

CAR DEALER

Implementing Best Practices: Eric Chase's Legal Audit Checklist for Auto Dealers®

This checklist is a suggested guide for all automotive dealers (1) to use in their ongoing efforts to assure their files and operations are current in matters of legal importance; (2) to provide reminders for ongoing and periodic legal requirements; (3) to have a simple, handy way of auditing their legal "health;" and (4) to trigger action(s) that might otherwise be overlooked. The checklist does not constitute legal advice.

Annual/Quarterly Internal Legal Audit

Done by: _____

Date: _____

STATUS
OK Follow up N/A

I. Franchise Relationship Files

A. Current Sales and Service Agreement, with all amendments and modifications

- i. Should be up-to-date in every dealership
- ii. Keep in a nearby, easy-to-access file drawer
- iii. Alternate Dispute Resolution (ADR) provisions, if any. Be sure to read and know when you have alternatives to the courtroom. (Note: Federal Law prohibits auto franchisors from imposing mandatory binding arbitration for all disputes as part of a dealer agreement.)

B. Factory Bulletins, Announcements

- i. Watch for "zingers" in otherwise routine correspondence (sometimes references to these show up in termination notices)
- ii. Carefully review any communications that refers to any change(s) in the brand's dealer agreement.

C. Possible or Actual Disputes or Disagreements: correspondence, memos, notes and other documents regarding actual or potential controversy, or other communications addressing items that are specifically applicable to your dealership. Keep copies of all correspondence that's addressed directly to you on all these subjects:

- i. Sales
- ii. Service and CSI
- iii. Allocations
- iv. Warranty

* OK (i.e., no action required)
Follow-Up (should specify *what* you need to do and *when*)
N/A (not applicable to dealer at this time)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	v. Dealership Audits
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	vi. Facilities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	vii. Location of Dealership
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	viii. Dualing/Undualing
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ix. New agreements/amendments
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x. Availability of (desirable) product
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	xi. Incentive Programs and Compliance with Terms/Conditions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	xii. Floorplan
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Franchise Termination File, if applicable. Threats regarding possible termination/nonrenewal. On this one, if you are getting threatening or coercive comments – keep a separate file, and responsibly respond to all such mail from your franchisor. On this one, if a termination threat is even hinted, talk to an experienced lawyer.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E. "Required" Business Plans
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Some, but by no means all, brands require periodic (usually annual) business plans.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Be careful on these. If you puff your plans, the factory may argue that you made compromises. If your franchisor has already pre-printed your plans or "promises," don't sign on to those that are not fair or realistic. Watch for "zingers" that might set you up for termination.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	F. Financial Statements and Related Documents
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Monthly financial statements: keep at least a full set of monthly financial statements as reported to the franchisor for <i>three years</i> .
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Keep end-of-year cumulative factory statements for <i>seven years</i> .
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iii. Keep copies of all state, federal and local tax filings, and associated correspondence for <i>seven years</i> .
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iv. Other financial statements, audits, reviews,
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	v. Related financial correspondence.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	vi. Procedures to protect confidentiality of and limited access to all financial documents
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	G. Document Retention for Litigation: If you are in litigation, or a formal dispute is imminent, you must retain and safeguard everything that may be relevant, including all electronically stored information. Coordinate with your counsel on this.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	II. Legal Advisor/State Legal Issues
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Your Legal Advisor
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Every dealer should have one: an attorney you can talk to with confidence.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Make sure your lawyer has experience in franchise/auto.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iii. Don't be shy. If you're looking for a lawyer, interview more than one.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. State Legal Questions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Keep mailouts from your association that address legal topics.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Call your association with questions.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iii. Keep a copy of state franchise laws and regulations that affect dealers: <i>Read them!</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	III. Business Structure Records; Minutes
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Structure: Corp.; LLC, etc.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Basic Documents: Articles of Incorporation; S-election; LLC.

C. Minutes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Licenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IV. Real Estate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A. Ownership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Lease	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Acquisition Documents (e.g., buy-sell)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Other Realty Records: Taxes; environmental issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
V. Financial Records/Business Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A. Monthly Statements, submitted to factory, and all accounting tax files.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Tax related files	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. What kind of an entity is your dealership and why? LLC? C-Corp? S-Corp?			
ii. LIFO			
iii. Assurance of timely sales tax payments			
iv. Withholding for employees			
C. File Destruction Policy: Make it clear, and in writing. Assure consistency with legal retention requirements. <i>Keep</i> everything related to ongoing or imminent litigation. Insure all employees instructed not to delete electronic information related to dispute. <i>Do it in writing.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Periodic audit/update with agent			
ii. Coverage adequacy			
(1) Check coverage for consumer disputes defense, and liability coverage			
(2) Business interruption			
VI. Loan Documents/Bank Relationships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Mortgages, credit lines, cap loans, but, especially, floor plan(s).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii. Bank account files and statements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii. Bank/Lender correspondence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
VII. Consumer Relations/Sales Practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A. Complaints from your customers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Written procedures to follow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii. Follow-up	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Litigation/Arbitration Records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Required Recordkeeping/Customer Privacy/Identity Theft/Loan Actions and Notices (Excellent publications available from NADA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Security measures/limiting access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii. Safeguarding Customer Information/Deal Jackets: Written policy and employee confidentiality agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii. Consideration in referrals of credit applications of the requirements of the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA): ~ Does dealership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	policy/practice avoid necessity of sending adverse action notices?
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iv. Staff Employee Trained in Privacy/Safeguard Rules - Keep training records
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Assignment of Responsible Employee to (a) Stay current on legal/regulatory requirements; (b) Monitor Consumer Relations at the Dealership, (c) and respond to inquiries/complaints
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E. Clear and Consistent F&I Practices and Policies
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	F. Consistency and Legality of RO Itemization (Do you have a documentary fee issue?)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	G. Arbitration Clause in all Consumer Contracts (Language for possible clause available from author without charge)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Must be fair and mutual
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Should bar multiple claimants and class claims
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iii. Should be reviewed in the light of State laws and case decisions
VIII. Regulatory Compliance				
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. All dealers nationwide need to assume compliance with federal laws and regulations. For an excellent summary of federal requirements, you should have a copy of the NADA and ATD <i>Federal Compliance Chart</i> .
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Dealers should inquire of their state associations for a list of state regulatory requirements.
IX. Promotions/Advertising				
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Know and Monitor State Laws and Regulations on advertising.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Have a "Duty Expert" to Assure Compliance in All Print and Broadcast Advertising.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C. If you use an agency, assurance of compliance is a must, because you may be liable for their mistakes.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Compliance with Do-Not-Call Rules and Faxing Regulations
X. Work Force/Employment				
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Posting of All Required State and Federal Notices.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Equal Opportunity (EEOC)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Wages
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	iii. Family Leave (FMLA)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Compliance: ADA, FMLA, COBRA, Immigration Law
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C. Plans/Policies/Correspondence regarding benefits:
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. e.g., health, dental, 401(k), profit sharing, vacation, etc.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Individual Personnel Folders (Ensure Privacy!)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E. Dealership Employee Policy Manual, including clear policies on sexual harassment and discrimination. Be sure to make clear that manual is not a contract, and does not change at-will employment status.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	F. Confidentiality Agreements: Especially as to consumer information in deal jackets.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	G. Training Programs
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. In-house: Periodically (not less than once a year and as part of initial indoctrination with all new employees) provide guidance on: sales practices, discrimination, sexual harassment, integrity, ~ Keep files on all training.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ii. Factory: Tech Training

