

October 2020 Volume 23, Issue 136

### **Inside this issue:**

Completing the MVDB 61	1
FTC Deceptive Price Mailers	1
Upcoming Events	<u>2</u>
FTC Covid - 19 Mailers	<u>4</u>
Rick Sipe Operations Manager	<u>4</u>
Proof of Liability Insurance	<u>4</u>
Synthetic Fraud	<u>5</u>
DMV News	<u>5</u>
Bird Dogging	<u>6</u>
Board Actions	7
Dealer-Operator Class Schedule	9
<u>YouTube</u>	9
What's Wrong With	<u>10</u>

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# MOTOR VEHICLE DEALER BOARD



# Completing the MVDB 61

To ensure that all sales applicants receive their sales license in a timely manner, please be sure that the MVDB 61 is complete, and all information is accurate. Be sure that salespersons take the time to accurately fill out sections two (2) and three (3). Dealers, you are responsible for completing section four (4) in its entirety, and have an officer of the dealership sign the application before sending the application to the Board.

As a reminder, it is important that all applicants truthfully answer the questions in section 3. The salesperson qualification and application forms ask "Have you ever been convicted of a felony?" Ever means ever! Regardless of how long ago the conviction was, if an applicant was ever convicted of a felony, the answer to the question on the application is "YES". Having a felony conviction does not necessarily mean that the application will be denied. However, answering "NO" to this question and having a felony conviction discovered in our nationwide criminal history check will result in a denial of the application. For new/initial sales license applicants, the MVDB-61 states in two places in section three (3) to attach information or documents pertaining to felony convictions. Even if the applicant checks yes for a felony conviction, don't forget to attach supporting documents. For example if the applicant owes fines or restitution, the applicant should send documents or a letter stating the status of the fines and restitution. Also, the same documents are required regarding parole or probation and any documentation if they have satisfied all financial obligations.

Lastly, the Board requires that dealers be responsible for criminal background checks PRIOR to submitting their **initial** sales license applications. The Board has posted a listing of authorized and Board approved background check providers on our website. Dealers must be prepared to arrange for one of these authorized providers to complete the background check prior to the dealer applying for licenses

Cont'd on pg. 2

### FTC Deceptive Price Mailers

An Illinois franchised dealership is facing actions from the state attorney general for allegedly engaging in unfair and deceptive advertising and business practices. Illinois attorney general Kwame Raoul filed a lawsuit this week against Skokie Motor Sales, which operates as Sherman Dodge. Raoul said Sherman Dodge's advertisements allegedly violated motor vehicle advertising regulations relating to sales events, trade-in values, discount substantiation and advertised prices.

Page 2 Volume 23, Issue 136



# **Upcoming EVENTS**

### **BOARD MEETINGS**

Virtual meeting will be held on

Monday, November 9, 2020\*\*

Dealer Practices Committee Meeting

<u>Time: 9:00 a.m.</u>

### **Licensing Committee Meeting**

Time: Immediately following Dealer Practices Committee

### **Advertising Committee Meeting**

Time: Immediately following Licensing Committee

# Transaction Recovery Fund Committee Meeting

Time: Immediately following Advertising Committee

### Full Board Meeting

15 minutes immediately following Transaction Recovery Fund Committee meeting.

\*\*Click <u>HERE</u> for Virginia Town Hall to view meeting information.

### MVDB will be closed

- ♦ Columbus Day October 12, 2020
- ♦ Election Day November 3, 2020
- ♦ Veterans Day November 11, 2020
- ♦ Thanksgiving Holiday, Noon on November 25-27, 2020

Cont'd from pg. 1

### Completing the MVDB 61

which require the background check as part of the application. Remember, all new or expired sales license applicants must complete a background check prior to being licensed by the Board. If you are renewing or transferring a sales license, the Board does not require a background check. Please do not send copies of the background check with the sales application, the Board just needs the background check company and the individual file number.

Once you have an account with one of the authorized providers, you will run the background check, and insert the unique identifier into section # 4 of the MVDB 61.

The following is the current list of approved background check providers.

### **Screening One**

Paul Craddock 919-533-5005 Paul.Craddock@screeningone.com

### Accurate Background

(formerly Career Builder) 866-255-1852 Connect@Accurate.com

#### Reliantcy

(800) 649-1243 support@reliantcy.com

### **Employment Screening Services**

Russ Blitz 205-879-0143 rblitz@es2.com

### Partnership Screening International Inc.

Jim Hulburt

j.hulburt@psiva.com

804-221-2341

Bill Auchmoody

b.auchmoody@psiva.com

804-908-4771

### The Cole Group

Paige Johnson EVP of Operations <u>MVDB@thecolegroup.com</u> 1-800-337-0165

#### **EBI**

Chad Birmingham Enterprise Acct. Mgr. 800-324-7700 x 211 <a href="mailto:cbirmingham@ebiinc.com">cbirmingham@ebiinc.com</a>

**NOTE:** Background providers may require exclusive use agreements or minimum service agreements to utilize their services.

Cont. from pg. 1

# FTC Deceptive Prize Mailers

In the lawsuit, filed in Cook County Circuit Court, Raoul alleged that Sherman Dodge's ongoing deceptive practices have the potential to impact any Illinois consumer who purchases new or used vehicles from Sherman Dodge, as well as harm other dealerships across Illinois.

"Sherman Dodge knowingly and repeatedly took advantage of people through deceptive advertising — even after entering into an agreement with the attorney general's office to stop using unlawful practices," Raoul said in a news release. "I am committed to seeking enforcement against business and others who violate the law to take advantage of Illinois consumers."

Sherman Dodge is an authorized Chrysler, Jeep and Dodge dealer located in Skokie, Ill., a northern suburb of Chicago. The AG's office indicated Sherman Dodge advertises through various mediums, including its own website, third-party websites, newspapers and direct mailers.

In October 2014, the attorney general's office opened an investigation into Sherman Dodge after receiving complaints from consumers who were unable to purchase vehicles advertised by the dealer. Consumers alleged that upon visiting Sherman Dodge to purchase a vehicle seen in advertisements, sales representatives would say the advertised vehicle was already sold, and would try to sell customers a different vehicle instead.

Additionally, Illinois' top law enforcement segment said consumers alleged that they continued to see the same vehicle in advertisements for weeks following.

Following the investigation, Sherman Dodge entered into an Assurance of Voluntary Compliance (AVC) with the attorney general's office in February 2016. Under the AVC, Sherman Dodge agreed to not sell a vehicle for more than the advertised price, advertise a vehicle that it has already sold or leased, guarantee a specific value for a trade-in vehicle, advertise a sale without reducing the selling price of vehicles listed in an advertisement by at least 5%, or include limited rebates in an advertised price.

Raoul's new lawsuit alleges that Sherman Dodge has violated the AVC by continuing to engage in the illegal and deceptive activities prohibited by the AVC. The attorney general also claims Sherman Dodge further violated the Illinois Consumer Fraud and Deceptive Business Practices Act by deceptively using fake checks and coupons in its advertisements, failing to disclose a consumer's potential responsibility for negative equity on a trade-in, failing to promptly pay off a loan on a traded-in vehicle, and advertising loan opportunities to those facing bankruptcy.

In the lawsuit, Raoul is seeking to prohibit Sherman Dodge from engaging in acts or practices that violate the law, rescind all contracts entered into between Sherman Dodge and consumers by use of unlawful methods and require Sherman Dodge to pay full restitution to consumers.

Raoul is also seeking a civil penalty of \$50,000 per deceptive act or practice, with an additional \$50,000 for each act or practice committed with the intent to defraud and an additional \$10,000 for each act committed against a person 65 years of age or older.

Assistant attorney general Jacob Gilbert is handling the case for Raoul's Consumer Fraud Division.

### Reminders...

ALL IDO's of independent dealerships must recertify their IDO qualification every three years by either taking an online course, classroom course, or by passing an administered DMV test. Click <u>HERE</u> for more information and <u>HERE</u> to determine your recertification deadline. Please note that dealers with <u>Franchise</u> endorsements are exempt from recertification. If you are unclear on your recertification deadline, or any other recertification questions, please contact Ann Majors at the MVDB. She may be reached at 804-367-1100 x 3016#, or email at <u>ann.majors@mvdb.virginia.gov</u>

# FTC Covid - 19 Mailers

The Federal Trade Commission has issued an <u>administrative complaint</u> against a marketer, Traffic Jam Events, LLC, and its owner, David J. Jeansonne II, charging multiple counts of deceptive conduct. The administrative complaint mirrors a prior federal court complaint, which the Commission voluntarily dismissed to pursue a broader administrative proceeding.

The administrative complaint alleges that the respondents have deceived consumers with mailers supposedly directing them to obtain federal COVID-19 stimulus benefits. The complaint also alleges that, in addition to the misleading COVID-19 mailers, respondents sent flyers to consumers containing matching numbers indicating that consumers had won a valuable prize. Consumers were then told they had to go to a car dealership to "claim" the prize, but the small print on the back of the mailer revealed that there was only a 1-in-52,000 chance the consumer had actually won the prize specified.

In addition to FTC Act violations alleged related to the COVID-19 and prize mailers, the FTC's complaint claims the respondents violated the Truth In Lending Act and Regulation Z for failing to clearly disclose required credit information in their advertising.

The Commission vote to issue the administrative complaint and dismiss the federal proceeding was 4-0-1, with Commissioner Rebecca Kelly Slaughter recorded as not participating.

**NOTE:** The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of the administrative complaint marks the beginning of a proceeding in which the allegations will be tried in a formal hearing before an administrative law judge.

# Proof of Liability Insurance

When the dealer submits a MVDB 9 Dealer Plate Application to the Board for an initial application, to renew D-tags, or requests to increase the number of dealer tags assigned to their dealership; the dealer must submit a copy of their Certificate of Liability Insurance. Board staff will review the Certificate of Liability Insurance to determine if the policy coverage includes the dealer plates that are already issued, and any additional plates to be issued. If the insurance coverage is adequate to cover all plates, then the additional plates will be issued. Please do not fax, mail, or email the entire insurance policy when submitting your proof of insurance. The Board requires the declarations page (usually it is the first 1 or 2 pages) of a policy that specifies the named insured, policy period, location of premises, policy limits, and number of plates insured (or all plates). This declarations page varies from company to company, and may also be referred to as the information page, or insurance binder. The ONLY instance where you are not required to send in your Certificate of Liability with an MVDB 9 is if you are only replacing a lost or stolen D-tag. Meaning a one for one replacement, or are reducing the number of d-tags assigned to your dealership. All copies of Certificates of Liability Insurance or other documents pertaining to insurance will be updated in the dealer profile, and placed in the dealer file.

# Rick Sipe Operations Manager

Rick has been promoted to Operations Manager at the Motor Vehicle Dealer Board. Rick brings to the position over 30 years of management experience in the customer service industry. During his career, Rick has been promoted to positions with increasing levels of work responsibilities and job duties and firmly believes in the "golden rule" of treating people the way you would like to be treated. During the 12 years at MVDB, Rick has spent time working as a Consumer and Advertising Analyst and Program Support Tech. His experience in those areas gives him a unique perspective in his current role as Operations Manager. Rick has been married to his best friend and soulmate Jamie for 20 years and they share 5 wonderful children and 6 amazing grandchildren. In his spare time Rick enjoys watching sports, dining out and getting together with family and friends. Rick may be reached at 804-367-1100 x 3003# or rick.sipe@mvdb.virginia.gov.

# Synthetic Fraud

The Federal Reserve report cited data that shows synthetic identities are found in between 0.3% and 0.6% of new payment accounts. What's more, the rate of approved accounts opened to an individual with a synthetic identity could be as high as 2.7% of all new accounts for some lender institutions. Synthetic identities can be detrimental to a financial institution's rate of losses, as well as the severity of loss. The report found that synthetic identities

makeup just over 20% of all losses in a given loan portfolio even though the identities and accounts comprise just under 1% of all loans. Synthetic identity fraud is typically a result of fraudsters using a combination of fictitious information in collaboration with data from an actual person, or it can be completely fabricated information. Fraudsters literally create new personas on the backs of real individuals, such as the creation of a false person with a new name that has an actual social security number or an address from a real person. According to Equifax Data and Analytics, just within a year's time 456,000 accounts were identified as potential synthetic identity fraud, which equates to an average of 4,000 accounts per major auto lender. What's more, this represents a bad balance per account of \$15,000, which translates to a potential loss of more than \$768 million to the auto lending industry. During the continued COVID-19 pandemic, fraudulent activity has the potential to be an elevated threat. With the increased emphasis on contactless and online shopping for vehicles, fraud alerts can prove greatly beneficial for lenders and dealers to spot inaccuracies during the online loan application. Synthetic identity fraud is a growing problem today for lenders across the entire automotive spectrum. It is important to have thorough training for all employees to have a higher level of awareness for the potential for synthetic identity fraud.

### Reminders...

Some dealers have failed to provide proof of safety inspection prior to retail sale as required by Virginia Code. Recent MVDB field inspections revealed that many dealers mistakenly believed they could access the safety inspection information online from the Virginia State Police, only to find that the inspection record was not available. Online safety inspection records can only be accessed for a limited amount of time. To ensure the dealer retains documentation of the safety inspection, as required by Virginia law, the Board recommends dealers make a photocopy of the inspection certificate and maintain a copy with their dealer records for 5 years.

### **DMV** News

Effective October 1, 2020, HB 1541 authorizes a fee increase to the Motor Vehicle Sales and Use Tax (MVSUT) for Mopeds, ATV's and Off road vehicles. The MVSUT rate will be increasing from 5.3 percent to 6 percent. The tax will be levied at the rate of 6 percent, if the dealer is located in the following counties:

- Charles City County
- Chesterfield County
- Goochland County
- Hanover County
- Henrico County
- New Kent County
- Powhatan County
- City of Richmond
- Ashland, Town of

This tax also impacts other items and products you may sell in your dealership that are subject to retail sales taxes such as warranties, and accessories. Click <u>HERE</u> for the full text of the Virginia Department of Taxation Tax Bulletin 20-8.

# **Bird Dogging**

A recent tooth pain turned into a root canal. It was unplanned, uncomfortable, and difficult to resolve. The pain lingered. When the root canal didn't resolve the pain, the doctor had to extract the tooth. The pain was everpresent for weeks after, even after the source of the pain was removed. I would have looked anywhere to find a way to resolve the pain (and done almost anything to relieve it).

This is how it feels when you aren't selling enough vehicles. You are looking for pain relief, right? And you will try almost anything that sounds reasonable. I get it. And part of your thinking is to try things which haven't been done before because it just feels better, right?

There are two (2) flavors of marketing: the analytical side (a.k.a. Google Analytics) or the witchcraft side of things, which is more art than science. Recently, I came across the latter. It can be exciting to work on the newest thing which may drive buyers into the showroom. As the dealer, you've experimented before; sometimes the new thing works and sometimes it doesn't.

I saw a "customer referral program." Here's how it works. This marketing company will advertise for people interested in making extra money and/or working from home. The person who wants to make money does so by referring anyone they know who might want to buy a car. That person enters the information on a portal. This agency captures the interested car buyer's information and forwards it to the dealer. If the referral purchases a vehicle, this agency bills the dealer \$400 for each sold car. See where I am headed here? This agency volunteered the invoice will show as "advertising," or "marketing expenses." The company then pays the original person interested in making extra money \$200 for each car that was sold, delivered, and funded. This would be confirmed through the dealer's CRM/DMS.

No matter what you call it, in the State of Virginia, this is "bird dogging," and is not legal.

Virginia Code §46.2-1537 Prohibited solicitation and compensation. "It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in §46.2-1500 unless that person is licensed as required by this chapter.

These laws help you by keeping third parties and bad actors from selling vehicles. The laws protect you as you have so much invested in your dealership.

A lot of national companies build platforms to sell different ways to get more leads. They tell you that their methods are "proven" and will give you the names of other dealers as examples of successes. Don't think that the other dealers have done any due diligence. Don't rely on that. Check for yourself.

Everyone involved in the sale of a vehicle must be licensed. Recently, a major Virginia dealership was fined \$6500 for agent licensing issues.

During challenging times, dealers are naturally inclined to consider these new marketing ideas. National vendors usually do not know or care about Virginia's regulations when pitching their idea. The compliance responsibility is yours.

To help protect the dealership, consider adding a clause in every contract: "Advertising and marketing must comply with federal and Virginia laws or dealership will withhold payments."

These marketing programs may make your pains temporarily easier, but later, after the dealership receives a regulatory inquiry, you may need more than oral surgery.

https://bettervantagepoint.com/

# **Board Actions**

### **Dealer Practices**

### **Informal Fact-Finding Conferences:**

**A2Z Auto Group and Zaher Ghali.** On September 10, 2020, an informal fact-finding conference was conducted, to address the alleged violations of misleading advertising on Craigslist. Based on the hearing officer's report, the Executive Director issued a written warning.

### Formal Hearing

Thomas K. Maad, Goldstar Motor Company. On March 5, 2019, an informal fact-finding conference was conducted to address the alleged violations of dealer records, proof of safety inspection prior to retail sale, title within 30 days, D-tag insurance, misuse of D-tags, failure to comply with previous warnings, and having used deceptive acts and practices. Based on the information provided at the conference, the Board assessed a civil penalty of \$9,000, revocation of his dealer-operator qualification and issued a written warning for failure to provide proof of safety inspection prior to retail sale. On September 27, 2019, Mr. Maad appealed for a formal hearing. On November 6, 2019, a formal hearing was conducted to address the alleged violations. Based on the information provided at the formal hearing, the Board assessed a civil penalty of \$9,000, a written warning for failure to provide proof of safety inspection prior to retail sale, and revocation of his dealer-operator qualification. Mr. Maad will retain his sales license. Mr. Maad may appeal to Circuit court.

United Auto Groups, Inc. and Hamed H. Abouzied. Historical Overview leading up to the formal hearing: On February 24, 2020, an informal fact-finding conference was conducted to address the alleged violations of failure to provide dealer records, maintain posted business hours, provide proof of safety inspection, misuse of Dtags, and failure to comply with previous warnings. At the June 15, 2020 Board Meeting, the Board mandated a satisfactory inspection, to be completed on or before September 15, 2020 and to successfully complete the Dealer-Operator course on or before December 15, 2020. On June 22, 2020, Mr. Abouzied appealed for a formal hearing. On August 11, 2020, a formal hearing was conducted to address the alleged violations. Based on the information provided at the hearing, the Board required a satisfactory inspection within 90 days and successful completion of the 2-day Dealer-Operator course. Mr. Abouzied may appeal to Circuit court.

Speedhunters Automotive Group, LLC and Antonio A. Jimenez. On February 13, 2020, an informal factfinding conference was conducted to address the alleged violations of dealer records, odometer disclosure, proof of safety inspection prior to retail sale, d-tag records, misuse of PoD tags, and failure to comply with previous warnings. At the March 9, 2020 based on the information provided at the conference, the Board assessed a civil penalty of \$4,250, a satisfactory inspection within 90 days and successful completion of the 2-day Dealer-Operator course on or before September 9, 2020. On March 23, 2020, Mr. Jimenez appealed for a formal hearing. On August 11, 2020, a formal hearing was conducted to address the alleged violations. Based on the information provided at the hearing, the Board assessed a civil penalty of \$3,750, a satisfactory inspection within 90 days and successful completion of the 2-day Dealer-Operator course. Mr. Jimenez may appeal to Circuit court.

#### **Administrative Actions:**

Keystone Cars Inc. and Kashif Khan Afridi. Paid a \$250 civil penalty for failure for failure to maintain dealer

Auto Wholesalers of America, Inc. and Mark Galy. Paid a \$3,000 civil penalty for failure to maintain liability insurance on each D-tag.

Grundy Auto Sales, and Henry Cantrell. Paid a \$250 civil penalty for failure to provide proof of safety inspection prior to retail sale.

Leonard Aluminum Utility Bldg. LLC and Lane Elias Faison. Paid a \$250 civil penalty for selling or displaying from an unlicensed location.

Cont. on pg. 8

# **Board Actions**

Hyman Bros. Subaru, LLC and Haywood B. Hyman Jr. Paid a \$1,500 civil penalty for unlicensed salesperson.

**Virginia Luxury Motors LLC and Jonaid Malik.** Paid a \$2,000 civil penalty for failure to maintain dealer records, unlicensed salespersons, and misuse of d-tags.

Streamline Auto Outlet and Kyle Cambron. Paid a \$250 civil penalty for failure to maintain dealer records.

**518 Auto Sales and Kyle Cambron.** Paid a \$750 civil penalty for failure to provide proof of safety inspection prior to retail sale.

Eagle Auto Sales and Raymond Sward, Jr. Paid a \$1,000 civil penalty for unlicensed salespersons and dealer records.

Major League Motors LLC and Darnell Juan Washington. Paid a \$2,750 civil penalty for failure to maintain dealer records.

**Prestige Auto Group LLC and Martin P. Hernandez.** Paid a \$250 civil penalty for failure to provide proof of safety inspection.

**Auto Union LLC and Farkhod Matkulov.** Paid a \$250 civil penalty for failure to provide proof of safety inspection prior to retail sale.

Auto World of Big Stone Gap Inc. and Chantz J. Scott. Paid a \$500 civil penalty for failure to maintain dealer records and provide proof of safety inspection prior to retail sale.

On Time Motors, LLC and Wallace A. Warden III. Paid a \$1,250 civil penalty for failure to maintain dealer records and provide proof of safety inspection prior to retail sale.

### Advertising

### **Administrative Actions:**

**DMV Auto Finance LLC and Fayzullo Kuvvatov.** Paid a \$250 civil penalty for failing to disclose their processing fee, and the phone number in the advertisement was not the dealership phone number.

For prior issues of Dealer Talk click <u>HERE</u>

# Reminders...

Make sure all your salespersons are licensed. Please remember that salespersons must be licensed in the name of your dealership in order to sell or participate in the sale of motor vehicles. This includes all salespersons, internet salespersons, F & I, dealer-operators, and anyone who manages salespersons. Allowing someone to sell vehicles without first being licensed could cost you up to \$1,000 in civil penalties per vehicle sold. The "Search Active Dealers" feature on the Board's website allows you to view a list of salespersons licensed to your dealership. It is the responsibility of the dealership owner to make sure that all salespersons are properly licensed. Please remember that salespersons may not be independent contractors paid via IRS Form "1099". Salespersons must be employees of the dealership and that means they receive an IRS Form "W-2" at the end of the tax year.

# IMPORTANT NOTICE TO PROSPECTIVE DEALERS

The path to a Dealer-Operator license begins with a required two-day course of study each month at various community colleges in Virginia with the curriculum and instruction provided by <u>VIADA</u>. The course takes the attendee from establishing the dealership under local zoning and Dealer Board requirements, through the sales process with its multitude of forms, laws and regulations, into a sampling of opening and operating expenses, and ending with a discussion on ethics. The course is also open to all existing dealers and their employees.

### THE FOLLOWING COURSES ARE REGISTERED THROUGH VIADA,

CALL 1-800-394-1960 to register or visit viada.org

2020			
Date:	Location:	Address:	
October 13-14	Comfort Inn Suites – Manassas	7350 Williamson Blvd, Manassas VA 20109	
October 27-28	Comfort Inn Monticello	2097 Inn Dr, Charlottesville, VA 22911	
November 3-4	Hampton Inn	Hampton Inn – 3101 Coliseum Dr, Hampton, VA 23666	
November 17-18	Comfort Suites Fredericksburg	4615 Southpoint Parkway, Fredericksburg, VA 22407	
December 8-9	TBD Henrico, VA 23228		



Please click <u>HERE</u> or on the graphic on the left to view our Dealership Education videos!

More videos will be uploaded on an ongoing basis, so stay informed and receive notifications when new videos are released. The MVDB Education video library will eventually cover a wide range of topics that Dealerships can use to remain compliant with Virginia Code.

You may also access these videos from a link on our website Home page.

BE SURE TO SUBSCRIBE TO OUR MVDB CHANNEL!

# MOTOR VEHICLE DEALER BOARD

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### Visit us on the Web!

### www.mvdb.virginia.gov

**DISCLAIMER:** We make every effort to ensure information in Dealer Talk is accurate, but it is not a substitute for legal advice.



# MVDB Mission Statement The Motor Vehicle Dealer Board will administer sections of the Commonwealth's Motor Vehicle Dealer Laws and regulations as charged; promote the best interest of both the automotive consumer and dealer community; while providing a high level of customer service.

Page 10 Volume 23, Issue 136

# What's Wrong With This Picture?



Improper use of Dealer Tag.

The Code of Virginia states in part that it is unlawful for any dealer to permit dealer's license plates to be used on: §46.2-1550 A (1) Motor vehicles such as tow trucks, wrecking cranes, or other service motor vehicles; (2). Vehicles used to deliver or transport (i) other vehicles....(4) Vehicles used in conjunction with any other business.