



Implementing Best Practices in 2015 and Beyond: 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 keep an up-to-date and complete copy of each Sales and Service Agreement, with all amendments, and related correspondence.
- ii. Advisable to have both hard copy and electronic copy.
- iii. Keep in a nearby, easy-to-access file drawer.
- iv. 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. See 15 U.S.C. § 1226.)
- v. Letters of Intent (LOIs)

B. Factory Bulletins, Announcements, Programs

- i. Watch for "zingers" in otherwise routine correspondence (sometimes references to these show up in termination notices).

* 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)

- ii. Carefully review any communications that refers to any change(s) in the brand's dealer agreement.
- iii. Keep a complete file on ongoing programs (*e.g.*, GM's "Essential Brand Elements"), and monitor your progress and commitments.

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 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. Service and CSI | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| iii. Allocations | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| iv. Warranty | <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. Dualling/Undualling | <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. Factory Programs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| xiii. 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. If a termination threat is even hinted, talk to an experienced lawyer.

E. "Required" Business Plans

- i. Some, but by no means all, brands require periodic (usually annual) business plans.
- ii. Sometimes, the franchisor will require a business plan from a dealer perceived as underperforming.
- iii. Be careful on these. If you puff your plans, the factory may argue that you made promises. If your franchisor has already preprinted 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.