

**CALIFORNIA NEW CAR
DEALERS ASSOCIATION**

**DEALER MANAGEMENT GUIDE
2010 – 2011**

**By
Manning, Leaver, Bruder & Berberich
Attorneys
Los Angeles, California**

SUMMARY TABLE OF CONTENTS

Chapter 1	3
ADVERTISING SALES PRACTICES.....	3
Chapter 2	59
AUTOMOBILE SALES FINANCE ACT	59
Chapter 3	93
CONSUMER AUTOMOBILE LEASING	93
Chapter 4	113
CREDIT REPORTS AND DECISIONS.....	113
Chapter 5	133
INSURANCE	133
Chapter 6	153
PRIVACY, SAFEGUARDS, IDENTITY THEFT AND RED FLAGS	153
Chapter 7	167
TELEMARKETING, FAX, AND EMAIL	167
Chapter 8	185
AUTOBROKERS.....	185
Chapter 9	203
NEW AND USED CAR WARRANTIES.....	203
Chapter 10	229
SERVICE CONTRACTS.....	229
Chapter 11	239
VEHICLE REPAIR AND MODIFICATION	239
Chapter 12	263
LIENS ON VEHICLES AND LIEN SALES	263
Chapter 13	277
SMALL CLAIMS COURT AND COLLECTION OF JUDGMENTS.....	277
Chapter 14	303
THE NEW MOTOR VEHICLE BOARD	303
Chapter 15	347
DMV INVESTIGATIONS AND ACCUSATIONS	347
Chapter 16	371
SALES AND USE TAX.....	371
Chapter 17	393
WAGES AND HOURS.....	393
Chapter 18	423
WRONGFUL TERMINATION AND DISCRIMINATION	423
Chapter 19	445
FAMILY AND PREGNANCY LEAVES	445
Chapter 20	469
POSTING OF NOTICES BY EMPLOYERS	469
Chapter 21	477
PUBLIC SIGNS AT DEALERSHIPS	477

ADVERTISING SALES PRACTICES

Chapter 22
DEALERSHIP OPENING, CLOSING, AND LICENSING..... 501

Chapter 23
RECORDS RETENTION..... 521

Chapter 24
OTHER IMPORTANT TOPICS 535

INDEX 591

ADVERTISING SALES PRACTICES

Chapter 1

Contents

Truth In Advertising	9
Introduction	9
Definition Of Advertising.....	9
Requirements Under The Business And Professions Code	9
False Or Misleading Advertising.....	9
Requirements Under The Vehicle Code	10
Application To Holders Of Dealer And Salesperson Licenses Issued By The DMV	10
Unlawful Advertising	10
Untrue Or Misleading Statements (Veh. Code section 11713(a)).....	10
Misrepresentation Of Vehicle Availability (Veh. Code section 11713(b))	11
Failure To Withdraw Advertisement (Veh. Code section 11713(c)).....	11
Misrepresentation Of Used Vehicles As New (Veh. Code section 11713(d))	11
Misrepresentation Of No Downpayment (Veh. Code section 11713(k))	12
Disclosure Of Date Of Factory Warranty (Veh. Code section 11713(o))	12
Restrictions On Acceptance Of Purchase Deposits (Veh. Code section 11713(p))	12
Consignment Of New Vehicles (Veh. Code section 11713(q))	12
Display Of Vehicles At Other Sites (Veh. Code section 11713(r))	12
Pictures Of Vehicles (Veh. Code section 11713(s)).....	12
Advertising Vehicles Used By The Selling Licensee (Veh. Code section 11713(t)).....	12
Failure To Identify Advertised Vehicles (Veh. Code section 11713.1 (a)).....	12
Misrepresentation Of Total Price Or Cost To Customer (Veh. Code section 11713.1(b)).....	13
Failure To Disclose Added Charges In Certain Print Media And Web Sites (Veh. Code section 11713.1(c)).....	13
Misrepresentation Of Document Preparation Charge Or Certificate Of Compliance Or Noncompliance Fees (Veh. Code section 11713.1(d)).....	13

Refusal To Sell Advertised Vehicles (Veh. Code section 11713.1(e)).....	13
Advertising Mistakes.....	13
Posting Rules Regarding Advertised Vehicles (Veh. Code section 11709.3).....	15
Advertising For Sale, Selling, Or Purchasing For Resale New Vehicles By Non-Franchised Dealers (Veh. Code section 11713.1(f)).....	16
Free Merchandise, Gifts, Or Services Prohibited (Veh. Code section 11713.1(h)).....	16
Disclosure Of Limitation Of Quantity (Veh. Code section 11713.1(i)).....	16
Dealer Rebates Prohibited (Veh. Code section 11713.1(j)).....	17
Restriction When Advertising Credit Terms (Veh. Code section 11713.1(k)).....	17
Guaranteed Trade-In Allowances Prohibited (Veh. Code section 11713.1(l)).....	18
Misrepresentation Of Salespersons Authority (Veh. Code section 11713.1(m)).....	18
Prohibition Of Advertising Based Upon Invoice Or Cost (Veh. Code section 11713.1(n)).....	18
Bait And Switch Advertising Prohibited (Veh. Code section 11713.1(o)).....	18
Restrictions On “Fully Factory Equipped” Advertising (Veh. Code section 11713.1(p)).....	18
Restrictions On Use Of Supplemental Price Stickers (Veh. Code section 11713.1(q)).....	18
Restriction On Advertising Underselling Claims (Veh. Code section 11713.1(r)).....	19
Restriction On Advertising Factory Incentives (Veh. Code section 11713.1(s)).....	19
Failure To Affix Buyer's Guide (Veh. Code section 11713.1(t)).....	19
Submission Of Information To Franchisor (Veh. Code section 11713.1(u)).....	19
Disclosure Of New/Used Status Of Vehicles (Veh. Code section 11713.1(v)).....	19
Use Of Simulated Checks (Veh. Code section 11713.1(w)).....	20
Fee From Autobroker (Veh. Code section 11713.1(x)).....	20
Advertising Used Vehicles (Veh. Code section 11713.16(a)).....	20
On Approved Credit (Veh. Code section 11713.16(b)).....	20
Unpaid Balance Advertising (Veh. Code section 11713.16(c)).....	20
Credit Advertising (Veh. Code section 11713.16(d)).....	20
Advertising An Amount That Includes A Deduction For A Rebate (Veh. Code section 11713.16(e)).....	20
“Everyone Financed” Claims (Veh. Code section 11713.16(f)).....	21
Down Payment Advertising (Veh. Code section 11713.16(g)).....	21
Vehicles Must Have Standard Equipment (Veh. Code section 11713.16(h)).....	21

Clear and Conspicuous Standard (Veh. Code section 11713.16(i))	21
Advertising Certified Used Vehicles (Veh. Code section 11713.18)	21
Misrepresentation Of Year Model (Veh. Code section 11713.5)	22
Advising Another To Change Year Model (Veh. Code section 11713.5)	22
Failure To Properly Identify House Car Completion (Veh. Code section 11713.5)	22
Damage Disclosure Rules For New Vehicles (Veh. Code sections 9990-9993)	22
Lessor-Retailers	26
Requirements Under The Code Of Regulations	26
Title 13 Truth In Advertising Regulations	26
“Advertising” Defined (13 Calif. Code of Reg. section 255)	26
“Dealer's Cost” Defined (13 Calif. Code of Reg. section 255.01)	26
“Demonstrator” Defined (13 Calif. Code of Reg. section 255.02)	26
Advertisements (13 Calif. Code of Reg. section 260)	27
Vehicle History (13 Calif. Code of Reg. section 260.02)	27
Vehicle Condition (13 Calif. Code of Reg. section 260.03)	27
Vehicle Availability (13 Calif. Code of Reg. section 260.04)	27
Vehicle Equipment (13 Calif. Code of Reg. section 260.05)	27
Returned Vehicles (13 Calif. Code of Reg. section 260.07)	27
Manufacturer's Or Distributor's Price (13 Calif. Code of Reg. section 262.01)	27
Dealer Added Charges And Auxiliary Stickers (13 Calif. Code of Reg. section 262.03)	27
Identity Of Dealer (13 Calif. Code of Reg. section 262.08)	28
Qualifying Statements (13 Calif. Code of Reg. section 262.09)	28
Display Area And Offsite Sales (13 Calif. Code of Reg. section 270.08)	28
Regulation Z For Closed-End Credit Advertising, And Regulation M For Lease Advertising	29
Regulation Z Disclosure Requirements For Advertising Closed-End Credit	29
Revised Regulation Z General Disclosure Requirements	29
Regulation Z Federal Truth In Lending Advertising Requirements	29
Trigger Terms Under Revised Regulation Z	29
Regulation M And California Requirements For Advertising Leases	29
FTC Guidelines On Internet Advertising	30
Further Requirements Under The Business And Professions Code	31
Advertisement of Former Price	31
False Advertising Claims And Comparisons	31
Limitations On Quantity	32
False Advertising Of Inducements To Visit Dealership	32
Telephone, Internet, Mail Order, Or Catalogue Sales Or Leases	32

Prize Or Gift Offer	32
Coupons	32
Faxing And Emailing Of Unsolicited Advertising Materials	32
Unsolicited Telephone Calls	32
Sweepstakes Entries.....	32
Operation Of Contests	33
Simulated Checks	33
Made In The USA.....	33
Civil Code - Consumer Legal Remedies Act.....	34
Provisions Of The Act	34
Remedies Under The Consumer Legal Remedies Act.....	35
Federal Trade Commission (FTC) Guidelines.....	35
Bait Advertising.....	35
Deceptive Pricing In Bargain Advertising.....	36
Former Price Comparisons	36
Retail Price Comparisons.....	36
Guidelines Concerning The Use Of The Word “Free” And Similar Representations	36
Deceptive Advertising Of Guarantees	36
Fuel Economy Disclosures	36
Endorsements And Testimonials	38
Practical Application Of Truth In Advertising Laws.....	39
Penalties And Remedies For False Or Misleading Advertising.....	42
Introduction.....	42
Business And Professions Code's Civil Penalties.....	43
Public Enforcement.....	43
Government Agency Investigations (Bus. and Prof. Code section 17508).....	43
Injunctions And Other Court Ordered Relief (Bus. and Prof. Code Sections 17203; 17204; 17207; 17535)	43
Private Attorney General Actions.....	43
Monetary Civil Penalties Bus. and Prof. Code Section 17206; 17536)	44
Penalties Are Cumulative	45
Business And Professions Code's Criminal Penalties.....	45
Vehicle Code And Code Of Regulations Civil Penalties.....	45
DMV Enforcement	45
License Suspension Or Revocation	45
Monetary Penalties	45
Private Party Relief.....	45
Private Recovery Against The Dealer's Bond.....	45
Injured Dealer's Recovery Of Damages And Injunctive Relief.....	45
Vehicle Code's Criminal Penalties.....	45
FTC Enforcement Of Its Guidelines	45
Voluntary Compliance.....	45
Cease And Desist Orders	46

FTC Enforcement By Consent Order 46

Private Remedies For Fraudulent Sales Practices 46

 Alternative Remedies Available To A Defrauded Purchaser 46

 Affirmation Of The Contract..... 46

 Rescission Of The Contract (Civ. Code section 1691 and 1692)..... 46

Miscellaneous Sales Practices Laws..... 46

 Sales Below Cost (Loss Leader Laws)..... 46

 Introduction 46

 Federal Regulation 47

 Sales Below Cost As A Violation Of The Sherman Anti-Trust Act 47

 Sales Below Cost As An Unfair Method Of Competition Under The FTC Act..... 47

 Sales Below Cost May Constitute A Criminal Violation Of The Robinson-Patman Act..... 47

 State Regulation 47

 Price Fixing Agreements 49

 “Per Se” Illegal Under Both The Federal (Sherman) And California (Cartwright) Antitrust Laws..... 49

 Practical Application Of Price Fixing As An Unlawful Restraint Of Trade..... 49

 Federal Penalties For A Price Fixing Violation In Restraint Of Trade 49

 Public Enforcement Of The Sherman Act..... 49

 Private Actions Under The Sherman Act 49

 State Penalties For A Price Fixing Violation In Restraint Of Trade 49

 State Enforcement Of The Cartwright Act..... 49

 Private Actions Under The Cartwright Act..... 49

 Odometer Laws 50

 Introduction 50

 Federal Odometer Requirements..... 50

 Use Of Device Which Causes False Mileage Reading..... 50

 Change Of Mileage Prohibited..... 50

 Illegal To Operate Vehicle With Disconnected Or Nonfunctional Odometer 50

 Disclosure Requirements Upon Transfer Of Ownership..... 50

 Leased Vehicles..... 51

 Record Retention..... 52

 Penalties For Violation Of Federal Odometer Laws 52

 Civil Penalties..... 52

 Criminal Penalties 52

 State Odometer Laws 53

 Privacy..... 54

 Penalties For Violation Of State Odometer Laws 54

 Acting As A Salesperson Without A License 54

 Illegal Lotteries..... 54

 Prescreened Credit Offers..... 55

Sales Tax Included Advertising 57

AUTOMOBILE SALES FINANCE ACT

Chapter 2

Contents

Scope And Purpose Of The Act	61
Purchase Orders	62
Establishing Contract Parameters	63
Finance Participation Caps	63
Simple Interest Or Precomputed Finance Charge	63
Precomputed Contracts Only: Rule of 78s, Actuarial Method, Or Sum Of The Digits Method	64
Simple Interest Basis Mandatory On 62 Month Or Longer Contracts	64
Hidden Finance Charges	65
Used Vehicle Contract Cancellation Option	66
Pre-contract Disclosures	67
Required Disclosure Statement	67
Payment Packing Prevention	68
Credit Score Disclosure	68
Conditional Sale Contract Contents	68
Conditional Sale Contract Forms	68
Civil Code Section 2982(a) Disclosures	68
Negative Equity and Overallowances	70
Trade-In Payoff Rules, Deadline	70
Disclosures Required By Regulation Z	70
Identifying and Handling Deferred Downpayments	71
Additional Civil Code Section 2982 Requirements And Provisions	72
Changes To Payment Terms And Consumer Complaint Notice	72
No Cooling Off Contract Language And Signs	72
New/Used Disclosure	73
Disclosure Of Payment Of Autobroker Fee	73
Contract Documentation Requirements	73
The Single Document Rule	73
Requirements and Problem Avoidance	73
Single Document Rule and Multi-Page Documents and Attachments	75
Delivery Of Contract And Other Required Documents To Buyer	76
Co-Buyer Notice Requirement	77
Spanish and Other Foreign Language Contract Translations	77
Foreign Language Posted Sign	78
Documents Required by the Certified Used Vehicle Law	79

Service Contract and Insurance Disclosure Requirements	79
Special Requirements Relating To The Sale Of Disability Insurance	80
Service Contract Sale And Cancellation Requirements.....	81
Bird Dog Rebates And Commissions	81
Contract Modifications And Side Loans.....	81
Extension Agreements Permissible Charges.....	81
Requirements Related To Dealer-Assisted Loans	81
Prohibition Against Other Security.....	81
Abolition of Distinction Between Side Loan For Part Payment And Side Loan For Unpaid Balance	82
Duty To Refund	83
Rights And Duties After Executing Contract	83
Inability Of Buyer To Obtain Financing - Dealer's Inability To Assign Contract.....	83
Duty To Refund - Conditional Sales Contract Is Contemplated But Not Executed.....	85
Right To Lost Profit and Retention of Deposits - Customer Breaches Agreement To Purchase	85
Rights To Advances To Pay For Insurance And Repairs	86
Default As Prerequisite To Acceleration	86
Pre-Repossession Written Notice of Delinquency to Cosigner	86
Buyers Right Of Reinstatement	87
Sale of Vehicle After Repossession.....	87
Requirements For Notice Of Intent To Sell Vehicle.....	87
Accounting Of Proceeds Of Sale	88
Assignee Takes Subject To Buyer's Rights Against Seller.....	90
The Holder-In-Due-Course Rule May Not Be Waived	90
Other Waivers Prohibited	90
Dealer's Liability For Violations Of The Act	90
Liability Under Civil Code Section 2983	90
Dealer's Right Of Offset	91
Dealer Liability - Civil Code Section 2983.1	91
Dealer Liability - Violation Of Truth-In-Lending	91
Limited Right To Correction - Civil Code section 2984	92
Binding Arbitration Clauses	92

CONSUMER AUTOMOBILE LEASING

Chapter 3

Contents

- Leasing Acts Applied To Consumer Transactions 95
 - Meaning Of “Lease Contract” 95
 - Meaning Of “Lessor” And “Lessee” 96
 - The Acts Do Not Apply To Credit Sale Transactions 97
 - Lease Form Disclosure Requirements-Federal Law 97
 - Lease Form Disclosure Requirements-California Law 100
 - Additional Provisions Under California Law 100
 - Required Lease Contract “Warning” Provisions 100
 - Trade-In Payoff Rules, Deadline 101
 - Lessee's Right To Rescind Under California Law 102
 - Prohibited Lease Contract Provisions 103
 - Executing A Lease Contract 103
 - Co-Lessor Notice 104
- Lease Advertising And Solicitation 104
 - General Principles 104
 - Required Federal Disclosures 105
 - Required California Disclosures 105
 - Television/Radio Lease Advertisements 106
 - Further Advertising Rules Under California Law 106
 - Early Lease Termination 107
 - Formula 107
 - Realized Value 107
 - Notice 107
 - Sale or Trade-in 107
 - Other Requirements 108
 - Lessee's Liability On Open-End Leases 108
 - Presumption That Liability Is Limited To Three Monthly Payments 108
 - Effect Of Excessive Wear And Use 109
 - Determining “Realized Value” 109
 - Commercially Reasonable Standard 109
 - Written Notice Regarding Sale 109
- Liability For Failure To Comply With The Law 109
 - Penalty/Damage Provisions 109
 - Correction Of Bona Fide Errors 110
 - State And Federal Statutes Of Limitations 110

CONSUMER AUTOMOBILE LEASING

Production And Retention Of Records 111

Miscellaneous California Statutes..... 111

California Licensing Requirements For Lessors..... 111

Leases Interpreted To Be Security Agreements..... 111

Registration..... 111

Transfer Of Ownership Disclosures..... 112

Equipment Requirements For Leased Used Vehicles..... 112

Liability For Permissive Use 112

Liability For Repair And Storage Liens..... 112

CREDIT REPORTS AND DECISIONS

Chapter 4

Contents

Credit Reports.....	115
Key Definitions	115
Permissible Purposes For Credit Reports	117
FTC Position On Use Of Credit Reports.....	117
Penalties For Misuse Of Credit Information	118
Prescreened Lists	118
Agreements/Procedures Involving Consumer Credit Reporting Agencies	119
Consumer Identification	119
Fraud Alerts/Personal Information Discrepancies.....	120
Requirements Where Dealers Provide Credit Information.....	121
Credit Decisions	122
CCRAA And FCRA Notice And Disclosure Requirements	122
Risk-Based Pricing Rules	123
Credit Decisions Based On Information Received From Third Parties	124
Penalties For Noncompliance With CCRAA/FCRA Notice Requirements.....	125
Other Legal Requirements Relating To The Credit Application/Decision Process	125
ECOA/Reg. B.....	125
Handling Credit Applications.....	126
ECOA/Reg. B Notices And Disclosures	127
Incomplete Applications.....	128
Incidental Credit.....	128
Withdrawn Applications.....	128
Records Retention	128
Penalties For Failure To Comply With ECOA/REG B/HCCDDA.....	128
Credit Reports Used For Employment Purposes.....	129
Investigative Consumer Reports.....	129
Public Records Investigation.....	131
Adverse Action Regarding Employment.....	132
Penalties For Noncompliance / Statute Of Limitations.....	132

INSURANCE

Chapter 5

Contents

Insurance Transactions Arising From Vehicle Sales And Leases	135
Introduction	135
Licensing Requirements	135
License.....	135
Pre-Licensing And Continuing Education Requirements	136
Limited Exemption From Continuing Education Requirements	137
Termination Of License For Failure To Comply With Continuing Education	137
Appointment On File.....	137
Display Of License Number.....	137
Internet Advertising.....	137
Change in Licensee's Background Information	138
License Termination.....	138
Dealer's Legal Duties.....	138
Motor Vehicle Insurance	138
Credit Life/Disability Insurance	140
Maintaining Insurance Premium Funds.....	141
Insurance Disclosures.....	142
Physical Damage Insurance Disclosures	142
Prohibited Conduct And Problem Areas	143
Solicitation.....	143
Insurance Assignment	143
Dealer's Liability As Insurance Agent.....	143
Collecting Insurance Proceeds For Repairs	144
Introduction	144
Duty Of Insurance Company To Pay For Repairs.....	144
Type Of Coverage	144
The Insurance Company's Authorization	144
Financial Benefit To Insurance Adjuster.....	145
Dealer's Liability Coverage	145
Introduction	145
Dealer's Liability As Owner: Permissive Use Law	145
Owner Defined	146
Limited Liability.....	146
Liability For Entrustment To Unlicensed Or Unsafe Driver.....	146

When The Dealer's Liability As Owner Terminates.....	146
Dealer's Insurance Policy Should Provide Coverage.....	147
Additional Requirement For Lease Contracts.....	147
Dealer's Auto Liability Policy - Primary And Excess Coverage	147
Dealer As Seller And Repairer Of Motor Vehicles	148
Dealership As Lessor Of Motor Vehicle	148
Loading/Unloading Of Vehicle	148
All Other Situations	148
Modification Of Presumptions.....	148
Insurance Coverage In Non-Liability Situations	148
Introduction.....	148
Examples Of Types Of Coverage	148
Litigation Procedure	149
Introduction.....	149
Tender To Insurance Carrier.....	149
Thirty Day Deadline	150
Contact Legal Counsel.....	150
Termination Of Dealership Business Effect On Insurance Coverage	150
Financial Responsibility Law	150
Introduction.....	150
Establishing Financial Responsibility.....	150
Insurance Policy.....	150
Cash Deposits	151
Self-Insurance	151
When Evidence Of Financial Responsibility Is Required	151
Reporting And Insurance Responsibilities In The Event Of An Accident	152
Registration Renewal.....	152

PRIVACY, SAFEGUARDS, IDENTITY THEFT AND RED FLAGS

Chapter 6

Contents

Privacy	155
Privacy Notice	155
Notice Delivery	155
Annual Notice.....	156
Notice Content.....	156
Information Sharing Exceptions.....	157
Opt Out Notice	157
Standards for Safeguarding Consumer Information.....	159
California Laws Relating to Privacy	160
Social Security Number Privacy	160
Requirement to Post Online Privacy Policy	161
Personal Information Security	161
A Customer’s Right to Ask About Information Sharing Practices.....	162
Exemptions.....	164
Legal Consequences of Non-Compliance	164
Breach of Computerized Data Systems Notification Requirement	164
IDENTITY THEFT AND RED FLAGS.....	165
Fingerprinting Customers	165
Identity Theft Investigations.....	166

TELEMARKETING, FAX, AND EMAIL

Chapter 7

Contents

Telemarketing Regulations.....	169
Introduction	169
Telemarketing Defined.....	170
Examples of Calls Not Involving Telemarketing.....	170
Upselling not covered by California or FCC “Intrastate” Regulations, only by FTC “Interstate” Regulations.....	170
Basic Requirements for Making Telemarketing Calls	170
Written Policy and Training	170
Basic Company-Specific Do-Not-Call Policy and Training	170
Safe Harbor Protection Against Liability Available If Additional Written Procedures and Training Maintained.....	171
Do-Not-Call Rules.....	171
Two Do-Not-Call Lists.....	171
National Do-Not-Call List.....	171
Company-Specific Do-Not-Call List.....	172
Exceptions and Exclusions to Do-Not-Call.....	172
Non-Telemarketing	172
Calls to Non-Residential, Non-Wireless Numbers.....	172
Both Lists Checked – Number not Found	173
Express Written Consent and Agreement To Receive Calls	173
Established Business Relationship	173
Express Request / Consumer Inquiry	174
Impact On Dealership Affiliates and Third Party Telemarketers.....	175
Do-Not-Call Requests Binding On Affiliates?.....	175
Affiliate Sharing of Established Business Relationship	175
Limited Delegation to Outside Telemarketing Vendors.....	175
Dealership Liability for Violations by Telemarketing Vendors.....	175
Regulations Applicable To Calls Permitted Under Do-Not-Call	176
After 8 a.m./Before 9 p.m.....	176
Callers Must Identify Themselves.....	176
Callers Must Be Able to Accept Do-Not-Call Requests	177
Caller ID Accurate, Not Blocked.	177
Calls To Be Allowed to Ring Four Rings or Fifteen Seconds.....	177
Call Center/Technology Limitations	177
Additional Do-Not-Call Issues.....	177

No Personal Relationship Exception	177
No Gift/Prize Exception.....	177
Phone Survey Exception Restricted.....	178
No Private-Party Classified Ad Exception	178
No Small Business Exemption.	178
Text Messaging to Cell Phones or Pagers Limited.....	178
Use of Downloaded Do-Not-Call Numbers Limited to Telemarketing Compliance	178
Penalties and Enforcement.....	179
Federal	179
California	179
Documenting Telemarketing Compliance – Record Keeping	179
Proof of Written Policy, Training and Employee Compliance.....	179
Company-Specific Do-Not-Call List	179
List of Numbers Downloaded from the National Registry	180
Verification of Checking of Lists, Scrubbing of Numbers	180
Evidence of Compliance with Express Request Exception	180
Evidence of Compliance with Established Business Relationship Exception.....	180
Records Establishing Call Abandonment Rate When Using Predictive Dialers	180
Voice Logging and Taping and Recording Of Calls.....	180
Fax Advertising Regulations.....	181
Fax Identification Required for All Faxes	181
No Faxing of Unsolicited Advertising	181
Applicable to Residence and Business Faxes	181
Not Applicable If Fax Entirely Free of Advertising	181
Not Applicable if Sent With Prior Express Written Invitation or Permission.....	181
Penalties and Enforcement.....	182
E-mail Regulations	182
Individual Email Requirements of The CAN-SPAM Act	182
Classification of Email Under CAN-SPAM	182
Unsolicited Commercial Email.....	183
Commercial Email Sent With Affirmative Consent	183
Transactional And Relationship Email	183
Additional CAN-SPAM Requirements.....	183
Enforcement and Penalties.....	184

AUTOBROKERS

Chapter 8

Contents

Restriction On Hold-For-Resale.....	187
Requirements Of A Dealer Who Brokers.....	188
Autobroker Log.....	188
Written Brokering Agreement.....	189
Disclosure Of Whether Fee Is Payable.....	189
Fiduciary Duty.....	189
Limit On Deposits.....	189
Trust Account.....	189
Refund Requirements.....	189
Canceling A Brokering Agreement For Non-Performance.....	189
Advertising.....	190
Cannot Act As Seller And Broker In The Same Transaction.....	190
Record Retention.....	190
Selling Dealer's Obligations In A Brokered Transaction.....	190
Register And Title Vehicle.....	190
Collecting The Sales Tax.....	190
Must Disclose Whether Fee Is Paid To Autobroker.....	191
No Consignment Of New Vehicles.....	191
No Display Of New Vehicles At Autobroker's Business Premises.....	191
Autobroker Cannot Use Your License, Supplies, Or Books.....	191
Manufacturer Prohibition.....	191
Motor Clubs.....	191
Motor Clubs Are Not Dealers Or Autobrokers.....	191
Motor Club Advertising Requirement.....	192
Q & A.....	192
Do's And Don'ts In Dealing With Autobrokers.....	194
Text Of Autobroker And Related Laws.....	196
Definition Of Autobroker.....	196
Definition Of Brokering.....	196
Definition Of Converter.....	196
Definition Of Dealer.....	196
Definition Of New Vehicle.....	196
Definition Of Retail Sale.....	197
Requirement Of Established Place Of Business.....	197
Autobroker Registration Fee.....	197

Brokers Subject To All Dealer Laws 197
Allowable Autobroker Advertising 197
Deposits 197
Display Of Vehicles 197
It Is Unlawful For Anyone Other Than A New Motor Vehicle Dealer
To Sell A New Vehicle 197
Required Disclosures on Sales Contracts 198
Unlawful For Manufacturers To Dishonor Warranties, Rebates, or
Other Incentives In Broker Transactions 198
Further Autobroker Requirements - Registration, Autobroker Log,
and Fiduciary Duties 198
Acts Which Are Unlawful In Autobrokering..... 198
Deposits When Brokering A Retail Sale 199
Contents of Brokering Agreement 200
Selling Dealer's Duties Regarding Title Registration, Warranties,
Rebates, and Incentives 200
Motor Clubs 200
Offsite Sales and Delivery 201

NEW AND USED CAR WARRANTIES

Chapter 9

Contents

Scope And Purpose Of Major Warranty Statutes	205
Definition Of Warranty	205
California Commercial Code Warranties	205
UCC Implied Warranty Of Merchantability.....	205
UCC Implied Warranty Of Fitness For A Particular Purpose.....	206
UCC Express Oral And Written Warranties.....	206
Waiving And Disclaiming Warranty Rights Under the UCC	206
California Song-Beverly Consumer Warranty Act	207
Federal Magnuson-Moss Warranty Act	207
New Car Warranty Issues	207
Implied Warranties	207
Under The Commercial Code.....	208
Under Song-Beverly.....	208
Under The Lemon Law	208
Reasonable Number of Attempts Presumption	209
Lemon Law Penalties	209
Lemon Law Damages.....	209
Lemon Law Reacquisition Agreements	210
The Lemon Law's Definition of New Vehicle	210
Lemon Law and Recreational Vehicles.....	210
Dealer Indemnity Rights	210
Under Magnuson-Moss	210
Express Warranties	211
The Adoption Problem	212
Pre-Sale Availability Of Warranties.....	212
Shifting Warranty Law Responsibility To The Factory	213
Used Car Warranty Issues	214
Implied Warranty Of Merchantability.....	214
Under The UCC.....	214
Duration Of Implied Warranty Of Merchantability	214
Under Song-Beverly.....	214
Under Magnuson-Moss	215
Disclaiming Implied Warranties.....	215
Certified Used Vehicles.....	215
Dealer Express Warranties On Used Car Sales.....	215

Written Warranties Under Magnuson-Moss	215
Written Warranties Under Song-Beverly.....	216
Oral Express Warranties	217
Disclaiming Oral Warranties	217
The FTC Used Car Rule	217
Sales Governed By The Rule.....	217
Unfair And Deceptive Practices.....	217
Requirements	218
Form And Content Of The Buyers Guide.....	218
Certified Pre-Owned Vehicles and the Buyers Guide	219
Used Car Warranty Questions And Answers.....	220
Warranty Issues Common To New And Used Car Sales.....	221
Notice Of Extension Of Warranty During Repair	221
Factory Warranty Adjustment Programs	222
Service Bulletin Availability	222
Disclosure Of Warranty Adjustment Program.....	222
Statutory Requirements For New Car Warranties Based On Mileage.....	222
Statute Of Limitations For Breach Of Warranty.....	222
Remedies For Breach Of Warranty.....	222
Factory Bankruptcy and Dealer Warranty Duties.....	223
Special Rules For Aids To The Physically Disabled	224
Lemon Law Disclosure And Title Branding.....	224
Manufacturer Requirements	224
Dealer Requirements.....	225
Completion and Delivery of Disclosure Form.....	225
Preparation and Delivery of Disclosure Statement.....	225
Warranty Buyback Notice - The Disclosure Form	226
Warranties For Anti-Theft Devices	228

SERVICE CONTRACTS

Chapter 10

Contents

Definition of Vehicle Service Contract	231
Types of VSCs.....	232
Third Party Obligor VSC Program Requirements.....	232
License Requirement	232
Insurance Commissioner Filing Requirements.....	232
VSC Form Disclosures Requirements.....	233
Record Requirements	233
Dealer Obligor VSC Program Requirements	234
Manufacturer Obligor VSC Program Requirements	234
Insurance Policy Requirements for Third Party and Dealer Obligor VSC Programs	234
Criminal Penalties	235
Civil Code Section 1794.4 VSC Disclosures	235
Civil Code Section 1794.41 VSC Requirements and Cancellation Rights.....	236
Obligor's Right to Cancel VSC.....	236
VSC Refund Agreements	237

VEHICLE REPAIR AND MODIFICATION

Chapter 11

Contents

Automotive Repair Act.....	241
Bureau Of Automotive Repair And Registration Requirements	241
Application Of The Act.....	241
Repair Of Motor Vehicles	241
Focus On Passenger Vehicles.....	242
Administration Of The Act.....	242
Bureau Of Automotive Repair.....	242
Bureau Branches.....	242
Registration Of Automotive Repair Dealers	242
Registration Requirement	242
Registration Fee.....	243
Registration Problems	243
Grounds For Invalidating A Registration	243
Notice And Hearing Requirements	244
Requirements Regarding Repair Work.....	244
Written Repair Estimates.....	244
Teardown Estimates	244
Special Requirements Regarding Transmissions	245
Invoices	245
Further Identifying Parts Information On Invoice.....	246
Identifying Dealer Information On Invoice.....	246
Miscellaneous Shop Supplies	246
Hazardous Waste Disposal Fee	247
Need To Retain Records.....	248
Customer Authorization	248
Oral, Fax or E-mail Consent to Additional Work	249
Return Of Replaced Parts	251
Special Licenses For Brake And Lamp Services.....	252
License Requirements	252
Disciplinary/Penalty Provisions	252
Trade Standards.....	252
Ball Joints.....	252
Automatic Transmissions	252
Advertising Regulations	253
The General Guideline	253

Specific Restrictions	253
Posting of Labor Rates.....	254
Disclosure Requirements For Warranties	255
Consumer Complaints/Disciplinary Procedures	256
Informal Actions	256
Administrative Proceedings.....	257
Court Proceedings.....	258
Disclosure Of Complaint Disciplinary License Status Information	258
Alteration of Vehicle by Dealer and Installation of Performance Parts.....	259
Make Inoperative	260
Alteration Defined	260
Certification Label	260
Alteration May Require Re-Placarding	260
Re-Placarding when Replacing Tires.....	261
California General Equipment Requirements	261
California Emissions Equipment Requirements	261
Vendor Background	261
Compliance with Laws	261
Vehicle Manufacturer and Related Issues.....	262
General Product Liability Issues.....	262

LIENS ON VEHICLES AND LIEN SALES

Chapter 12

Contents

Types Of Liens	265
Labor And Material Liens	265
Storage And Parking Liens.....	266
Towing And Storage Liens For Vehicles Authorized To Be Removed By A Public Agency and Others (Civil Code section 3068.1)	268
Right Of Tow Truck Operator To Deficiency Claim (Civil Code section 3068.2)	269
Enforcement Of Liens	269
Tender Of Cash And Claims By Legal Owner.....	270
Labor And Materials Lien When Registered And Legal Owner The Same	271
Assignment Of Liens	271
Revival Of Lost Liens	271
Misdemeanor Violations	272
Improper Towing Or Removal	272
Procedures For Conducting Lien Sale	272
Sale Of Vehicles Valued Over \$4,000.....	272
Right Of Registered Or Legal Owner To Redeem Vehicle After Lien Sale	273
Charges For Lien Sale Preparation.....	273
Release Of Owner's Interest In Vehicle.....	274
Sale Of Vehicle Valued At \$4,000 Or Less.....	274
Disposition Of Lien Sale Proceeds.....	274
Mobilehomes.....	275
Removal Of Vehicles To Garages By Law Enforcement Authorities.....	275
Personal Property In Vehicle.....	275
Frequently Asked Questions.....	275

SMALL CLAIMS COURT AND COLLECTION OF JUDGMENTS

Chapter 13

Contents

Commencement Of A Small Claims Action	280
Jurisdiction	280
Filing A Claim.....	281
Filing Fee.....	282
Naming Defendants.....	282
Individual Or Entity.....	283
Doe Defendants	283
Filing A Claim In The Proper Court.....	284
Meaning Of Venue	284
Determining Venue	284
Challenging Venue Or Court Location.....	284
Statute Of Limitations	284
Setting An Action For Trial.....	285
Timing Of Hearing	285
Service Of An Action On The Defendant	285
Service By Mail.....	285
Personal Service	285
Individual Defendant.....	285
Corporate Defendant	286
Partnership Defendant.....	286
Minor Defendant	286
Substituted Service	286
Timing Of Service	286
Defendant's Role In A Small Claims Action.....	287
Response To Plaintiff's Claim	287
Counterclaim	287
Transfer To Higher Court.....	287
Request For Transfer.....	287
Court's Discretion.....	288
Conduct Of A Small Claims Trial	288
Representation Of The Parties.....	288
Pre-Trial Preparation	288
Personal Appearance By Parties.....	289

Pre-Trial Procedure.....	289
Trial.....	290
Burden Of Proof.....	291
Evidentiary Concerns.....	291
Small Claims Judgments.....	291
Notice Of Judgment.....	291
Default Judgment.....	291
Motion To Vacate Default Judgment.....	292
Motion To Vacate When Improper Service.....	292
Small Claims Appeal.....	292
Defendant's Option Only.....	292
Procedure For Filing An Appeal.....	293
Notice To Other Parties.....	293
Setting Appeal Hearings.....	294
Conduct Of An Appeal Hearing.....	294
Dismissal of Appeal.....	294
The Decision Of The Superior Court On Appeal.....	294
Collecting On A Small Claims Judgment.....	295
Stay Of Judgment.....	295
Obtaining Financial Information About The Judgment Debtor.....	296
Prior Business Dealings.....	296
Court Questionnaire.....	296
Judgment Debtor's Exam.....	296
Use Of An Investigator.....	297
Collection Procedures.....	297
Abstract Of Judgment (For Real Property).....	297
How To Establish.....	297
Effect.....	297
Judgment Lien (For Business Personal Property).....	297
How To Establish.....	297
Effect.....	298
Writ Of Execution (For Personal Or Real Property).....	298
How To Obtain A Writ.....	298
Instructions For Writ Of Execution Form.....	298
Instructions:.....	298
Reverse Side:.....	299
Instructing The Levying Officer.....	299
Effect Of The Writ.....	300
Exemptions.....	300
Third Party Claims.....	301
Wage Garnishment.....	301
How To Obtain A Wage Garnishment.....	301
Effect.....	301
Exemptions Applying To Wage Garnishment.....	302
Use Of A Keeper.....	302

Satisfaction Of A Judgment.....302

THE NEW MOTOR VEHICLE BOARD

Chapter 14

Contents

Formation Of The Board	308
Membership	308
Meetings Of The Board, Quorum, And Voting Rights	308
Autonomy Of The Board	308
Board Records	309
Powers And Duties Of The Board In General	309
Hearing Of Appeals, Petitions And Protests	309
Hearing Of Petitions	309
Exhaustion Of Administrative Remedies	310
The Yamaha Cases	310
Fladeboe vs. New Motor Vehicle Board	310
Zaheri vs. Mitsubishi	310
HWB vs. Nissan	310
Miller vs. Superior Court	311
Hardin vs. New Motor Vehicle Board	311
Tovas vs. Honda	312
Kemp vs. Nissan	313
South Bay Creditors vs. General Motors Acceptance	313
1998 Law	314
Consideration Of Customer Complaints; Mediation Program	314
Statistical Breakdown Of Board's Activities And Decisions	314
Appeals From DMV Decisions	314
2008 Statistics	315
2009 Statistics	315
Dealer Protests And Petitions	316
Protests Pursuant To Vehicle Code Section 3060 Against Termination Or Modification Of A Franchise	316
Notice Requirements For Termination Or Refusal To Continue An Existing Franchise	316
Notice Requirement On Part Of Franchisor To Modify Or Replace A Franchise	316
Significant Court Decisions Regarding Modification of Franchise	317
Rights And Responsibilities Upon Receiving A Notice To Terminate, Modify Or Replace The Franchise	317
Filing Fee Requirement Upon Filing Of Protest, Petition, Appeal Or Initial Pleading	318

Form And Content Of Section 3060 Protest	318
Board's Procedures Upon Receiving Protests In Setting Case For Pre-hearing Conference, Mandatory Settlement Conference And Hearing	319
Pre-hearing Conference	319
Discovery	320
Mandatory Settlement Conference	320
Stipulated Decision And Proposed Order Of The Board	321
Burden Of Proof And Issues To Be Determined	321
Conduct Of Hearing, Disqualification of Judge, And Decision By The Board	321
Appeal From Decisions Of The Board – Administrative Mandamus	323
Protests Pursuant To Vehicle Code Section 3062 - The Establishment Or Relocation Of A Dealership Within A Relevant Market Area	324
Duty Of Manufacturer Or Distributor To Give Notice	324
Satellite Warranty Facilities	325
Right To File Protest And Time Within Which To File	325
Interested Parties	328
Form And Content Of Section 3062 Protest	328
Filing of Notice of Appearance	328
Board's Procedures Upon Receiving A Protest	328
Special Significance Of Mandatory Settlement Conferences In Establishment Or Relocation Cases	329
Burden Of Proof And Issues To Be Determined	329
Conduct Of Hearing And Decision Of The Board	331
Protests Over Predelivery Obligations, Warranty Work, and Incentives	331
Section 3064 Delivery And Preparation Obligations	331
Section 3065 Warranty Obligations	331
Section 3065.1 Incentive Obligations	331
Burden Of Proof	333
Stipulation Of Facts	333
Hearing By Board Or Hearing Officer	333
Dealer Rights Under Vehicle Code Sections 11713.2, 11713.3, And 11713.13	333
Petitions Involving Violations Of A Dealer's Rights Under Vehicle Code Sections 11713.2, 11713.3, And 11713.13	334
2009 Franchise Law Amendments	339
Mediation Of Disputes Subject To Petition Jurisdiction.	340
Form And Content Of section 3050 Petitions	340
Procedures Of The Board After Receipt Of A section 3050 Petition, Burden Of Proof And Hearing	341
Appeals From Decisions Of The Director Of The DMV Imposing License Discipline Upon A Dealer	341
Authority Of Board To Dismiss Proceedings	342
Rights Of Parties To Intervene In Board Proceedings	342
Amicus Curiae Briefs	342
Administrative Procedure Act Of 1995	342
Arbitration Clauses in Franchise Agreement	343

Dealers' Day In Court Federal Legislation344

DMV INVESTIGATIONS AND ACCUSATIONS

Chapter 15

Contents

DMV Investigations And Inspections	349
Statutory Authority	349
Routine DMV Inspections Or Inquiries.....	350
Dealer Reviews.....	351
What Triggers A Dealer Review	351
How The Dealer Review Commences	351
Why Your Report Of Sale Books Are Picked Up	351
What Follows The Taking Of The Report Of Sale Books	352
The Inspection Of Selected Sales Jackets	352
The Interviewing Of Customers	352
How The Review Is Concluded.....	353
The Dealer Resume	353
The Investigator's Report.....	353
The Conduct Of Investigators	354
Recommended Actions For Dealer Under Review	354
Accusations.....	355
Proceedings Before Hearing.....	355
Authority For Filing Of Accusation	355
Content Of Accusation	355
Grounds For Accusations In Filing Against New Car Dealers	356
Typical Dealer Violations.....	357
Filing And Service.....	358
Filing Date And Statute Of Limitations	358
Service Of Accusation, Required Accompanying Documents, Notice Of Time And Place Of Hearing And DMV Report	359
Responsive Pleadings By Dealer.....	359
Discovery.....	359
Administrative Procedures Act of 1995	361
Hearing Procedure	361
Formality And Chronology Of Hearing	361
Distinctions Between Accusations And Other Proceedings.....	362
When Dealer May Be Called As Witness	362
Liberal Rules Of Evidence And Admissibility Of Hearsay	362
Cross-Examination And Impeachment Of Witnesses	362
Use Of Affidavits	362

The Administrative Law Judge's Decision 363

 Trial Tactics And The Use Of Mitigating Evidence 363

 Recovery of Costs and Expenses 364

The Administrative Law Judge's Decision And Its Approval Or Rejection 364

 The Administrative Law Judge's Decision Is Merely A Recommended
 Decision..... 364

 Language Of Decisions..... 364

 The Department's Options Regarding The Administrative Law
 Judge's Recommended Decision 365

 Service And Effective Date Of Decision 365

 Right To Petition For Reconsideration 365

Appeal Of Decision To The New Motor Vehicle Board 366

 Dealer's Right To Appeal And Stay Effect Of Decision..... 366

 Time For Filing And Contents Of Notice Of Appeal 366

 Appeals Hearing Procedures..... 366

 The Power Of The Board And How It Is Exercised 367

 Effect Of License Discipline Upon Dealer And Officers 367

Settlement - Alternative To Accusation Hearing..... 368

 Practical Considerations Involving Settlements 369

SALES AND USE TAX

Chapter 16

Contents

State Board Of Equalization	373
Sales And Use Tax Permits	373
Filing Returns	373
Penalties For Overdue Filings and Payments	374
Electronic Filing Requirement	374
Audits	374
Managed Audit Program	375
Appealing An Audit	375
Record Keeping Requirements	375
Application Of Sales And Use Tax Laws	376
District Taxes	376
Tax Calculations	376
Amounts Subject To Sales Tax	377
Trade-In Vehicles	377
Courtesy Deliveries	377
Drop Shipments	377
Internet Sales	378
Resale Certificates	378
Availability Of Sales Tax Refunds In Unwind Situations	379
Contract Cancellation Option Agreements	380
Lemon Law And Sales Tax Refunds	380
Refunds For Charge Off Accounts and Losses	380
Gasoline	381
Dealership Vehicles	381
Loaned Vehicles	381
Demonstrator Vehicles	382
Exemptions	383
Sales To The United States Government	383
Sales To Foreign Diplomats	383
Out-Of-State Sales	383
Purchases by California Residents For Use Out of State	384
If Delivery Is Made Other Than By A Common Carrier Auto Transporter	384
Vehicles Sold to Native Americans and Delivered on a Reservation	385
Vehicles Loaned To State University Employees	386
Vehicles Used In Interstate Or Foreign Commerce	386

SALES AND USE TAX

Vehicles For Physically Handicapped Persons.....	386
Lease Taxation.....	386
Passenger Vehicles	386
Resales By Lessees	387
Local Use Taxes On Leases	387
Service And Repair	387
Taxable Sales Of Goods	388
Non-Taxable Services.....	388
Hazardous Waste Fees	388
Core Charges For Vehicle Repair Parts	388
Sublet Repairs.....	389
Exchanged Parts.....	389
Supplies Used For Repairs.....	389
Warranty And Service Contract Repairs.....	389
Responsible Persons For Sales And Use Tax Liability.....	391

WAGES AND HOURS

Chapter 17

Contents

Scope Of Wage And Hour Law And Exemptions.....	395
California White-Collar Exemptions.....	395
Executive Exemption – Federal Law	397
Administrative Exemption – Federal Law.....	397
Combination Of Exemptions.....	398
Common Problems	398
Specific Wage And Hour Requirements	398
Working Hours, Overtime Pay, And Employment Of Minors	398
Regular vs. Overtime.....	398
Alternative Workweeks.....	399
Make Up Time.....	399
Commissioned Employee Exemption	399
Hours And Overtime For Minors	399
Minors In Work Experience Program	400
Exceptions For Collective Bargaining Agreement.....	400
Discussion Of Overtime	400
General Rules	400
Mechanics.....	400
Service Advisors.....	401
Partspersons.....	401
Salespersons	402
Calculating Overtime	402
Mechanics.....	402
Calculating The Regular Rate	402
Compensation To Salespersons.....	403
Timing Of Wage Payments To Salespersons	403
Pay Plans	404
Minimum Wages	405
Pay For Reporting To Work.....	406
Meals, Breaks, And Facilities.....	406
Meals	406
Rest Periods.....	407
Uniforms And Equipment	407
Change Rooms And Resting Facilities.....	408
Miscellaneous Requirements.....	408

WAGES AND HOURS

Exemptions For Employer Based Upon Undue Hardship	409
Paying Wages And Record Keeping.....	409
Time Of Payment Of Wages.....	409
Exemptions For Executive, Administrative And Professional Employees	409
Payment Of Wages To Employees Paid Weekly.....	409
Time Of Payment Of Commission Wages.....	410
Payment Of Wages Upon Termination Of Employment.....	410
Records That Must Be Kept.....	411
Equal Pay For Equal Work	412
Assignment Of Wages And Wage Garnishment.....	413
Assignment Of Wages	413
Garnishment.....	413
Authorized Deductions From Wages.....	413
Charging Employee For Cash Shortage Or Breakage	414
Vacations And Other Time Off.....	414
“Day's Rest”	414
Sick Leave.....	415
Vacations and Vacation Pay	415
Time Off For Voting.....	416
Service Of Employee As Juror Or Witness	416
Leave For Crime Victims.....	417
Military Service	417
Independent Contractor Or Employee	417
Enforcement Of Wage And Hour Laws.....	418
Penalties.....	418
Labor Commissioner Enforcement Of Wage Claims	419
Arbitration Of Wage & Hour Claims.....	420

WRONGFUL TERMINATION AND DISCRIMINATION

Chapter 18

Contents

Judicial Restrictions On Discharge Of Employees.....	427
General Principles - Wrongful Discharge Cases	427
Violation Of Public Policy	427
Express Or Implied Contracts	427
Breach Of The Implied Covenant Of Good Faith And Fair Dealing	428
Discharges For Cause.....	429
Importance Of Legal Counsel Before Discharge	429
Drug Testing And Discharges For Workplace Drug Use.....	429
Pre-Employment Testing.....	430
Reasonable Suspicion Testing.....	430
Random Testing	430
Preventative Measures.....	430
Legislative And Regulatory Restrictions.....	430
Unlawful Discharge - Federal Legislation And Regulations.....	431
Civil Rights Act Of 1964 - Race, Color, Religion, Sex, Or National Origin.....	431
Age	431
Civil Rights Act Of 1866.....	431
Civil Rights Act of 1991	431
Exercise Of Rights To Collective Bargaining	431
Garnishment For Any One Indebtedness	431
Occupational Safety And Health Act	432
Employee Wage Complaints	432
Exercise Of Employee Rights Under ERISA	432
Service By Employee As Juror.....	432
Employee Involvement In Proceedings Under Toxic Substances Control Act	432
Employee Involvement In Proceedings Under Solid Waste Disposal Act.....	433
Employee Involvement In Proceedings Under The Clean Air Act	433
Worker Adjustment And Retraining Notification Act	433
Employee Polygraph Protection Act	433
Americans With Disabilities Act Of 1990.....	433
The Family And Medical Leave Act of 1993.....	434

Whistleblowers	434
Unlawful Discharge - California Legislation And Regulations	434
California Fair Employment And Housing Act	434
Rights Of Pregnant Employees	435
Employee Involvement In Workers' Compensation Matters	435
Employee Involvement With Employee Safety Or Health Laws	435
Employee Claims With Labor Commissioner	435
Coercion Not To Join Labor Organization	435
Coercion Of Political Activities Of Employees	436
Employee's Refusal To Make Coerced Purchases	436
Employer's Language Policy	436
Employee's Refusal To Work Excess Hours	436
Employee's Refusal To Sign Medical Information Release Authorization	436
Employee's Refusal To Take Polygraph Or Lie Detector Test As Condition Of Employment	436
Employee's Refusal To Be Photographed Or Fingerprinted	436
Arrest Record Or Detention Not Resulting In Conviction Or Referral Or Participation In Diversion Programs	437
Use Of Information Concerning Marijuana Offenses	437
Use of Employee Social Security Numbers	437
Garnishment For The Payment Of One Judgment	437
Employee's Service As Juror Or Appearance In Court As Witness	437
Taking Time Off For Victims Of Domestic Violence	437
Employee's Acting As Election Officer	437
California WARN Act	437
Lawful Conduct Occurring During Non-Working Hours Away From The Employer's Premises	438
Employee Discussion of Wages and Working Conditions	438
Employee's Membership In Military Or Naval Forces	438
Taking Time Off To Appear In School On Behalf Of Child	438
Time Off As Volunteer Fire Fighter	438
Sexual Assault Victims Employment Protections	439
Leave for Crime Victims	439
California Family Rights Act	439
Discharge Based On An Employee's Illiteracy	439
Whistleblower Legislation	439
Registered Domestic Partnerships	440
Sexual and Other Forms of Harassment	440
Federal Legislation And Regulations	440
What Constitutes Harassment?	440
Employer Liability	440
California Legislation And Regulations	441
Preventing Harassment Claims and Required Training	441
Investigating Harassment Claims	442

Investigating The Complaint442
Take Corrective Action443
Follow through443
Other Forms of Harassment.....443
Response In Administrative Hearings And To Employee Claims443

FAMILY AND PREGNANCY LEAVES

Chapter 19

Contents

Family Care and Medical Leaves	447
Introduction	447
Family Care And Medical Leave Requirements	448
Family Care And Medical Leave Questions And Answers.....	448
Domestic Violence Employment Leave	457
Federal Pregnancy Discrimination Act.....	458
Introduction	458
EEOC Interpretation Of Pregnancy Discrimination Act	458
EEOC Questions And Answers.....	458
The Issue Of Fetal Protection By Employers	461
California Law Prohibiting Pregnancy Discrimination	462
FEPA Restrictions	462
Pregnancy Leave Requirements Under California Law	462
Temporary Transfer Rights of Pregnant Employees Under California Law	463
State Disability Insurance.....	464
Enforcement Of Discrimination Laws.....	464
FEHA Enforcement Of California Discrimination Laws	464
Remedies And Damages Available Under California Law	465
Enforcement Of Federal Discrimination Laws.....	465
Enforcement Of Federal Pregnancy Discrimination Act By The EEOC.....	465
Enforcement Of FMLA By The Department Of Labor or Private Lawsuit.	466
Conclusion.....	467

POSTING OF NOTICES BY EMPLOYERS

Chapter 20

Contents

Federal Posting Requirements.....	471
Federal Civil Rights Information.....	471
Employee Polygraph Protection.....	471
Minimum Wage Poster.....	472
Federal Family And Medical Leave Notice	472
Uniformed Services Employment and Reemployment Rights Act Notice.....	472
California Posting Requirements.....	472
Industrial Welfare Commission Orders and Minimum Wage.....	472
Payday Notice.....	472
Fair Employment Practices Information.....	472
Notice Of Workers' Compensation Rights and Identification of Carrier	473
Workers' Compensation Off-Duty Recreational Activities Notice	473
Unemployment And Disability Insurance Notices	473
Posting Requirements.....	473
Unemployment Benefits Notice Upon Discharge Or Lay Off	473
Disability Insurance / Paid Family Leave Notice Upon Hiring And Upon Taking Leave	474
Obtaining Pamphlets	474
California Family Rights Act and Pregnancy Leave Notice	474
California "Whistleblower" Notice Under Labor Code Section 1102.5	474
Safety And Health Protection On The Job Bulletin	474
Cal/OSHA Citations.....	474
Proposition 65 Warning.....	474
Emergency Medical Services Notice.....	475
Access to Medical Records Notice.....	475
Smoking Causes Cancer Sign.....	475
Illegality Of Sexual Harassment Notice.....	475
Time Off To Vote.....	475
Recommended Postings.....	475
Dealership's Own Policy Against Harassment	475
Dealership-Wide Safety Notices	475
Emergency Evacuation Routes.....	476
No Smoking Policy	476
Injury And Illness Prevention Program.....	476

PUBLIC SIGNS AT DEALERSHIPS

Chapter 21

Contents

Covered Elsewhere	481
Employment Notices	481
Ancillary Businesses	481
Hazard and Environmental Warnings.....	481
Local Ordinances and Regulations	481
Web and Internet Sites.....	481
Signs On Vehicles	482
Table of Public Signs.....	482
Language and Format of Signs.....	485
Sign #1. General Repair Shop Sign.....	485
Sign #2. B.A.R. Certificate.....	486
Sign #3. Hours Open to Public	486
Sign #4. Posting of Labor Rates.....	486
Sign #5. Lamp, Brake, and Smog Check Station Licenses	486
Sign #6. Adjustors' Licenses	486
Sign #7. Lamp and Brake Station Official Signs.....	486
Sign #8. Lamp, Brake, and Smog Check Station Prices.....	487
Sign #9. Muffler Station Official Sign	487
Sign #10. Muffler Station License.....	487
Sign #11. Muffler Station Prices	487
Sign #12. Smog Check Station Official Sign	487
Sign #13. Smog Check Station Failed Vehicle Repair Options	487
Sign #14. Smog Check Station Licenses and Certificates.....	487
Sign #15. Dealer's Smog Check Station Prices	487
Sign #16. Smog Check Test Only Sign.....	487
Sign #17. No Cooling Off Period Without Cancellation Option Sign	487
Sign #18. Right to Inspect Used Vehicle Sign	488
Sign #19. Spanish/Foreign Language Translation Sign	488
Sign #20. Presale Availability of Warranty Sign	488
Sign #21. Availability of Service Bulletins Sign.....	488
Sign #22. Credit Card Request for Check Writing Notice	488
Sign #23. Refunds and Exchanges Policy	489
Sign #24. Cellular Telephone Activation Notice.....	489
Sign #25. Grey Market Goods Sign	489
Sign #26. Anti-Graffiti Warning Sign.....	489

Sign #27. Child Passenger Restraint Sign.....	489
Sign #28. Rental Company Damage Waiver	490
Sign #29. Sales Tax Permit.....	490
Sign #30. Insurance Licenses.....	490
Sign #31. Dealer DMV License.....	490
Sign #32. Salesperson DMV Licenses.....	490
Sign #33. Business License.....	490
Sign #34. Contract for Parking or Storage Sign.....	490
Sign #35. Public Parking Prohibited Sign.....	490
Sign #36. Storage for Towed Vehicles Sign.....	490
Sign #37. Exit Signs.....	490
Sign #38. Off Site Vehicle Display.....	491
Sign #39. Notice of Lien Sale.....	491
Sign #40. No Smoking.....	491
Sign #41. Fuel Economy Guide Booklet	491
Discussion of Applicable Statutes and Regulations.....	491
California Requirements.....	491
General Repair Shop Signs.....	491
General Repair Shop. Sign #1.....	491
B.A.R. Certificate. Sign #2.....	492
Posting of Repair Hours Open To Public. Sign #3	492
Posting Of Labor Rates. Sign #4	493
Lamp, Brake, and Muffler Stations.....	493
Display of Station License. Sign #5.....	493
Display of Adjusters' Licenses. Sign #6	493
Display of Station Sign. Sign #7.....	493
Posting Of Prices. Sign #8	493
Muffler Station Sign. Sign #9.....	493
Display Of Muffler Station License. Sign #10	494
Posting Of Muffler Station Prices. Sign #11	494
Smog Check Stations.....	494
Smog Check Station Sign. Sign #12.....	494
Required Smog Repair Limits Sign. Sign #13.....	494
Display Of Smog Check Licenses And Certificates. Sign #14....	495
Posting Of Dealer's Smog Check Station Prices. Sign #15	495
Smog Check Test Only Sign. Sign #16	495
Other Vehicle Sales Related Signs	495
No Cooling Off Period Without Cancellation Sign. Sign #17.....	495
Right To Inspect Used Vehicles Sign. Sign #18.....	495
Spanish / Foreign Translation Of Contract Sign. Sign #19	496
Presale Availability Of Warranty Sign. Sign #20.....	496
Availability Of Service Bulletins. Sign #21	496
Other State Mandated Signs	496

Sign Regarding Credit Card Request For Check Writing. Sign #22 496

Policy Concerning Refunds And Exchanges Sign. Sign #23 496

Cellular Telephone Activation Notice. Sign #24 497

Grey Market Goods Signs. Sign #25 497

Anti-Graffiti Warning. Sign #26 497

Child Passenger Restraint Sign. Sign #27 497

Rental Company Damage Waiver Signs. Sign #28 497

Display Of Sales Tax Permit. Sign #29 498

Posting Of Insurance Licenses. Sign #30 498

Posting Of Dealer License. Sign #31 498

Display Of Salesperson License. Sign #32 498

Display Of Business License. Sign #33 498

Contract For Parking Or Storage Sign. Sign #34 498

Public Parking Prohibited Sign. Sign #35 499

Storage Charges For Towed Vehicles Sign. Sign #36 499

Exit Signs. Sign #37 499

Off Site Vehicle Display. Sign #38 499

Lien Sale In Ten Days. Sign #39 499

No Smoking. Sign #40 499

Fuel Economy Guide Booklet. Sign #40 499

DEALERSHIP OPENING, CLOSING, AND LICENSING

Chapter 22

Contents

Vehicle Dealer’s License and Other Permits.....	503
Dealer Licensing Requirements	503
Application Forms	503
Fees.....	504
Site Inspection	504
Other Forms Required To Process Dealer License Application.....	504
Live Scan.....	505
Dealer Bond.....	505
Useful Information on DMV Website.....	505
Other Dealer License And Permit Requirements	506
License Denial	507
Grounds For Denial Of New Car Dealer's License	507
Right Of Applicant To A Hearing Upon Refusal To Issue A License	508
Closing a Dealership.....	508
Factory Buy-Back Obligations	508
Preserving Rights	509
Other Agreements with Manufacturer.....	509
Vendor Contracts.....	509
Retail Finance Dealer Agreements, Service Contracts, Dealer Warranties.....	510
DMV and Related Licensing Matters.....	510
Records Retention	510
Insurance Considerations.....	510
Business Entity Dissolution.....	510
Employee Issues and Federal and State WARN ACT Requirements	510
Unfunded Liability If Dealership Pays Contributions To Union Pension Fund	511
COBRA	511
Permits and Taxes	511
Utility Companies.....	511
Obtaining A Salesperson's License	511
Who Needs A Salesperson's License?.....	511
Application Forms	512
Temporary Permit.....	512

Term Of License, Renewal And Duplicate.....	512
Display Of License And/Or Temporary Permit.....	513
Loss Of License Privileges	513
Grounds For The Refusal To Issue, Or To Suspend Or Revoke A License	513
Criminal Conduct.....	513
Unlawful Use Of Salesperson’s License.....	514
Salesperson’s Licensing Issues and Rules To Be Aware Of	514
Salesperson Licensing Issues.....	514
Deadbeat Parent Laws.....	515
Occupational Licensing And Disciplinary Guidelines.....	516
Use Of Dealer Special Plates	517
Requirements For Use Of Dealer Plates Under Special Plates Regulation	517
Vehicle Code Provisions On The Use Of Special Plates	519
Salespersons.....	519
Work Vehicles	519
DMV OL-124 and Market Notice Chart.....	519
Conclusion	520

RECORDS RETENTION

Chapter 23

Contents

Records Retention Schedules	523
Basis Of Advice On Length Of Retention Schedules.....	523
Permanent Retention May Be The Best Approach.....	523
Department Must Approve Storage Of Records Off-Site.....	523
Illustrative Records Retention Schedule.....	524
Retention Schedule Litigation “Hold”.....	531
Retention Of Documents Using Computer Technology.....	531
Proof Of Reliability Essential.....	531
Retaining Original Documents Having Special Legal Significance.....	531
Confidentiality Considerations	532
Shredding Law.....	532

OTHER IMPORTANT TOPICS

Chapter 24

Contents

At Will/Arbitration Agreements.....	539
California Emission Standards and “The 7,500 Mile Rule”	539
California Tire Fee	540
Lease Vehicles.....	541
Demonstrator Vehicles	541
Vehicles Sold To Rental Car Companies	542
Vehicles Sold At Wholesale	542
Vehicles Sold To Government Entities	542
Courtesy Deliveries For Out-Of-State Dealers.....	542
Sublet Work.....	542
Cancellation Of Contracts By Minors	543
Computer Access Issues	543
Consignment Sales	545
Consignor’s Rights Can Trump Those of Flooring Lender	546
Consumer Recovery Fund	546
Overview	546
Dealer Fee.....	547
Timeline.....	547
Fee Collection.....	547
Consumer Application.....	547
Dealer Penalties	547
Corporate Minutes	548
Credit Card Processing Fees.....	548
Customer Bankruptcy	549
Preference Law.....	549
Trustee's Lien	549
Bankrupt Customers Lose	550
“Ride-through” Option	550
Dealer Involvement In Criminal Prosecutions	550
Filing False Police Report	550
Cooperating With District Attorney	550
Immunity From Civil Law Suits.....	550
Malicious Prosecution	551
Dealer Liability for Damage Caused by Vehicle Thief.....	551
A Dealer's Right To Refuse Business.....	552

OTHER IMPORTANT TOPICS

Disclosing Identities of Financial Institutions Receiving Credit Applications	552
Dishonored Checks	553
Environmental Fee	555
Factory Payment Of Warranty And Incentive Claims	555
Fair Debt Collection Practices Act Is Applicable To Dealers.....	556
Federal Restrictions On Selling 15-Passenger Vans.....	557
Fuel Economy Guides.....	557
Insurance Cost Information.....	558
Lienholders Have 15 Days After Payoff to Deliver Title	559
Money Judgment Versus Right To Possession	560
Notice Required When You Repossess A Vehicle	561
Office of Foreign Assets Control (“OFAC”) Compliance.....	561
Offsite Sales	562
Originating And Duplicating Motor Vehicle Ignition Keys	563
Dealers Exempt From Licensing Requirements	563
Record-Keeping Requirements.....	563
“Pay Or I’ll File Charges” Is Illegal	563
Payment By Check And Credit Card, And Copying Drivers’ Licenses	564
“Payment In Full” Checks	565
Civil Code Section 1526	565
Commercial Code Section 3311	565
Which Statute Controls?	565
Protecting Customer Lists.....	566
Protections When Selling To Another Dealer.....	567
Punitive Damages Against A Corporation.....	567
Rear Seatbelt Disclosure	568
Registered Domestic Partnership Rights.....	569
Reporting Lost Or Stolen Dealer Plates.....	570
Repossession Law.....	570
Responding To a Summons and Complaint.....	571
Sales And Rentals To Unlicensed, Risky, And Uninsured Drivers	572
Subpoena Of Employment Records.....	573
Teenage Driving By Employees Of The Dealership	574
Tire Chain Disclosure	575
Trade-In Payoffs: 21-Day Deadline and Other Rules	575
Suggested Procedures to Comply with Payoff Requirements	575
Unclaimed Property Law	576
State Controller’s Office.....	576
Changing Landscape.....	576
General Requirements.....	576
Penalties for Non-Compliance.....	578
Professional Assistance.....	578
Underground Storage Tank Fee	578
Unlawful Subleasing Of Motor Vehicles.....	579
Use Of Credit Cards By Retail Customers.....	580

Acceptance of Card not Prohibited..... 580

No Requirement That Dealer Accept Card..... 580

Prohibition Against Surcharges For Use Of Card 580

Credit Card "Stop Payment" Rights Against Dealers..... 580

Escalation Of Complaint Process 580

Additional Warranty Or Unwind Rights 580

Vehicle Safety And Equipment Requirements 581

 Chapter 1. General Provisions..... 581

 Chapter 2. Lighting..... 581

 Chapter 3. Brakes. 582

 Chapter 4. Windshields and Mirrors. 583

 Chapter 5. "Other Equipment." 583

 Chapter 6. "License Plate Brackets." 584

Window Stickers On Vehicles..... 584

 Federal Monroney Window Sticker (MSRP Sticker)..... 584

 California Requirements For Light Duty Trucks 585

 California Bumper Strength Notice..... 586

 Fuel Economy Notice..... 586

 Noncompliance Sticker-Emissions..... 586

 Foreign Content Labeling..... 586

 Other Stickers 586

What To Do If the Dealership Is A Criminal Defendant..... 586

What's In A Dealer File? 587

Who Can You Sue On Odometer Rollback? 588

 Odometer Law 588