for GM customers, and we share with you the desire to profitably grow market share for GM dealers and General Motors. We are listening to dealer concerns, and we are committed to being responsive. We need your support of our programs and policies to make our strategy successful. We trust you understand our position on this matter, and request your support. If you have any further questions, please contact your Zone Manager.



Buyers Beware: Signing Your Dealer Agreement Without Reading It Could Be Costly

By Erin K. Tenner, Esq.

If you are not in the habit of reading documents the Manufacturer puts in front of you to sign, it is time you started. Whether you are signing new documents because you are buying a dealership, or renewing your Dealer Sales and Service Agreement, what you find if you read it carefully may surprise you. Manufacturers have been making more revisions to their Dealer Sales and Service Agreements that erode dealer rights in the last five years than in the prior 25 years combined.

HERE'S WHY: Dealers are unwittingly agreeing to things like allowing the manufacturer to charge their account for money owed to the manufacturer by the selling dealer. This can cost a dealer hundreds of thousands of dollars. Make sure you give any documents a manufacturer asks you to sign to your attorney to review before you sign if you don't want to read it or don't understand it. A manufacturer cannot, in many states, refuse to approve a buyer because the buyer will not agree to unreasonable agreements or unreasonable provisions contained in a Dealer Sales and Service Agreement.

PROTECTIVE STATUTES. California makes it unlawful for manufacturers to terminate a franchise without good cause or to fail to approve a buyer without good cause. Poor sales performance or failure to sign a new dealer agreement are NOT typically good cause for termination. In addition, refusal to agree to unreasonable terms in a dealer sales and service agreement is not good cause for refusing to approve a buyer.

MORE EXAMPLES OF PROBLEM PROVISIONS. Here is a sampling of some of the provisions I have seen manufacturers attempt to put into Dealer Sales and Service Agreements for the first time in the last five years:

1. A provision stating the dealer agrees to include in their purchase and sale agreement, if they sell, that the buyer will agree to all of the manufacturer's current dealer agreement provisions as a condition of the manufacturer's obligation to approve the buyer to whom a seller has agreed to sell their dealership. This provision is prohibited by California and many other state's laws that provide that a manufacturer cannot unreasonably withhold consent to a buyer. If a seller agrees to a provision like this one, the seller will have given the manufacturer leverage against a buyer. Why? Because the seller, not the buyer, has the right to object when a manufacturer unreasonably withholds consent to the transfer of the dealership assets to a

buyer. If the seller has agreed it will not object, the buyer has no leverage to negotiate terms it can live with. This makes the dealership less valuable because it narrows the pool of buyers to those who will agree to unreasonable terms and because the unreasonable terms could affect profitability.

2. A provision stating that the manufacturer's sales performance standards are reasonable. They often are not reasonable and agreeing they are without being able to understand how to meet them is a huge mistake. This is the manufacturer's attempt to circumvent recent case law protecting dealers from incomprehensible and unreasonable performance standards.
3. A provision giving the manufacturer or its assignee the right to perform an environmental inspection for purposes of determining whether it will exercise its right of first refusal. This provision gives the manufacturer the right to exercise their right of first refusal and then walk away leaving the seller without a buyer unless the original buyer wants to step back in after the manufacturer has essentially queered the deal.
4. A provision allowing the manufacturer to exercise their right of first refusal with respect to only one franchise, and not all if more than one is included in the purchase agreement – or requiring a separate purchase agreement for each franchise. Under California law, and in some other states, if the manufacturer exercises the right of first refusal, it must perform all the obligations of the original buyer under the purchase agreement so that the seller does not lose the benefit of their bargain with the original buyer.

HOW DO YOU GET A MANUFACTURER TO DO WHAT YOU WANT THEM TO DO? It's easy. California, like many other states, has laws that protect dealers. An attorney can write a kind, but firm, letter to the manufacturer educating them. Manufacturers are dealing with 50 states' laws. It is easy to think they know the laws of all states, but they generally don't. They need to be educated. When they get such a letter, they go to their legal department, which checks the letter for accuracy. If it is accurate, they will typically back off.

WHY THIS WORKS. California law protects dealers from termination of their franchise by a manufacturer when the dealer agreement expires. If a new agreement is not signed, the old agreement just continues. It cannot be terminated without giving the dealer the opportunity to be heard before the state Administrative Agency, the New Motor Vehicle Board. The New Motor Vehicle Board determines, in California, what is reasonable grounds for termination, not the manufacturer. Dealers win before the New Motor Vehicle Board more often than not. Refusal to sign a new dealer agreement is not reasonable grounds for termination in California. The dealers who are in the best position to fight the manufacturer when their dealer agreement becomes a topic of dispute are the dealers who have not agreed to the new terms when they hurt the dealer. Your franchise is a valuable asset. Protect it.

OTHER ADVERSE CONSEQUENCES OF JUST AGREEING: Many of these provisions could adversely affect you if you try to sell your dealership. In addition to the example above, manufacturers are notorious for asking dealers to sign agreements to expand their facilities. Many states, including California, have laws that limit the frequency with which manufacturers can require expansion or remodeling of a facility. If you are going to agree in writing to remodel or expand but you don't really want to, check into your legal rights. You may be surprised. If you are going to sign the agreement, make sure the agreement is specific and gives you plenty of time to complete the expansion. Once you have agreed to it in writing you are likely going to be bound to complete it. Manufacturers often give extensions if

good cause for delays or reasonable efforts to move forward can be shown, but it gives the manufacturer leverage and takes leverage from the dealer to be in this position. The manufacturer will also ask any buyer to complete the construction you agreed to complete and didn't complete.

Here's another tip: Getting the manufacturer to sign the building plans once they have agreed to them may save you a lot of money. Manufacturers are notorious for changing their minds and revoking approval after the dealer has spent thousands of dollars and many hours getting approvals and pulling permits. If you have a written approval of your plans and a letter went out to the manufacturer telling them you are moving forward in reliance on their approval, you have the ammunition to shift the leverage in your favor so you don't have to agree to unreasonable demands.

Getting your attorney involved can save you hundreds of thousands of dollars.

This article is not intended to be legal advice with respect to any particular matter. Readers should consult with a corporate transactional attorney before taking any action affecting their interests.

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LAWS RESTRICTING FACILITY UPGRADE REQUIREMENTS BY STATE

Alabama

Governing Statutes

Alabama Code Title 8. 20

Renovation

Must be reasonable

Alaska

Governing Statutes

AS 45.25.010 to 45.25.990

Renovation

Must be reasonable

Arizona

Governing Statutes

ARS 28 Ch. 10 Art. 5 4451-4463

Renovation

Reasonable and justifiable in light of current and reasonably foreseeable economic conditions... or unless the alteration is reasonably required to effectively display and service a vehicle based on the technology of the vehicle.

Arkansas

Governing Statutes

Arkansas Motor Vehicle Commission Act Arkansas Code § 23-112.101-107 and 401-806

Renovation

Incentive penalties allowed for refusing renovation after seven years.

California

Renovation

OEM may not:

"(b) Require a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including

economic conditions. In any proceeding in which the reasonableness of a facility or capital requirement is an issue, the manufacturer or distributor shall have the burden of proof.

(c) Require, by contract or otherwise, a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions and advancements in vehicular technology.

This subdivision does not limit the obligation of a dealer to comply with any applicable health or safety laws.

(1) A required facility alteration, expansion, or addition shall not be deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor when goods or services of substantially similar kind, quality, and general design concept are available from another vendor.

This paragraph shall not apply to a specific good or service if the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate provides the dealer with a lump-sum payment or series of payments toward a substantial portion of the cost of that good or service, if the payment is intended solely to reimburse the dealer for the purchase of the specified good or service.

(2) In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof.

(3)(A) A required facility alteration, expansion, or addition shall not be deemed reasonable if the facility has been modified within the last 10 years at a cost of more than two hundred fifty thousand dollars (\$250,000), and the modification was required, or was made for the purposes of complying with a franchisor's brand image program, and was approved by the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate.

(B) This paragraph does not apply to a specific facility alteration, expansion, or addition that is necessary to enable the sale or service of zero-emission or near-zero-emission vehicles, as defined in Section 44258 of the Health and Safety Code.

(C) This paragraph does not apply to a specific facility alteration, expansion, or addition involving the exercise of the franchisor's trademark rights that is necessary to erect or maintain signs or to the use of any trademark.

(D) This paragraph does not apply to a specific facility alteration, expansion, or addition that is necessary to comply with any applicable health or safety laws.

(E) This paragraph does not apply to the installation of specialized equipment that is necessary to service a vehicle offered by a franchisor and available for sale by the franchisee.

(F) This paragraph does not apply to voluntary written agreements signed by both parties between a franchisee and a manufacturer, manufacturer branch, distributor, distributor branch, or affiliate."

Colorado

Governing Statutes

Colorado Powersports Vehicles, Colo. Rev. Stat. 12-6-501-33

Renovation

(Updated, July 2017) OEM may not "require, coerce, or attempt to coerce a powersports dealer to substantially alter a facility or premises if the facility or premises has been altered within the last 10 years at a cost of more than \$25,000, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative; except that this paragraph (w) does not apply to improvements made to comply with health or safety laws or to accommodate the technology requirements necessary to sell or service a line-make" or technological improvements to support electric or other new technologies.

Connecticut

Governing Statutes

Conn. Gen. Stat. Title 42, Chap. 739, §42-133r to §42-133ee, Conn. Gen. Stat. Title 42, Chap. 743b, §42-179(d)

Renovation

Reasonable and justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, availability of additional vehicle allocation and such dealer's market for the sale of vehicles.

Delaware

Governing Statutes

Title 6, Ch. 49

Renovation

OEM may not "require, coerce or attempt to coerce a dealer to substantially alter a facility or premises if the facility or premises has been altered within the last 7 years at a cost of more than \$250,000 and the alteration was required and approved by the manufacturer, except for improvements made to comply with health or safety laws, to accommodate the technology requirements necessary to sell or to service a motor vehicle or for alterations made pursuant to voluntary agreements between a dealer and a manufacturer where separate and valuable consideration has been offered and accepted."

Florida

Governing Statutes

FS 320

Renovation

(Updated, June 28, 2017) If an applicant or licensee establishes a program, standard or policy, or in any manner offers a bonus, incentive, rebate, or other benefit to a motor vehicle dealer which is based, in whole or in part, on the construction of new sales or service facilities or the remodeling, improvement, renovation, expansion, replacement, or other alteration of the motor vehicle dealer's existing sales or service facilities, including installation of signs or other image elements, a motor vehicle dealer who completes such construction, alteration or installation in reliance upon such program, standard, policy, bonus, incentive, rebate or other benefit is deemed to be in full compliance with the applicant's or licensee's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs and image elements for 10 years after such completion.

Hawaii

Governing Statutes

HRS 437.51-58

Renovation

OEM may not "require a dealer to construct, renovate, or make substantial alterations to the dealer's facilities unless the manufacturer or distributor can demonstrate that such construction, renovation, or alteration requirements are reasonable and justifiable based on reasonable business consideration, including current and reasonably foreseeable projections of economic conditions existing in the automotive industry at the time such action would be required of the dealer."

Idaho

Governing Statutes

Title 49 ch. 16

Renovation

OEM may not require dealer to "expand facilities without a written guarantee of a sufficient supply of new vehicles so as to justify an expansion, in light of the market and economic conditions; or make significant modifications to an existing dealership or to construct a new vehicle dealership facility without providing a written guarantee of a sufficient supply of new vehicles so as to justify modification or construction, in light of the market and economic conditions."

Indiana

Governing Statutes

Public Law 167, 174; IC 23-2-2.7

Renovation

OEM may not force renovations if facilities are adequate.

Kansas

Governing Statutes

KSA 8.2401-1

Renovation

OEM may not require dealers to "remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles;" may not require separate facilities for another brand.

Michigan

Governing Statutes

Mich. Comp. Laws Chap. §445.1561 to §445.1583

Renovation

OEM may not "change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if changing the location or making the alterations is unreasonable."

Minnesota

Governing Statutes

Commercial Regulations Ch. 80E.1-18

Renovation

OEM may not require "require a dealer to pay an extra fee, or remodel, renovate, or recondition the dealer's existing facilities, or purchase unreasonable advertising displays, training, tools, or other materials, or to require the dealer to establish exclusive facilities or dedicated personnel as a prerequisite to receiving a model or a series of vehicles."

Montana

Governing Statutes

Montana Code Annotated 61-4-150-310 Montana Cancelled Dealership Repurchase Requirements, Mont. Code Ann. § 30-11-701-13; Montana Sales and Distribution of Motor Vehicles Act, Mont. Code Ann. § 61-4-132-50; Montana Motorsports Manufacturer Unfair Trade Practices, Mont. Code Ann. § 30-14-2501-03.

Renovation

OEM may not require "a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles."

Nebraska

Governing Statutes

Motor Vehicle Industry Regulation Act, Nebraska Statutes 60-1401 through 60-1440

Renovation

OEM may not "change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable, including unreasonably requiring a franchisee to establish, maintain, or continue exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business considerations."

Nevada

Governing Statutes

NRS 482.36311-36425

Renovation

"A manufacturer shall not require a dealer:

- (a) To alter substantially an existing facility of the dealer; or
- (b) To construct a new facility, for any new vehicles that are handled by the dealer unless the alteration or new construction constitutes a reasonable facility requirement in accordance with the franchise agreement."

New Hampshire

Governing Statutes

NHRS Title 31 Chapter 357-C

Renovation

The manufacturer or distributor shall have the burden of proving that changes, alterations, remodeling, or replacement to a motor vehicle dealer's sales or service facilities or signage are reasonable and justifiable under this subparagraph." Generally 15 years unless the OEM is paying 65 percent or more of the cost.

North Carolina

Governing Statutes

Motor Vehicle Dealers and Manufacturers Licensing Law: G.S. 20-286 (8a)

Renovation

OEM may not "require, coerce, or attempt to coerce any new motor vehicle dealer in this State to

change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.... Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that NC General Statutes - Chapter 20 Article 12 41 this assistance, encouragement, or rewards are not determined on a per vehicle basis."

Ohio

Governing Statutes

Title 45, Chapter 17.43-99 New motor vehicle franchise agreements-revise law; on-and off road

Renovation

"Require, coerce, or attempt to coerce any new motor vehicle dealer in this state to change the location of the dealership, or to make any substantial alterations to the dealership premises or facilities, if any of the following apply:

(i) The proposed change or alteration would be unreasonable in light of the current market and economic conditions.

(ii) The change or alteration is proposed without a written estimation of a sufficient supply of new motor vehicles so as to justify the location change or alterations in light of the current market and economic conditions .

(iii) The change or alteration is proposed within seven years after the dealership premises was constructed or altered, as approved by the franchisor unless the change or alteration is necessary to comply with a health or safety law, or a technology requirement that is essential to the sale or service of a motor vehicle that the new motor vehicle dealer is authorized by the franchisor to sell or service. "

Oregon

Governing Statutes

OS 650.120-170

Renovation

7 years, more frequently under some circumstances. Except as provided in paragraph (b) of this subsection, a manufacturer, distributor or importer may not require a dealer to construct a new dealer facility or materially alter or remodel an existing dealer facility within seven years after the date on which the dealer previously constructed, materially altered or remodeled the existing dealer facility if the existing dealer facility complies with the manufacturer's, distributor's or importer's approved brand image standards or plans that existed at the time the dealer constructed, materially altered or remodeled the existing dealer facility.

Pennsylvania

Governing Statutes

PL 306, No. 84 CL.63;

Renovation

"Expand, construct or significantly modify facilities without assurances that the manufacturer or distributor will provide a reasonable supply of new vehicles within a reasonable time so as to justify such an expansion in light of the market and economic conditions. (8.1) Unreasonably expand, construct or significantly modify facilities in light of the market and economic conditions or require a separate facility for the sale or service of a line-make of a new vehicle if the market and economic conditions do not clearly justify the separate facility."

Rhode Island

Governing Statutes

Rhode Island Fair Dealership Act Title 31 CH. 31-5.1

Renovation

OEM may not "require that a dealer expand facilities without a guarantee of a sufficient supply of new motor vehicles to justify that expansion or to require that a dealer expand facilities to a greater degree than is necessary to sell and service the number of vehicles that the dealer sold and serviced in the most recent calendar year."

Texas

Governing Statutes

Occupations Code 14.A.2301; Transportation Code 503

Renovation

10 years or to sell or service a particular line

Utah

Governing Statutes

Utah Powersport Vehicle Franchise Act, Utah Code Ann. § 13-35-101-307; Rule R151-35. Powersport Vehicle Franchise Act Rule; Amended by Session Law Ch. 262, 268

Renovation

OEM may not "require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable."

Vermont

Governing Statutes

Title 9, Ch. 108 §§ 4083 - 4100f

Renovation

OEM may not "change the location of the dealership or to make any substantial alterations to the dealership premises or facilities when to do so would be unreasonable." or "change the location of the dealership or to make any substantial alterations to the dealership premises or facilities in the absence of written assurance from the manufacturer or distributor of a sufficient supply of new motor vehicles to justify the change in location or the alterations."

Washington

Governing Statutes

Washington Motorsports Vehicles – Dealer and Manufacturer Franchises, Wash. Rev. Code § 46.93.010-901; Wash. Rev. Code Tit. 46, Chap. 46.70, §46.70.180, and §46.70.190, and Wash. Rev. Code Tit. 46, Chap. 46.96, §46.96.010 to §46.96.900

Renovation

OEM may not "Condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided one hundred eighty days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business."

West Virginia

Governing Statutes

West Virginia Code Ch. 17A Art. 6A1-6A18

Renovation

OEM may not "coerce or require any dealer, whether by agreement, program, incentive provision or otherwise, to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those improvements, signs or franchisor image elements completed within the proceeding ten years that were required and approved by the manufacturer, factory branch, distributor or distributor branch or one of its affiliates." In termination, OEM must pay for required alterations within the past five years.

Wyoming

Governing Statutes

Wyoming Code Title 31 Ch. 16 Sec. 101-127

Renovation

"OEM may not require dealers ""To expand facilities without making available a sufficient supply of new vehicles to justify an expansion considering the market and economic conditions;
(x) To modify significantly an existing dealership or to construct a new vehicle dealership facility without a sufficient supply of new vehicles to justify a modification or construction considering the market and economic conditions."

Source: *Dealer News*; dealernews.com/DN-Academy/Management/post/franchise-laws-by-state/2016-11-29

This handout should not be relied upon as legal advice. This document is intended as a general overview only and may not accurately reflect current legislation. An industry transactional attorney in the state where the facility is located should be consulted.

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QUESTIONS FOR YOUR ACCOUNTANT AND/OR ATTORNEY AND/OR INSURANCE AGENT

If you are selling:

1. What is my potential income tax and capital gains tax liability upon sale? Should we change anything in the purchase agreement to reduce it?
2. What is my potential sales tax liability upon closing?
3. What is my potential employment tax liability upon closing?
4. What is my potential franchise tax liability upon closing?
5. Can I, or should I, dissolve my corporation or limited liability company after closing and if so when? This question has implications for the insurance you obtain after closing as well.
6. Does the insurance need to be in my name individually or in the name of the entity? What is the cost of the insurance one way or the other?
7. Did we wrap up all loose ends in the purchase agreement to make sure the price cannot be renegotiated on closing?

Make sure your accountant knows what your attorney is telling you and your attorney knows what your accountant is telling you. They need to be communicating with each other.

If you are buying:

1. How will my allocation impact my ability to depreciate the assets I purchase and my basis in the assets I purchase?
2. How will the entity I form to buy impact:
 - a. The income I pay taxes on?
 - b. My franchise tax?
 - c. My tax on liquidation after I sell?
 - d. My self-employment tax?
 - e. The deductions I will be able to take for:
 - i. W-2 Wages
 - ii. Employee Benefits
 - f. Will my heirs get a step up in basis on the inside value of assets on my death or on transfer of an ownership interest?
 - g. How will company debt impact my basis in different entities?
3. Did we include language in the purchase agreement to make sure the allocation on form 8594 is the same as the sellers?

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