

## PART III

# Dealer Licensing

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### **A. WHO MUST BE LICENSED**

#### **1. AS A MOTOR VEHICLE DEALER**

##### ***320.27, F.S.***

Any person engaged in the business of buying, selling, or dealing in motor vehicles, or offering or displaying motor vehicles for sale at wholesale or retail, is a motor vehicle dealer. Any person who buys, sells, or deals in three or more motor vehicles in any twelve (12) month period or who offers or displays for sale three or more motor vehicles in any twelve month period is prima facie presumed to be engaged in business as a motor vehicle dealer, and therefore, must be licensed. The terms "selling" and "sale" as used in the law, include lease-purchase transactions.

#### **2. AS A MOBILE HOME OR RECREATIONAL VEHICLE DEALER**

##### ***320.77, 320.771, F.S.***

Any person engaged in the business of buying, selling, or dealing in mobile homes or recreational vehicles or offering or displaying mobile homes or recreational vehicles for sale, is defined as a mobile home or recreational vehicle dealer, respectively.

As used in the law, the term "dealer" includes a mobile home or recreational vehicle broker. The definition of a broker under Florida law is any person who is engaged in the business of offering to procure or procuring used mobile homes or recreational vehicles for the general public; who holds themselves out through solicitation, advertisement, or otherwise as one who offers to procure or procures used mobile homes or recreational vehicles for the general public; or who acts as the agent or intermediary on behalf of the owner or seller of a used mobile home or recreational vehicle which is for sale or who assists or represents the seller in finding a buyer for a mobile home.

Any person, who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of one or more mobile homes or recreational vehicles in any twelve (12) month period is prima facie presumed to be a dealer. As in the case of motor vehicles, the terms "selling" and "sale" include lease-purchase transactions.

**B. WHEN LICENSING IS NOT REQUIRED**

***320.27(1)(c)(5), and 319.20, F.S.***

1. **AS A MOTOR VEHICLE DEALER** - Any person dealing in motor vehicles under one or more of the circumstances described below is specifically exempt by law from the necessity of being licensed as a motor vehicle dealer:
  - a. Persons not engaged in the purchase or sale of motor vehicles as a business, but rather, are disposing of their own vehicles or vehicles used in their business;
  - b. Public officers while performing their official duties - This exemption includes such activities as the sale of vehicles owned by a governmental entity or the sale of vehicles seized by public officers while performing their official duties;
  - c. Receivers;
  - d. Trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment of any court;
  - e. Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business. Pawnshops are not considered loan agencies and therefore would be required to have a dealer license;
  - f. Motor vehicle brokers - A motor vehicle broker is defined by law as any person engaged in the business of offering to procure or procuring motor vehicles for the general public, or who holds himself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public, and who does not store, display, or take ownership of any vehicles for the purpose of selling such vehicles;
  - g. Motor vehicle rental and leasing companies that sell motor vehicles to licensed motor vehicle dealers on a wholesale basis. In such cases, the fact of sale indicates that the vehicles being sold are no longer being used as rental or leased vehicles. The exemption applies only if off-lease vehicles are being sold on a wholesale basis, to a licensed dealer. Rental and leasing companies that retail to the public after the lease has expired or offer the customer the option to purchase the vehicle when the lease expires will need an independent dealer's license.
  - h. A motor vehicle acquired by foreclosure or by operation of law; and
  - i. The sale of twenty-five or fewer trailers, in a twelve-month period, that weigh more than 2,000 lbs., and are required to be titled.

**NOTE:** A person must apply for an independent dealer's license if they sell over 25 trailers in a twelve-month period that weigh more than 2,000 lbs each. However, the Department does not license the manufacturers of such trailers. Trailer manufacturers who manufacture in two stages must provide their dealers or customers the 1<sup>st</sup> stage Manufacturer's Certificate of Origin (MCO) and 2<sup>nd</sup> stage MCO for the purpose of titling and registering the units at the Tax Collector's Office. The 2<sup>nd</sup> stage MCO must state the length of the trailer with hitch and without hitch.

## **2. WHEN LICENSING IS NOT REQUIRED FOR MOBILE HOMES OR RECREATIONAL VEHICLES**

***320.77(1)(a), 320.771(1)(a), F.S.***

- a. Banks, credit unions and finance companies that acquire mobile homes or recreational vehicles incidental to their regular business.
- b. Mobile home rental and leasing companies that sell mobile homes or recreational vehicles to dealers possessing a mobile home or recreational vehicle dealer license.
- c. A recreational vehicle dealer license is not required in order to sell camping trailers (rag top/pop-up) to the public.

## ***C. CONSEQUENCES OF NOT OBTAINING A LICENSE WHEN ONE IS REQUIRED***

***320.27(2), 320.27(8), 320.27(11), 320.27(12), 320.77(11), 320.77(12), 320.771(12), 320.771(13), F.S.***

Any person dealing in motor vehicles, mobile homes, or recreational vehicles, who is required to have a dealer license, but who fails to obtain a license, is subject to a number of different penalties. These can include the issuance of an injunction by a court of competent jurisdiction, by the filing of an unfair and deceptive trade practices complaint with the State Attorney or the Attorney General's Office (that may lead to fines of up to five thousand dollars per violation and a cease and desist order), or the filing of criminal charges amounting to a second degree misdemeanor for violation of the licensing requirements. Any vehicles that are displayed for sale by an unlicensed individual, at an unlicensed location, could also be in violation of s. 316.1951, F.S. Violation of this statute may cause the vehicle to be removed by a law enforcement officer, local government agency code compliance/enforcement official or Bureau of Motor Vehicle Field Operations Compliance Examiner.

#### **D. TYPES OF LICENSES ISSUED**

***212, 320.27, 320.642(6), 320.71, 320.77, 320.771, F.S.***

The Department issues a number of categories of dealer licenses. The license prefix designations and descriptions are:

1. VF - This is the prefix for a franchised motor vehicle dealer. This type of license allows a licensee to sell new motor vehicles under an established agreement with a manufacturer, importer or distributor. A franchise dealer is licensed by the Department to sell specific line-makes in the State of Florida that are manufactured, imported or distributed by licensed manufacturers, distributors or importers. Franchise dealers sell new motor vehicles, electric or gas powered motorcycles, low speed vehicles, mini-trucks and tri-vehicles under an agreement with the manufacturer. A franchise dealer is licensed by the Department to sell specific line-makes in the State of Florida that are manufactured, imported or distributed by licensed manufacturers, distributors or importers.

Please Note: A franchise dealer who wants to sell self propelled or non-self propelled recreational vehicles must apply for a recreational vehicle dealer's license. A franchise dealer who wants to sell new mobile homes must apply for a mobile home dealer license.

A franchise dealer license is required in order to sell electric motorcycles above 2 bhp, 1492 watts or gas powered motorcycles with an engine displacement above 50 cc.

A franchise dealer license is not required if a person sells electric motorcycles with an engine displacement of 2bhp or less, 1492 watts or less or gas powered motorcycles with an engine displacement of 50 cc or less.

The manufacturer, importer or distributor of motorcycles must be licensed by the Department regardless of the displacement.

2. SF – Any franchised dealer wishing to operate their service and repair facility at a location other than their licensed dealership must also be licensed to operate the service only facility. No vehicle sales either new or used are permitted at this facility. A service facility is always associated with a franchise license and cannot exist without the dealer being licensed as a franchise dealer.
3. VI - This indicates that the licensee is an independent dealer who is buying, selling or dealing in used motor vehicles as defined in ss. 320.01(1)(a), Florida Statutes. An independent dealer who wants to sell self propelled or non-self propelled recreational vehicles must apply for a recreational vehicle dealer's license.

4. VW - A license with this prefix is issued to one who is buying, selling, or dealing in motor vehicles only at wholesale with other licensed dealers. A licensed wholesale motor vehicle dealer is licensed to engage exclusively in the business of buying, selling or dealing in motor vehicles at wholesale or motor vehicle auctions. **NOTE:** Licensed wholesale motor vehicle dealers shall not sell or auction a vehicle to any person who is not a licensed motor vehicle dealer, and shall not have the privilege of the use of dealer license plates. A wholesale dealer is exempt from display provisions, but shall maintain an office space wherein records are kept in order that those records may be inspected.
5. VA - Auctions that sell motor vehicles and recreational vehicles, by the bid process, where buyers are licensed motor vehicle dealers, must obtain a VA license. Auctions that plan to sell motor vehicles retail are required to be licensed as an independent dealer with a VI prefix license.

**Please note:** Licensed auction dealers shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

6. SD – This license prefix is issued to any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

This means that a salvage dealer can sell the vehicles in the salvaged or wrecked state. However, if the salvage dealer rebuilds the vehicle to retail or wholesale they will need an independent dealer’s license.

7. DH - This designation is for those persons licensed as mobile home dealers. A mobile home dealer may also buy, sell, deal, or broker in recreational vehicles after applying for a recreational vehicle endorsement to their license with the Department. However, if a mobile home dealer deals exclusively in mobile homes, such dealer may not exercise the privilege of obtaining and using dealer license plates. A “park trailer”, as defined in s. 320.01(b)(7), F.S., is a recreational vehicle. Therefore, a mobile home dealer who wishes to sell park models or recreational vehicles must also meet the requirements for garage liability insurance. A licensed mobile home dealer can sell both mobile homes and recreational vehicles in their main location and in the supplemental locations provided they submit garage liability coverage. However, if a licensed mobile home dealer wishes to open a supplemental location exclusively for the sale of recreational vehicles; then they would have to apply for a recreational vehicle dealer’s license. As per section 320.771(8), Florida Statutes, a mobile home dealer may apply to the Department for authority to sell recreational vehicles at no additional fee.

**NOTE:** Pursuant to section 320.77(1)(h), Florida Statutes, a licensed mobile home dealer is allowed to display and offer for sale mobile homes in a mobile home park.

8. **BH** - This designation is for persons licensed as used mobile home brokers. A mobile home broker deals exclusively in used mobile homes and acts as the middleman on behalf of the owner or seller of a used mobile home which is for sale, or who assists or represents the seller in finding a buyer for a used mobile home. A mobile home broker never takes possession of a mobile home, and must meet all licensing requirements of a mobile home dealer with the exception of the display space requirement. A used mobile home broker may also sell used recreational vehicles after applying for a recreational vehicle endorsement to their license with the Department; however, the broker will be required to obtain a garage liability insurance coverage.
9. **RV** - Any person dealing exclusively in buying, selling, or brokering new recreational vehicles (self-propelled and non-self-propelled) must meet the licensing requirements of a recreational vehicle dealer with this prefix. A recreational vehicle dealer may not sell mobile homes. A recreational vehicle dealer with an "RV" prefix is licensed to sell both new and used recreational vehicles at their licensed location. A recreational vehicle dealer with this prefix is licensed by the Department to sell specific line-make(s) in the state of Florida that are distributed by licensed recreational vehicle manufacturers, distributors, or importers. A recreational vehicle dealer license is not required to sell camping trailers (rag top/pop-up) to the public.
10. **RU**- Any person dealing exclusively in buying and selling used recreational vehicles (self-propelled and non-self-propelled) would obtain a recreational vehicle dealer license with this prefix. A recreational vehicle dealer may not sell mobile homes. A recreational vehicle dealer license is not required to sell camping trailers (rag top/pop-up) to the public.

**NOTE:** Pursuant to 320.27 (c) Florida Statutes, "...A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in section 320.01 (1) (b) 1, 6 and 8, Florida Statutes, acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to section 320.771, Florida Statutes.

11. **NI, NH, NR** – Any person, who is a non-resident of the state, who does not have a dealer's contract from the manufacturer or manufacturer's distributor of motor vehicles, mobile homes, or recreational vehicles authorizing the sale thereof in definite Florida territory, and who sells or engages in the business of selling motor vehicles at retail in the state shall register with the Department of Revenue for a sales tax dealer registration number and comply with Chapter 212, F.S., and pay a license tax of \$2,000 per annum in each county where such sales are made. This tax is in addition to the licensing fee.

**NOTE:** An applicant for a motor vehicle dealer's license will be considered a Florida resident dealer provided they meet all the licensing requirements as per section 320.27, Florida Statutes, have a physical location in the state of Florida that meets the location requirements of Rule 15C-

7.003(4), Florida Administrative Code (FAC), and the business is registered with the Division of Corporations, Secretary of State, to conduct business in the state of Florida. An applicant is not considered a non-resident because they have registered the business with the Division of Corporations as a Foreign Corporation/LLC/Partnership, or has started a company under the laws of another state or country or submits Articles of Incorporation registered in another state.

This means that all applicants for a motor vehicle dealer's license in the state of Florida will be considered as Florida resident dealers as long as they meet the licensing requirements as required by Florida Law.

**Licensed auction dealers can sell recreational vehicles to licensed recreational vehicle dealers only.**

A licensed new or used recreational vehicle dealer may, at retail or wholesale, sell a motor vehicle, as described in s. [320.01\(1\)\(a\)](#), Florida Statutes, acquired in exchange for the sale of a recreational vehicle, if such acquisition is incidental to the principal business of being a recreational vehicle dealer. However, a recreational vehicle dealer may not buy a motor vehicle for the purpose of resale unless licensed as a motor vehicle dealer pursuant to s. [320.27, Florida Statutes](#).

**E. LICENSING PERIODS**

***320.27(4)(a), 320.77(6), 320.771(6), F.S.***

All dealer licenses are issued for a maximum period of one year. The effective and expiration dates for the various categories of licenses are staggered. The licensing periods are as follows:

Franchised motor vehicle dealer (VF)	January 1 - December 31
Franchised motor vehicle service facility (SF)	January 1 - December 31
Independent motor vehicle dealer (VI)	May 1 - April 30
Wholesale motor vehicle dealer (VW)	May 1 - April 30
Motor vehicle auction (VA)	May 1 - April 30
Salvage motor vehicle dealer (SD)	May 1 - April 30
Mobile home dealer (DH)	October 1-September 30
Mobile home broker (BH)	October 1-September 30
Recreational vehicle dealer (RV)	October 1-September 30
Used Recreational vehicle dealer (RU)	October 1-September 30
Non-resident dealer (NI, NH, NR)	January 1 – December 31

Even if a license is issued in the middle or near the end of the annual licensing period, the license will expire on the date all licenses in that same category expire. As noted below, license fees will not be prorated. Thus, an applicant seeking an initial license near the end of a license period may wish to delay the effective date of the license until the beginning of the new license year. **However,**

**applicants are reminded that they may not engage in business until the license becomes effective.**  
To do otherwise is a serious violation of the law and, of course, title work will not be processed.

**F. INITIAL LICENSING FEE**

***215.26, 320.27(3), 320.71, 320.77(4), 320.771(4), F.S.***

The fee for an initial dealer license in any of the motor vehicle license categories previously described is \$300. The fee for a license as a mobile home or recreational vehicle dealer is \$340; \$40 of which is used to fund a Mobile Home and Recreational Vehicle Protection Trust Fund.

Pursuant to section 215.26, Florida Statutes, a license fee is non-refundable unless the Department determines that one of three exceptions exist; either the applicant sent duplicate money in error, or an overpayment was made in error, or the fee accompanying an application was submitted for an activity which is not required to be licensed or is specifically exempt from being licensed. If a license is denied for any other reason, the fee is non-refundable. A license fee may not be prorated for a portion of a licensing period. All non-resident applicants are also required to pay a license tax of \$2,000 for each county in which they do business. This tax is in addition to any required licensing fees.

**G. GENERAL LICENSING REQUIREMENTS**

There are a number of general requirements that every applicant for a dealer's license must satisfy as a prerequisite to having a license issued. Prospective applicants are urged to consider these carefully before making application, as these requirements involve a commitment of money and time.

**1. MOTOR VEHICLE DEALER LICENSE APPLICANTS**

***320.27, 320.77, 320.771, F.S.***

The following items are generally the most difficult or time consuming to obtain:

**a. SURETY BONDS**

Applicants are required to provide a surety bond in the amount required for the type of license for which they are applying. The original bond must be issued to expire at the end of the licensing period. Subsequent bonds or continuation certificates must be issued concurrent with the licensing period. The surety bond must be issued in the exact name, to include all fictitious trade (DBA) names and executed on a form provided by the Division of Motorist Services. Substitute forms will not be accepted. There must be no alterations, erasures or "white out" on the form. The name of the business and signature of the principal or licensee is required on the bond. The names, addresses and telephone numbers



of the bond company and surety agent are also required on the bond. The bond company must also affix their seal. The original bond form and power of attorney form from the bond company must be submitted with the dealer license application (to access Dealer License Bond forms HSMV 86018, HSMV 86019, and HSMV 86020, visit the Department's website at <http://www.flhsmv.gov/html/forms.html>.)

If during the licensing year the dealership cancels its surety bond and obtains a replacement bond with another firm, the dealer must provide the new original surety bond to the Bureau of Motor Vehicle Field Operations, Regional Office responsible for regulating the dealership IMMEDIATELY. Continuous surety bond coverage is required through the licensing year. Replacement bonds must have an effective date on or prior to the cancellation date of the previous bond. Gaps in surety bond coverage are not acceptable. Bond Riders are acceptable to indicate any change or correction. Although a new bond is required each year, the assurance provided by the bond remains in force and effect until the statutes of limitations prohibit claims of any nature from being filed against the bond. This time period is normally five years following the year for which the bond was issued. The surety bond covers transactions at all locations for the dealership.

<b><u>Type of License</u></b>	<b><u>Amount of Bond</u></b>	<b><u>Term of Bond</u></b>
*Motor Vehicle Dealer	\$25,000	May 1-April 30
*Franchise Dealer	\$25,000	Jan 1-Dec 31
*Service Facility	Not required	Jan. 1-Dec 31
*Mobile Home Dealer	\$25,000	Oct 1-Sept 30

<b><u>T y p e o f L i c e n s e ( c o n t ' d )</u></b>	<b><u>Amount of Bond</u></b>	<b><u>Term of Bond</u></b>
*Mobile Home Dealer with more than 4 supplemental locations	\$50,000	Oct 1-Sept 30
*Recreational Vehicle Dealer	\$10,000	Oct 1-Sept 30
*Recreational Vehicle Dealer with more than 4 supplemental locations.	\$20,000	Oct 1-Sept 30

**b. IRREVOCABLE LETTER OF CREDIT**

Only motor vehicle dealers, mobile home dealers, and mobile home manufacturers may submit an irrevocable letter of credit. Motor vehicle and mobile home dealer applicants may provide an irrevocable letter of credit issued by a Florida bank in the amount of \$25,000. Applicants for a mobile home manufacturer’s license may provide an irrevocable letter of credit issued by a Florida bank in the amount of \$50,000. The letter of credit must be submitted on forms—HSMV 86057, HSMV 86058, or HSMV 86059 Irrevocable Letter of Credit according to the license type (visit the Department's website at <http://www.flhsmv.gov/html/forms.html> to access these forms). Substitute forms cannot

be accepted. Addendums or Riders are not acceptable for Irrevocable Letters of Credit. An Irrevocable Letter of Credit continuation certificate is acceptable.

The following items are required on the letter of credit:

1. The bank must assign a number;
2. The name, address, and telephone number of the bank;
3. Signature and printed name of bank official authorizing issuance;
4. Bank seal must be affixed. If the bank does not have a seal, the bank's rubber stamp is acceptable;
5. Must be issued in the exact name in which the dealership is applying for license including fictitious trade names;
6. Must be signed by the principal of the business;
7. Dealership's address is required on the letter of credit; and
8. Irrevocable letters of credit shall be for the licensing period, and a new irrevocable letter of credit or continuation certificate shall be delivered to the Department by the dealer at the beginning of each license period.

Although a new letter of credit or a continuation certificate is required each year, the assurance provided by the irrevocable letter of credit remains in force and effect until the statutes of limitations prohibit claims of any nature from being filed against it. The letter of credit covers transactions at all locations. This time period is normally five years following the year for which the letter of credit was issued.

If during the licensing year the dealership cancels its letter of credit, and obtains a replacement letter of credit with another firm, the dealer must provide the new original irrevocable letter of credit IMMEDIATELY to the Bureau of Motor Vehicle Field Operations, Regional Office responsible for regulating the dealership.

Application forms for initial licensing, surety bond forms and irrevocable letters of credit can be accessed at the Department's website at <http://www.flhsmv.gov/html/forms.html>.

**c. REGARDING SURETY BONDS AND IRREVOCABLE LETTERS OF CREDIT**

***95.11(2)(b), F.S.***

When applying for a surety bond or irrevocable letter of credit, dealer license applicants should understand the Bond Company or bank may require collateral as a condition of underwriting the bond or letter of credit. In this case your bond company or bank may not be willing to release your collateral unless the original bond or letter of credit is returned. There is a five-year statute of limitations during which a claim may be filed for the licensing year of a bond or letter of credit. What does this mean to an applicant? If you cease doing business as a dealer and your bond or irrevocable letter of credit has been underwritten based on collateral, the bond company or bank may choose not to release your collateral for five years. Each continuation certificate issued and underwritten on the same collateral adds another year to the time a bond company or bank may retain the collateral.

The Department retains the originals of all surety bonds and irrevocable letters of credit for a period of five years after the expiration date of the letter of credit. Once the retention schedule is met, the letters are destroyed.

Section 95.11(2)(b), Florida Statutes, provides a limitation to file claims within five years. This means claims may be filed against the surety bond or letter of credit for up to five years after the licensing year for which the letter of credit was written.

**The Department will not release any surety bond company or bank from liability. Please keep this in mind when applying for a bond or irrevocable letter credit. Please contact your bank or the surety bond company regarding their policies.**

**d. LOCATION AND FACILITY REQUIREMENTS**

***15C-7.003(4), F.A.C., 320.27, F.S.***

Proposed location and facilities, which would house the licensed place of business, must conform with statutory and rule requirements. Those location requirements include, but are not limited to the following:

**No motor vehicle or recreational vehicle dealer office shall be maintained from a residence.** The office must be in a permanent structure. The office must have a minimum of 100-square feet of interior floor space excluding any hallways, closets or restrooms and a minimum 7' ceiling.

Prospective applicants are advised to contact the regional office serving that area and ask for an inspection of the location before committing time and money at a location that may not meet state requirements. Location and facility requirements are contained in Rule 15C-

7.003(4), Florida Administrative Code, (F.A.C.). To view a copy of Rule 15C-7, F.A.C., visit the Department of State's website at <https://www.flrules.org/default.asp>.

Mobile Home applicants' location and facility requirements are somewhat less restrictive than the requirements for a motor vehicle dealership; certain requirements are imposed and should be verified with the local regional office.

**e. ZONING AND OCCUPATIONAL LICENSE REQUIREMENTS**

The Department does not regulate zoning or issuance of occupational licenses. These are governed strictly at the county or municipal level in Florida. Failure to meet such requirements may be in violation of county or municipal ordinances and refusal of a city or county to issue an occupational license which may result in the denial of a dealer license. In addition, should it be discovered that the location does not meet city or county zoning requirements, the Department will advise the concerned authorities since the safety and welfare of the motoring public is the responsibility of the Department.

**f. CORPORATE/PARTNERSHIP INFORMATION**

If a dealership is to be operated by a corporation, a copy of the articles of incorporation, a copy of the minutes reflecting current officers, and proof of registration of the corporate name with the Secretary of State, Division of Corporations office **MUST** be submitted with the application. If a new corporation is formed for establishing the dealership and all corporate officers on the dealership application form are exactly the same as those identified in the articles of incorporation, then a copy of the minutes is not required. If there is a partnership agreement, a copy of the partnership agreement should be submitted. Anytime there is a change to the corporation or its officers, the dealer must submit a corporate update application on form HSMV 86056 to their Regional Office or to the Compliance Examiner. On-line access for Division of Corporations is available at [www.sunbiz.org](http://www.sunbiz.org). Form HSMV 86056 can be downloaded from the Department's website at <http://www.flhsmv.gov/html/forms.html>.

**g. LIMITED LIABILITY COMPANIES (LLC)**

**608.402(19), (22), 608.407, 608.422, F.S.**

Limited liability companies are legal entities similar in purpose to corporations with certain business advantages that may be unique to the members forming the entity. Like corporations, a limited liability company (LLC) must register with the Secretary of State, Division of Corporations. All Limited Liability Companies are member-managed entities unless the articles of organization or the operating agreement provide that it is a manager-managed entity.

When a LLC is member-managed; all of the members are agents of the LLC and have the ability to legally bind the LLC. Each member is required to appear on the dealer license application and must be electronically fingerprinted. In the case of a manager-managed LLC, the manager(s) are required to appear on the dealer license application, and must be electronically fingerprinted.

Proof of electronic fingerprint for each officer, manager, member, partner, sole proprietor or director from a FDLE authorized service provider must be submitted with application to the Regional Office responsible for the dealership. A list of FDLE approved service providers can be accessed at the Department's website at <http://flhsmv.gov/dmv/FDLEApprovedServiceProviderListForElectronicFingerprints.pdf>.

An LLC may have other corporations, Limited Liability Companies, Limited Partnerships, etc. as members. The officers from these companies that are going to be authorized signatories in the LLC must be listed on the dealer license application and will have to be electronically fingerprinted.

**An LLC applying for a motor vehicle dealer license must provide the Department with copies of both the articles of organization and the operating agreement.** The operating agreement is an important document. This is an agreement that is signed by the members of the LLC before the articles of organization are registered and covers clauses regarding the discontinuation of the dealership and surrender of dealer license. If a LLC has been formed without an operating agreement, an affidavit from the dealer to that effect must be collected with the application.

On-line access for Division of Corporations is available at [www.sunbiz.org](http://www.sunbiz.org).

**h. LIMITED LIABILITY PARTNERSHIPS, LLP**  
**620.8105, 620.9001, F.S.**

If the partnership is a limited partnership, which may be comprised of two or more partners and/or one or more corporations or companies, a breakdown of the structure of the limited partnership must be submitted.

A limited partnership may file a partnership registration statement with the Department of State (s. 620.8105, F.S.). Limited Liability Partnerships may file a qualification with the Department of State (s. 620.9001 F.S.). A copy of acceptance of the partnership registration must be submitted with the application for a dealer license along with the partnership agreement.

Section 620.9002, F.S., requires that the name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "Limited Partnership", or Limited Liability Limited Partnership", or "RLLP", "LLP", "LP", or "L.P.", or "LLLL" abbreviations.

In the case of two corporations forming a limited liability partnership the dealer agreement may designate a General Partner. This person will be the only person that is required to be on the application and undergo the background check.

**i. FICTITIOUS NAME REGISTRATION**

A fictitious name or doing business as (d/b/a) name means any name under which a person transacts business in this state, other than their legal name. Business means any enterprise or venture, in which a person sells, buys, exchanges, barter, deals, or represents the dealing in anything or article of value, or renders services for compensation.

Florida Statutes require that any business operating under any fictitious name to register such fictitious name with the Division of Corporations, Florida Department of State. Proof that the corporation has filed a fictitious name registration with the Secretary of State must be submitted with the dealers' application. The fictitious name may be filed and paid for on-line at the Florida Department of State, Division of Corporations website at <http://www.sunbiz.org>.

**NOTE:**

Section 865.09(2)(a), Florida Statutes, defines a fictitious name as any name under which a person transacts business in this state, other than the person's legal name.

A legal name is a person's given name or the name of a properly registered business entity, such as a corporation, limited liability Company (LLC) or limited partnership (Ltd.). A fictitious name is required if a person is transacting business under a name other than their legal name, corporate, LLC, or Ltd. name. A sole proprietor would need to register a fictitious name if the name of their business is other than their legal name. JOHN DOE LAWN SERVICE would require a fictitious name registration as LAWN SERVICE is not part of John Doe's legal name.

If a mobile home dealership is located in a mobile home park, and the dealer wishes to advertise and do business under the name of the mobile home park, this must be recorded as a fictitious name. The dealership must advertise this as a fictitious name and this fictitious name must be added to the surety bond. The fictitious name is only valid for five (5) years.

**j. LEASE/OWNERSHIP**

If the property on which the dealership is to be located is not owned by the applicant, but rather, is leased, a true copy of the lease, dated and signed by all parties to the lease, must be submitted with the application for licensure. The lease must be a current lease and must indicate the names of the lessor and lessee, signed by them, and must have the address with zip code that is indicated on the application or legal description as the physical location of the dealership.

Fictitious names need not be indicated on the lease agreements. The licensee name as indicated on the application and Division of Corporations must be stated on the lease agreements. The licensee could be a corporation, LLC, partnership or sole proprietorship. In the case of sole ownership and partnerships, the name of all principals and the fictitious trade d/b/a name(s) are required on the lease agreement. If the property on which the dealership is to be located is owned by the applicant, a copy of the deed, or a tax statement, or other evidence of ownership must be submitted with an application for licensure.

If the property on which the dealership is to be located is owned by one of the partners or one or more of the corporate officers, a lease will be required between the actual owner(s) of the property and the entity that is applying for the dealer's license.

If the property is owned by two individuals and only one individual is applying for a license, a lease will be required between the two owners as lessor (owners of property) and the lessee/dealership (the one individual applying for license).

**Example:**

Mary and John Jones - Owner of property. John Jones d/b/a "A-1 Used Cars - dealership/applicant". The lease would be between Mary and John Jones as landlord/lessor and John Jones d/b/a A-1 Used Cars/lessee/dealership.

John Jones - owner of property and President of Corp. ABC INC. d/b/a "A-1 Used Cars". ABC Inc. d/b/a. A-1 Used Cars - dealership/applicant. The lease would be between John Jones - Owner of Property - landlord and ABC Inc. d/b/a A-1 Used Cars.

The lease must include the term of the lease and the complete address. The address must be the address as assigned by the county, zoning, or post office. The address of the lessor must be written on the lease. The lease agreement can state the complete street address or the legal description of the location.

**k. ELECTRONIC FINGERPRINTS**

***320.27(3), F.S.***

Pursuant to 320.27(3), Florida Statutes, “Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the Department for the purpose of determining any prior criminal record or any outstanding warrants.” All officers and directors of an incorporation, all officers, members and managers of a LLC, partners of a partnership, and sole owners of sole proprietorships must be electronically fingerprinted and must submit proof of electronic fingerprint from a FDLE authorized service provider. A list of FDLE approved service providers can be accessed at the Department’s website at <http://flhsmv.gov/dmv/FDLEApprovedServiceProviderListForElectronicFingerprints.pdf>.

The fingerprints will be processed through the Florida Department of Law Enforcement and the Federal Bureau of Investigation. The processing time will not delay the issuance of a license. If the applicant was previously fingerprinted for a dealer license application, and the license is active a new fingerprint card is not required. An applicant who has been convicted of a felony or equivalent charge anywhere, or has been convicted of a felony or first degree misdemeanor for a violation of any provision of Chapters 319 or 320, Florida Statutes, or has been convicted of a felony or first degree misdemeanor in any other jurisdiction for violation of motor vehicle laws (excluding parking and traffic laws) must provide documentation showing the final disposition.

**l. FEDERAL EMPLOYER’S IDENTIFICATION NUMBER**

***119.092, F.S.***

An Employer Identification Number (EIN), also known as Federal Tax Identification Number (FEIN), is a nine digit number that the Internal Revenue System (IRS) assigns business entities. Every organization having a bank account and sole proprietors, partnerships, limited liability companies and corporations must have a Federal Identification Number (FEIN). A federal employer’s identification number is required of all employers who have one or more employees. If there are no employees, an affidavit to that effect must accompany the application. A number may be obtained through the Internal Revenue Service. The federal employer’s identification number must be entered on the license application. The affidavit is a part of the application (visit the Department's website at <http://www.flhsmv.gov/dmv/forms/BFO/86056.pdf> to access form HSMV 86056, Application for a License as a Motor Vehicle, Mobile Home, or Recreational Vehicle Dealer). A federal employer’s identification number is mandatory for a corporation and for an LLC even if it is a single member.

Sole proprietors and partnerships must have a FEIN if they have one or more employees.



**m. GARAGE LIABILITY INSURANCE**

**320.27(3), 320.771(3)(j), F.S.**

Section 320.27(3), Florida Statutes, states, “ Such application shall contain such other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period.”

The above means:

**1) Independent dealers (VI), Auction dealers (VA), and Wholesale dealers (VW) have the option to submit:**

- A garage liability insurance certificate which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection; **OR**
- A general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection.

**2) Franchise dealers (VF), recreational vehicle dealers (RV/RU) and Mobile home dealers with recreational vehicle endorsement** must submit a garage liability insurance certificate which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection.

**3) Salvage Dealers (SD)** are not required to submit proof of garage liability insurance coverage with their application for an original license or at the time of renewal.

Garage liability insurance coverage must be maintained continuously throughout the license period. Proof of liability insurance, with policy number, must be submitted by the dealer with the application.

Although the laws that govern insurance requirements do not mandate Personal Injury Protection on motorcycles, the Department requires the dealer license applicant to submit a garage liability insurance policy which includes at a minimum; \$25,000 combined single limit liability coverage including bodily injury, property damage protection and \$10,000 personal injury protection. This is because even if the dealer only intends to sell motorcycles, the dealer may accept used cars as trade-in from customers.

Pursuant to section 320.771(3)(j), Florida Statutes, all recreational vehicle dealers (RV and RU) are required to be insured under a garage liability insurance policy, which shall include, at a minimum, \$25,000 combined single limit liability coverage including bodily injury, property damage protection and \$10,000 personal injury protection.

Note: An electronic signature on a Garage Liability Insurance Certificate is acceptable.

**If during the licensing year the dealership cancels its garage liability policy and obtains a replacement policy with another insurer, the dealership must IMMEDIATELY notify the applicable Motor Vehicle Field Office of this information.** The law requires the coverage to be maintained continuously. Failure to do so will result in an administrative action being filed against the dealership which could result in a fine, or suspension or revocation of the license.

Garage liability insurance at a minimum, \$25,000 combined single limit liability coverage including bodily injury, property damage protection and \$10,000 personal injury protection is also required of mobile home dealers and brokers who sell recreational vehicles. A park model, as defined in ss. 320.01(1)(b)(7), F.S., is a recreational vehicle. Therefore, a mobile home dealer or broker who wishes to sell park models must also meet the requirement for garage liability insurance. The dealer must also submit an application to the motor vehicle field office for an RV endorsement to be added to their license.

Multiple licenses held by the same dealer operator and owner at the same location or at different locations can be covered under the same garage liability insurance policy. For example, if a dealer owner/operator has two licenses at the same location, the garage liability insurance coverage shall include, at a minimum, \$25,000 combined single limit liability coverage including bodily injury, property damage protection **per business** and a single amount of \$10,000 personal injury protection (PIP). What this means is that the coverage must show at a minimum \$50,000 combined single limit liability coverage including bodily injury, property damage protection for the two dealership licenses and \$10,000 PIP. A PIP of \$10,000 is sufficient as it is per occurrence. The Garage Liability Insurance Certificate must list the names of the dealerships owned by the person that are covered in the policy.

If a dealer owns and operates several dealerships at different locations, one garage liability insurance policy at a minimum, \$25,000 combined single limit liability coverage including bodily injury, property damage protection **per business** and a single amount of \$10,000 personal injury protection (PIP). For example, if a dealer owner/operator has four dealership licenses at different locations, the garage liability insurance policy must cover all four dealerships owned by the dealer, at a minimum \$100,000 combined single limit liability coverage including bodily injury, property damage protection and a \$10,000 personal injury protection (PIP). A PIP of \$10,000 is sufficient as it is per occurrence. The Garage Liability Insurance Certificate must list the names of the dealerships owned by the person that are covered in the policy.

**n. TRAINING REQUIREMENT**

***320.27(4)(a)(b), F.S.***

Each initial license application received by the Department for a dealer license must be accompanied by verification that within the preceding six months, the applicant (owner, partner, officer, or director of the applicant or a full-time employee of the applicant that holds a responsible management-level position) has successfully completed training conducted by a licensed motor vehicle dealer training school.

Pursuant to section 320.27(4)(a), Florida Statutes, any applicant for a new franchised motor vehicle dealer license who has held a valid franchised motor vehicles dealer license continuously for the past two years and who remains in good standing with the Department is exempt from the pre-licensing training requirements.

Pursuant to section 320.27(4)(b), Florida Statutes, any applicant who has held a valid motor vehicle dealer's license continuously within the past two years and who remains in good standing with the Department is exempt from the pre-licensing training requirements. What this means is that the dealer applicant should have held a valid license within the past two years and remain in good standing.

**Please note:** The pre-licensing exemption for dealers in good standing does not apply to mobile home and recreational vehicle dealers.

All applicants for a motor vehicle dealer license, who were not previously licensed, must complete and provide proof that the applicant or one or more designated employee has attended a privatized dealer-training course. Applicants are required to schedule their own attendance at the dealer-training seminar. Applicants may obtain the list of names and contact information for the private schools from the Department's website at [http://flhsmv.gov/dmv/L\\_Dealer\\_Trng\\_Sch.pdf](http://flhsmv.gov/dmv/L_Dealer_Trng_Sch.pdf).

Pursuant to sections 320.77(6) and 320.771(6), Florida Statutes, all mobile home dealers, mobile home brokers and recreational vehicle dealers must submit proof with the initial application that within the preceding six months, the applicant or one or more of their designated employees has attended a training and information seminar conducted by the Department or by a private provider approved by the Department.

Pursuant to section 320.27(4)(a), Florida Statutes, “Each independent dealer shall certify that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the Department. Such certification shall be filed once every two years. The continuing education shall include at least two hours of legal or legislative issues, one hour of Department issues, and five hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence.”

**o. SALES TAX NUMBER**

***15C-7.004, FAC.***

A state sales tax number is required on an application for a motor vehicle dealer license. A number may be obtained from the Florida Department of Revenue. The Florida Department of Revenue issues a sales tax number for each location of the dealership.

**NOTE:** Pursuant to rule 12A-1.066, FAC, “every agent, auctioneer, **broker**, or other person who is engaged in any business activity of making sales of tangible personal property with the object of private or public gain, benefit, or advantage, either direct or indirect, who sells at retail, or who has in his possession for sale at retail, is required to register as a dealer under Chapter 212, Florida Statutes, and collect and remit any applicable tax on the total retail sales price of any taxable item of tangible personal property without any deduction for any expense, such as storage, commission, or repairs.” It is immaterial that:

- The auctioneer, broker, factor, or other person may not have possession of the tangible personal property.

**In plain language, a mobile home broker is responsible for collecting the sales tax on each sale and remitting the amount to the Department of Revenue.**

**p. SALE OF RECREATIONAL VEHICLES BY MOTOR VEHICLE DEALERS**

***320.27(1)(c), F.S.***

Motor vehicle dealers may accept recreational vehicles as a trade-in from a customer. Such recreational vehicles may be sold by a motor vehicle dealer at the retail or wholesale level. A motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless

they are licensed as a recreational vehicle dealer pursuant to s. 320.771, F.S., and using the dealership's RV or RU prefix license number.

**q. SALE OF RECREATIONAL VEHICLES BY MOBILE HOME DEALERS**  
***320.77(1)(a), 320.771(8), F.S.***

Any mobile home dealer licensed pursuant to section 320.77, Florida Statutes, may apply to the Department for authority to sell any recreational vehicle. The mobile home dealer must file the dealer license application and will be governed by the licensing provisions contained therein. No additional license fees or bond will be required for issuance of this endorsement to the mobile home dealer's license, and both mobile homes and recreational vehicles can be sold from the same location. However, garage liability insurance at a minimum, \$25,000 combined single limit liability coverage including bodily injury, property damage protection and \$10,000 personal injury protection is required of mobile home dealers and brokers who sell recreational vehicles and must be submitted with their application to the Motor Vehicle Field Office responsible for the dealership.

**Please note:** If the mobile home dealer wants to open an additional lot exclusively for the sale of recreational vehicles, they must apply for a recreational vehicle dealer license.

**r. SALE OF MOTOR VEHICLES BY RECREATIONAL VEHICLE DEALERS**  
***320.771, F.S.***

A recreational vehicle dealer may sell motor vehicles accepted as trade-ins. However, if the recreational vehicle dealer wishes to engage in the business of selling motor vehicles they must apply for an independent motor vehicle dealer license.

**s. REGISTRATION OF MOBILE HOME DEALERS SALESPERSON(S)**  
***320.77(1)(c)(1), 320.77(2), F.S.***

Every mobile home dealer must register with the Department, within 30 days after the date of hire, the name, local residence address, and home telephone number of each person newly employed by the licensee as a mobile home salesperson. A licensee may not provide a post office box in lieu of a physical residential address. Form HSMV 84045, Registration of Mobile Home Dealer's Salesperson(s) must be used by a mobile home dealer to add new hires with the Division of Motorist Services, Regional Office. Form HSMV 84045 can be accessed on-line at the Department's website at <http://www.flhsmv.gov/dmv/forms/BFO/84045.pdf>.

Every mobile home dealer must notify the Department of the termination or separation from employment of each mobile home salesperson employed by the dealer on a quarterly basis (**March 31, June 30, September 30, and December 31**). Form HSMV 84045,

Registration of Mobile Home Dealer's Salesperson(s) must be used by a mobile home dealer to update salesperson(s) status information with the Division of Motorist Services, Regional Office.

Each time a mobile home salesperson employed by a licensee changes their residence address, the salesperson must notify the Division of Motorist Services, Regional Office within 20 days after the change using form HSMV 84045, Registration of Mobile Home Dealer's Salesperson(s).

**t. VEHICLE SALES AT MOTOR VEHICLE AUCTIONS**

***320.27(1)(4) F.S.***

A licensed motor vehicle auction dealer may sell motor vehicles only to licensed motor vehicle dealers. The auction must obtain documentation that all of its customers are licensed motor vehicle dealers regardless of whether they are Florida dealers or dealers licensed in other states.

**Foreign buyers:** If a customer is from another country, the auction should obtain documentation from that country (that has been translated into English) indicating the customer is a licensed dealer. If the country of origin does not license motor vehicle dealers, the auction should obtain documentation to this effect and indicating that the person involved deals in motor vehicles in their country of origin. Such documentation may be obtained from that country's embassy in the United States.

If a licensed auction dealer wishes to retail motor vehicles, they must apply for an independent motor vehicle dealer's license with the Department. If a licensed auction dealer wishes to retail recreational vehicles, they must apply for a recreational vehicle dealer's license with the Department.

**u. UNFAIR AND DECEPTIVE TRADE PRACTICES STATEMENT**

An applicant for a recreational vehicle dealer license must provide a statement that the applicant has not and will not enter into any agreements, written or oral, with any other person or business entity, which would constitute an unfair and deceptive trade practice in violation of Part II of Chapter 501, Florida Statutes. The required statement is part of the RV dealer license application (visit the Department's website at <http://www.flhsmv.gov/dmv/forms/BFO/86056.pdf> to access form HSMV 86056, Application for a License as a Motor Vehicle, Mobile Home, or Recreational Vehicle Dealer).

## PART V

# Dealer Operations

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### A. RECORDS KEEPING

#### 1. REQUIREMENTS

*319.35, 319.23(3)(2)(b), 320.27(3), 320.27(6), 320.27(7), 320.27(9)(b)5, F.S.*

Florida Statutes require an applicant for any dealer license to certify that the location where the business is to be conducted provides an adequately equipped office space where the applicant can, in good faith, carry on such business and keep and maintain books, records, and files necessary to conduct such business. The law also requires records to be available at all reasonable hours to inspection by the Department, any of its Compliance Examiner, or other employees.

Section 320.27, Florida Statutes, provides for the regulation and licensing of motor vehicle dealers. Section 320.77, Florida Statutes, provides for the regulation and licensing of mobile home dealers. Section 320.771, Florida Statutes, provides for the regulation and licensing of recreational vehicle dealers.

Sections 320.27(3), 320.771(3)(h) and 320.77(3)(h), Florida Statutes, require that an applicant for a license certify that the business location of his business provides an adequately equipped office where the applicant can in good faith carry on such business and keep and maintain books, records and files necessary to conduct such business, which will be available at all reasonable hours for inspection by the Department, any of its Compliance Examiner, or other employees. These statutes require dealers to maintain records. These statutes also create the authority for inspection of records by members of this agency. However, these subsections do not specify what records are to be kept.

a. Sections 320.27(6), 320.771(9) and 320.77(8), Florida Statutes, require dealers to keep information regarding motor vehicle, mobile home, or recreational vehicle transactions. These laws provide that every licensee shall keep a book or record in **either paper or electronic** form prescribed or approved by the Department for a period of 5 years, in which the licensee shall keep a record of:

1. The purchase, sale or exchange, or receipt for purpose of sale, of any motor vehicle, mobile home or recreational vehicle.
2. The date a temporary tag was issued.
3. The date of title transfer.
4. The name and address of the purchaser.
5. The alleged owner or the person from whom such motor vehicle, mobile home, or recreational vehicle was purchased or received.
6. The name and address of the person to whom the motor vehicle, mobile home, or recreational vehicle was sold or delivered.
7. The vehicle description, identification number or engine number, maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and will also include a statement that a number has been obliterated, defaced, or changed, if such is the fact.
8. The statutes which require dealers to maintain records also provide that the Department will prescribe or approve the form in which the records are to be maintained. The Department has chosen to specify the data elements that must be maintained but will only suggest rather than mandate a specific form or format for records maintenance.

When a licensee chooses to maintain electronic records, the original paper documents may be destroyed after the licensee successfully transfers title and registration to the purchaser as required by chapter 319 for any purchaser who titles and registers the motor vehicle in this state. In the case of a sale to a purchaser who will title and register the motor vehicle in another state or country, the licensee may destroy the original paper documents after successfully delivering a lawfully reassigned title or manufacturer's certificate or statement of origin to the purchaser and after producing electronic images of all documents related to the sale.



- b. Although authority exists for the Department to prescribe or approve the form in which records are maintained by dealers, the Department has chosen to specify the data elements that must be maintained but to only suggest, rather than mandate, a specific form or format for records maintenance with the exception of a numerical temporary tag log form HSMV 84016, Temporary Tag Record). Form HSMV 84016 can be accessed at <http://www.flhsmv.gov/dmv/forms/BFO/84016.pdf>.
- c. Section 320.27(7), Florida Statutes, provides that, “for each used motor vehicle in the possession of a licensee and offered for sale by him or her, the licensee either shall have in his or her possession or control a duly assigned certificate of title from the owner in accordance with the provisions of Chapter 319, F.S., from the time when the motor vehicle is delivered to the licensee and offered for sale by him or her until it has been disposed of by the licensee, or shall have reasonable indicia of ownership or right of possession, or shall have made proper application for a certificate of title or duplicate certificate of title in accordance with the provisions of Chapter 319, F.S. A motor vehicle dealer may not sell or offer for sale a vehicle in his or her possession unless the dealer satisfies the requirements of this subsection. Reasonable indicia of ownership shall include a duly assigned certificate of title; in the case of a new motor vehicle, a manufacturer's certificate of origin issued to or reassigned to the dealer; a consignment contract between the owner and the dealer along with a secure power of attorney from the owner to the dealer authorizing the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner; a court order awarding title to the vehicle to the dealer; a salvage certificate of title; a photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer ("floor plan"); a copy of a canceled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be, but has not yet been, received by the dealer; a vehicle purchase order or installment contract for a specific vehicle identifying that vehicle as a trade-in on a replacement vehicle; or a duly executed odometer disclosure statement as required by Title IV of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as amended by Pub. L. No. 94-364 and Pub. L. No. 100-561) and by 49 C.F.R. part 580 bearing the signatures of the titled owners of a traded-in vehicle.”

Section 320.77(10), Florida Statutes, provides that, “The licensee shall also have in their possession for each new mobile home a manufacturer's invoice or statement of origin, and for each used mobile home a properly assigned certificate of title or registration certificate if the used mobile home was previously registered in a nontitle state, from the time the mobile home is delivered to the licensee until it has been disposed of by them.”

Section 320.771(10), Florida Statutes, provides that, “(a) the licensee shall also have in their possession for each new recreational vehicle a manufacturer’s invoice or statement of origin.

For each used recreational vehicle in the possession of a licensee and offered for sale, the licensee either shall have in their possession or control a duly assigned certificate of title from the owner in accordance with the provisions of Chapter 319, Florida Statutes, or a registration certificate if the used recreational vehicle was previously registered in a nontitle state, from the time when the vehicle is delivered to the licensee and offered for sale by them until it has been disposed of by the licensee, or shall have reasonable indicia of ownership or right of possession, or shall have made proper application for a certificate of title or duplicate certificate of title in accordance with the provisions of Chapter 319, Florida Statutes. A dealer may not sell or offer for sale a vehicle in their possession unless the dealer satisfies the requirements of this subsection. Reasonable indicia of ownership shall include a duly assigned certificate of title; in the case of a new vehicle, a manufacturer’s certificate of origin issued to or reassigned to the dealer; a consignment contract between the owner and the dealer along with a secure power of attorney from the owner to the dealer authorizing the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner; a court order awarding title to the vehicle to the dealer; a salvage certificate of title; a photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer (“floor plan”); a copy of a canceled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be, but has not yet been, received by the dealer; a vehicle purchase order or installment contract for a specific vehicle identifying that vehicle as a trade-in on a replacement vehicle; or a duly executed odometer disclosure statement as required by Title IV of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as amended by Pub. L. No. 94-364

and Pub. L. No. 100-561) and by 49 C.F.R. part 580 bearing the signatures of the titled owners of a traded-in vehicle.

Florida Administrative Code, Rule 15C-7.002, requires each dealer to have either made application for a certificate of title or a duplicate certificate of title as required in Chapter 319, Florida Statutes, or shall have in their possession one of the following indicia of ownership or proof of right of possession for each vehicle from the time they acquire each vehicle until the time they dispose of each vehicle:

1. A duly assigned certificate of title.
2. In the case of a new vehicle, a Manufacturer's Statement of Origin issued to or reassigned to the dealer.
3. A consignment contract between the owner and the dealer along with a power of attorney from the owner to the dealer authorizing the dealer to apply for duplicate certificate of title and assign the title on behalf of the owner.

A licensed dealer must have a certificate of title duly assigned by the owner to the dealer for each vehicle offered for sale by the dealer in accordance with section 320.27(7), Florida Statutes. If a dealer has made proper application for a certificate of title or duplicate certificate of title, in accordance with statutory requirements of Chapter 319, Florida Statutes; possession of the title is satisfied.

A duly assigned certificate of title must have the following information entered in the appropriate spaces where provisions are made for such information on the title form:

- 1) Name of the dealer or purchaser;
- 2) The selling price, if sold to anyone other than a licensed dealer;
- 3) The odometer reading;
- 4) The date the odometer was read;

- 5) An indication if the odometer reading is not the actual mileage or if the mileage exceeds mechanical limits of the odometer;
  - 6) The signature and printed names of the transferee and the transferor; and
  - 7) The seller's address;
- d. A motor vehicle dealer is also required to provide a customer or purchaser with a written odometer disclosure statement. All dealers must provide their customers with a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of a motor vehicle. These requirements include the following types of documentation:
- 1) An odometer disclosure statement. The dealer must maintain copies of odometer statements for five (5) years. Section 319.225(4), F.S., exempt vehicles with GVW more than 16,000, and 10 years old or older, or not self-propelled;
  - 2) A sales contract;
  - 3) A purchase agreement;
  - 4) A finance contract;
  - 5) An insurance contract;
  - 6) A warranty agreement;
  - 7) Buyer's guide;
  - 8) Copy of certification of pollution control devices or systems; and
  - 9) Any other agreement relevant to the motor vehicle transaction.

## **2. INSPECTIONS**

The Department, through its representatives, makes periodic inspections to ensure that appropriate records are being kept. Dealers are required to keep accurate records on every motor vehicle purchased or sold, the status of the titles on every vehicle in the dealer's possession and being offered for sale, and complete and accurate records on all temporary tags in the dealer's inventory or those that have been issued including complete and accurate records of all pre-printed stock, electronic temporary plates acquired via department approved providers and those that have been issued, those that were acquired at the tax collector's office. Dealers are also required to keep accurate records of all dealer tags purchased by the dealership so that each tag and the person to whom it is assigned for use can be easily and readily identified.

Records inspections are normally conducted by a Compliance Examiner from the Bureau of Motor Vehicle Field Operations, Regional Offices, but there are occasions when an inspection is conducted by a Compliance Examiner from the Manufactured Housing Section, Division of Motorist Services, or by a uniformed or plainclothes law enforcement officer from the Florida Highway Patrol. These DHSMV representatives are equally authorized to conduct records inspections.

Dealers are required to cooperate and assist the Department by providing all information requested. Following a routine inspection, a licensee will be given an opportunity to correct any discrepancies found. A follow-up inspection, if needed, by the Compliance Examiner will ensure compliance.

A dealer who fails or refuses to cooperate by withholding records or failing to maintain records is subject to a fine or the suspension or revocation of their license. In addition, such failure or refusal constitutes a second-degree misdemeanor and subjects the dealer to arrest.

## **B. MERCHANDISING: OPERATING IN GOOD FAITH**

### **1. IN GENERAL**

By accepting a license issued by the Department of Highway Safety and Motor Vehicles, there is an implied agreement between the licensee and the state that the dealer will operate the business in good faith and that any dealings with the public and with governmental agencies will not be fraudulent, confusing, misleading, unethical, or unlawful.

### **2. ESTABLISHING AND MAINTAINING WORKING RELATIONSHIPS**

It is necessary for dealers to develop and maintain complete cooperation with the Department, and with the county tax collectors and their branch offices. Each group performs certain functions with regard to the sale of vehicles and the processing of ownership and registration documents. In addition, dealers must conduct business between themselves so as not to impede the flow of titles, registrations, and supporting documents.

County Tax Collectors and their branch offices, commonly referred to as tag agencies, are legal agents for the Department of Highway Safety and Motor Vehicles. They provide the facilities for processing of titles and registrations at the local level. It is important, therefore, for a positive relationship to exist between dealers and local tax collector's offices. Although the Department does not take an active role in the management of the day-to-day operations of tax collectors' offices and tag agencies, it is the responsibility of the tax collectors to ensure that their offices adhere to the Department's policies and procedures regarding the processing of titles and registrations. This is supported by continuous communications between the Department and tax collectors and through an ongoing series of training programs. However, any problems a dealer encounters in processing work through a tax collector's office should be dealt with directly through the county tax collector or their designated agent.

As noted earlier, the Bureau of Motor Vehicle Field Operations has regional offices located throughout the state to provide services to the public, dealers, and tax collectors on matters of dealer licensing and the processing of titles and registration work. Employees in this bureau will

assist in resolving, or make appropriate recommendations for resolving any conflict that may arise regarding these matters. Bureau of Motor Vehicle Field Operations, Regional Office Compliance Examiners have the authority to investigate matters regarding dealer licensing and vehicle titling and registration issues. Included is the authority of Bureau of Motor Vehicle Field Operations, Regional Office Compliance Examiners and supervisors to enter private and public property to enforce applicable statutes.

Any dealer having a problem with a tax collector's office regarding a matter of Departmental policy or procedure that cannot be resolved with the local office, may contact the local Bureau of Motor Vehicle Field Operations, Regional Office. Conversely, tax collectors who are experiencing difficulties with licensed dealers, not complying with Departmental policies and procedures, have the authority to reject, before processing, any paperwork submitted by the dealer for title and registration transfers, and advise the applicable regional office of such difficulties.

### **3. USE OF PROPER DEALERSHIP NAME AND ADDRESS**

The name and address of the licensee as it appears on the dealer license is the only authorized name and address the dealer is permitted to use in conjunction with the conduct of the business. Such name may be the fictitious name under which the business is licensed. The purpose of this requirement is to ensure that members of the consuming public fully know and understand the identity of the licensee with whom they are dealing. This requirement applies not only to sales but also to all forms of advertising.

### **4. DISCLOSURES**

***320.840, F.S, 501-976(10) F.S.***

Statements regarding sales, financing, or advertising of vehicles shall not be false, deceptive, or misleading. Any written contract, statement, receipt, or other agreement between dealers or between a dealer and a consumer must be in compliance with applicable state and federal laws. It is expected that a dealer will comply with any written agreement that is made with another dealer or with a consumer. It is important to note that, as a general rule, disputes over

contractual matters arising between a dealer and a consumer would not ordinarily relieve a dealer of the obligation to transfer or apply for title and registration following the sale of a vehicle. The advertised price of a motor vehicle whether it is displayed on a windshield or included in a printed advertisement must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rust proofing. State and local taxes, tags, registration fees and title fees need not be disclosed in the advertising.

The applicability of refunds, liquidated damages, the return of deposits and down payments on the sale of recreational vehicles and mobile homes shall be governed by applicable statutes or contract law. Copies of all written statements, agreements, receipts, or contracts regarding the purchase, sale, or exchange of any motor vehicle, mobile home or recreational vehicle must be given to the consumer. This is particularly applicable to any written instrument that the consumer signs.

Section 320.840, F.S., specifies that in the absence of an express provision in the sales contract, the retail seller of a mobile home may only retain deposit amounts as stipulated in s. 320.840, F.S.

Pursuant to section 501.976 (10) Florida Statutes, a dealer may not “Require or accept a deposit from a prospective customer prior to entering into a binding contract for the purchase and sale of a vehicle unless the customer is given a written receipt that states how long the dealer will hold the vehicle from other sale and the amount of the deposit, and clearly and conspicuously states whether and upon what conditions the deposit is refundable or nonrefundable.”

## **5. CONSIGNMENT SALES**

### ***15C-7.002(5)(c), F.A.C.***

Florida law imposes a requirement on a dealer to have a duly assigned title or reasonable indicia of ownership in their possession from the time of acquiring a vehicle until the time of disposing of such vehicle. The common consignment sale practice of merely turning over possession of the vehicle while the consignor/seller holds title is unlawful in this state. Thus, in order for a dealer



to stay out of a potentially damaging situation whereby the dealer sells a vehicle that has been consigned, later to discover that the seller refuses to transfer title, the Department permits consignment sales only if the dealer has a secure power of attorney from the owner to the dealer, signed by the seller, which would enable the dealer to process the title after the sale, accompanied by a written consignment agreement that spells out the conditions and obligations of each of the parties in the consignment. The dealer will also need a power of attorney to apply for a duplicate title and assign the title on behalf of the owner. In the cases where there is a lien on a vehicle to be consigned, the dealer must also have in their possession a copy of the front and back of the title and a secure power of attorney. In a consignment arrangement, the Department holds the dealer responsible for transferring the title to the purchaser within the time frame specified by law. Failure of a dealer to exercise due caution in this regard can potentially jeopardize the status of the dealer's license. The dealer should complete an odometer statement at the time the vehicle is taken in for consignment sale.

For motor vehicle dealers, the consignment that is contemplated is from a non-dealer owner to a dealer and not between dealers. Only the titled owner can give another person or business a power of attorney to apply for a duplicate title or assign a title on their behalf. No dealer is permitted to sell a vehicle on consignment from another dealer.

## **6. RESALE OF PREVIOUSLY DELIVERED NEW VEHICLE**

### ***319.001(9), F.S.***

Dealers finding themselves in a situation when the title of a new motor vehicle has not been transferred but possession of the vehicle is transferred (delivered) pursuant to a conditional sales contract or lease and the conditions are not satisfied and the vehicle is returned to the motor vehicle dealer, the motor vehicle may be resold to a new customer by the motor vehicle dealer as a new vehicle provided the selling motor vehicle dealer gives the following written notice to the purchaser: **"THIS VEHICLE WAS DELIVERED TO A PREVIOUS PURCHASER."** The purchaser shall sign an acknowledgment of this declaration and a copy must be kept in the selling dealer's files.

## **7. SALE OF DEMONSTRATOR VEHICLES**

Any franchised motor vehicle dealer selling a new motor vehicle that is identified on the records of the dealership as being used by, being inspected, or driven by the dealer or their employees or prospective customers for the purpose of demonstrating the vehicle's characteristics, is a demonstrator. Before any dealer sells such a new motor vehicle, either to another dealer or to an ultimate purchaser, the dealer must disclose, in writing, to the purchaser that the vehicle is a demonstrator.

## **8. SALE OF REPOSSESSED VEHICLES**

A dealer who sells a repossessed motor vehicle, mobile home, or recreational vehicle for a bank, finance company, or any other lien holder must reassign the title through the dealership and process the title transfer to the purchaser. Before a dealer offers a repossessed vehicle for sale, a repossessed title or certificate of repossession must be applied for by the lien holder (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82040, Application for Certificate of Title With/Without Registration).

If a dealer finances their own sales, and appears on the title as a lien holder, a repossessed title must be applied for in the name of the dealership before the vehicle is resold, unless the vehicle is voluntarily sold back to the dealership. In either case, the title must be reassigned to the dealer and transferred by the dealer to the next purchaser, when sold.

## **9. SALE OF REBUILT VEHICLES**

***319.14(1)(a)(b), F.S. 681.111 F.S.***

"Rebuilt vehicle" means a motor vehicle or mobile home built from salvage or junk, as defined in s. [319.30\(1\)](#), Florida Statutes. Anyone, whether a licensed dealer or not, who offers a motor vehicle for sale or exchange which has been rebuilt, must disclose, in writing, prior to consummating the sale, that the vehicle has been previously titled or registered as a "Rebuilt." A rebuilt vehicle is one that has been built or repaired from salvage, or junk, or water damaged vehicles and has a title issued which is branded as "Rebuilt." Such disclosure is also required on

any advertisement offering such rebuilt vehicle for sale. Note that the same requirements apply to any motor vehicles previously used as police vehicles or taxicabs, manufacturers buy backs or recall, short-term lease, or a non-conforming vehicle.

Dealers who rebuild vehicles are required to comply with the rebuilt application and inspection process. Certain requirements are imposed and should be checked with the Compliance Examiner or Bureau of Motor Vehicle Field Operations, Regional Office. The procedure includes and is not limited to the following: photographs of the vehicle must be submitted in its wrecked condition, original signed receipts for all major component parts, listing the vehicle identification number of the vehicle the parts came from, proof of ownership, and a physical inspection of the vehicle and all replacement parts is required. The dealer who rebuilds or assembles the vehicle from parts must first apply for a Florida title branded rebuilt or assembled from parts (ASPT), in their name before the vehicle may be resold. The dealer must advise the customer in writing that the vehicle has been rebuilt or assembled from parts.

All dealers should thoroughly inspect vehicles before offering for sale. The vehicle should be inspected to determine if it has previously been rebuilt. The pillar post on the driver's door should be checked to determine if a rebuilt plate or decal has been affixed. The title should also be checked for rebuilt or other brands prior to sale. Dealers selling salvage rebuildable vehicles cannot issue temporary tags for such vehicles and are required to apply for a salvage rebuildable title in the customer's name. Once the title is in the customer's name, the customer becomes responsible for the rebuilding inspection process and proper registration, when applicable.

No person shall knowingly offer for sale, sell or exchange a rebuilt vehicle unless the Department has stamped in a conspicuous place on the title for the vehicle words stating that the vehicle has been rebuilt or assembled from parts, or is a kit car, glider kit, replica, or flood vehicle unless proper application for a certificate of title for a vehicle that has been rebuilt or assembled from parts, or is a kit car, glider kit, replica, or flood vehicle has been made with Department. The Department will then conduct a physical examination of the vehicle and all the major component parts which have been repaired and replaced. Thereafter, the Department shall affix a decal to the vehicle showing the vehicle to be rebuilt.

## **10. SALE OF LEASE VEHICLES**

***319.14(2), F.S.***

A motor vehicle that is rented, leased, or otherwise used as a lease vehicle must be titled and registered as such prior to being used, and may only be operated on the streets and highways. Dealer license plates may not be used. Once a vehicle has ceased being used as a lease vehicle and the ownership has been transferred to an owner for private use, the new owner may request the Department to issue a title removing the "lease brand", which indicates the previous use of the leased vehicle. If the label has not been removed, anyone, including a dealer, who offers such a vehicle for sale, must disclose, in writing, prior to consummation of the sale, that the vehicle is titled and registered as a lease vehicle.

## **11. SALE OF PREVIOUSLY DAMAGED VEHICLES**

Although there is no requirement for a seller to disclose that a vehicle has previously had a bent frame, or major rust on the undercarriage or body, it is expected that a dealer will not intentionally misrepresent the condition of a vehicle or sell a vehicle knowing such vehicle to be unsafe. Such actions may make a dealer civilly or criminally liable in any cause of action arising as a result of the sale of a vehicle with such damage or deterioration. Water damaged vehicles must be titled as-flood vehicles if no major components were replaced. However, if the vehicle was flood damaged and major components were replaced; the title must be branded as a flood vehicle and rebuilt. When the out of state proof of ownership has issued a title showing the brand as water damaged or flood damaged, the Florida title will be issued showing the brand and will be carried forward for the life of the vehicle.

## **12. SALE OF DAMAGED NEW VEHICLES**

***501.975, 501.976 (19) F.S.***

A dealer is obligated to disclose to a prospective customer any damage to a new motor vehicle whenever the actual cost to the dealer exceeds three percent of the manufacturer's suggested retail price or \$650, whichever is less, excluding replacement items as defined in s. 501.976, F.S.

**13. SALE OF VEHICLES WITH UN-ORDERED EQUIPMENT**

A dealer may not require a purchaser to accept a vehicle with any equipment or accessories not ordered by the customer or purchaser.

**14. REQUIRING SPECIFIC FINANCING**

A dealer may not require a customer or purchaser to finance a motor vehicle with a specific institution or company.

**15. PURCHASE OF INSURANCE**

A dealer may not require a purchaser of a motor vehicle to contract with the dealer for physical damage insurance.

**16. SALE OF DAMAGED MANUFACTURED HOMES**

A mobile home dealer is responsible for verifying the condition of a manufactured home when it is delivered to the dealer by the manufacturer. If any damage occurs in transit, the dealer is responsible for notifying the manufacturer and assuring that the home is repaired before it is delivered to an ultimate purchaser.

**17. SALE OF MANUFACTURED HOMES NOT IN COMPLIANCE WITH STANDARDS**

***320.823, 320.8245, F.S.***

A mobile home dealer is prohibited by federal law from selling or offering for sale a manufactured home the dealer knows is not in conformance with the Federal Manufactured Home Construction and Safety Standards. Furthermore, a dealer is prohibited from selling or offering for sale any manufactured home which has been altered or changed in such a way as to create an imminent safety hazard or condition which causes the manufactured home to fail to conform to federal standards. Each single-family or duplex mobile home or manufactured home manufactured in this state or manufactured outside this state but sold or offered for sale in this

state shall meet the Manufactured Home Construction and Safety Standards. Federal law mandates all dealers to maintain complete records of any alterations made to a manufactured home. All mobile homes are constructed to the Federal Safety Standards and a Federal Housing and Urban Development (HUD) label is affixed to the rear of each mobile home. The HUD labels are silver and red in color and are affixed to each section of a mobile home. If the mobile home is a double wide it will have two HUD Labels.

A mobile home dealer is responsible for assuring that a manufactured home has a HUD label affixed to each section.

## **18. USED RECREATIONAL VEHICLE SAFETY STANDARDS**

### ***320.8232, F.S.***

It is the responsibility of a dealer to ascertain that all used recreational vehicles manufactured after January 1, 1968, either meet or exceed the requirements and standards of the Used Recreational Vehicle Code, prior to offering any such units for sale to the public.

## **19. FALSE, MISLEADING OR DECEPTIVE ADVERTISING**

Subsection 320.27(9)(b)3, Florida Statutes, provides that when a dealer misrepresents or makes false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which the motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles can cause the Department to deny, suspend or revoke the dealer's license. It is immaterial whether a dealer had knowledge of the misrepresentation or of the falsity of the sales promotion. Even if the dealer did not intend to deceive anyone through the use of the deceptive advertisement, it is no defense to a civil or criminal charge. Liability is both civil and criminal and can constitute a second-degree misdemeanor. Civil liability can result from the filing of an unfair and deceptive trade practices suit by the State Attorney or the Attorney General's office. In addition to fines that may be levied of up to \$5,000 per violation, the dealer may also be forced to rescind any sales contract stemming from the advertisement or to otherwise reimburse wronged consumers.

As per section 320.771(3)(k), Florida Statutes, recreational vehicle dealer applicants are also required to sign a statement in their application that they have not and will not enter into any agreement, written or oral, with any other person or business entity, which would constitute an unfair and deceptive trade practice in violation of Part II of Chapter 501, Florida Statutes.

Dealers also need to be aware that rules of the state require all fees or charges, which a customer must pay, including freight, destination charges, dealer preparation charges, undercoating, or rust-proofing, be included in any advertised price and may not be added on later.

## **C. COMPLETING THE SALES TRANSACTION**

### **1. COPIES OF DOCUMENTS TO PURCHASER**

#### ***320.27(9)(b)4, F.S.***

A licensed dealer is responsible for ensuring that each customer is provided with copies of any sales contract, purchase order, odometer disclosure statement, finance agreement, or other documents pertinent to a sale which are properly completed and signed. Mobile home dealers are responsible for providing each customer with documents provided by the manufactured home manufacturer. These include the following:

- a. Installation instructions, including specifications and procedures for the placement and hook-up of a home at its permanent location;
- b. The homeowner's maintenance manual;
- c. Warranties and owner manuals for the appliances, fixtures or components;
- d. Operating instructions for the appliances; and
- e. Records of purchase.

**2. COMPLYING WITH TERMS OF A WRITTEN CONTRACT OF MOBILE HOMES**

**320.8335, 15C-2.011, F.A.C.**

Once a contract has been completed and signed, both parties are expected to honor all terms of the contract. A mobile home dealer is responsible for providing the purchaser of a mobile home with a written contract. The contract must specify a complete list of the installation services included in the purchase price. If the wheels and axles used to transport the home are to be retained by the dealer, a statement to that effect must be in the contract. If such a statement is absent, then it is assumed that the wheels and axles have been paid for and belong to the purchaser. Mobile home dealers must also disclose, in writing, to a purchaser when the length of the coupling mechanism is included in the overall length of the mobile home.

As per 15C-2.011 FAC, "Running Gear Assembly" means a mobile/manufactured home chassis subsystem consisting of suspension springs, drawbar, axles, bearings, wheels, hubs, tires, and brakes, with their related hardware.

In order to clarify whether the assembly is included in the sale, no dealer or manufacturer shall sell or deliver a mobile/manufactured home to a retail purchaser without disclosing whether the running gear assembly is included in the transaction. The disclosure must be in written form, such as the following:

The sale of this mobile/manufactured home,\_\_\_\_(VIN Number),\_\_\_\_(Year & Make), includes/excludes (strike one) the running gear assembly (suspension springs, axles, bearings, wheels, hubs, tires, brakes).

	Dealer/Manufacturer	Purchaser
	Dated	Dated



The absence of a written disclosure or the failure to strike the inapplicable word (include/exclude) will be interpreted as meaning the running gear assembly was to be included in the sale. No oral agreements, whether witnessed or not, will be acceptable.

A copy of the disclosure shall be maintained by the dealer or manufacturer as part of the sale records and will be subject to periodic inspection by the Department.

Failure to maintain a disclosure statement or to comply with the requirements of this rule will result in disciplinary action against the dealer or manufacturer pursuant to Chapter 320, F.S.

### **3. TAKING A VEHICLE IN TRADE**

#### ***319.23, F.S.***

When a consumer is trading a vehicle in exchange for the purchase of a new or more current model, motor vehicle, mobile home, or recreational vehicle, a dealer should check the following items:

#### **a. PROOF OF OWNERSHIP**

A dealer should check the title to the motor vehicle, mobile home, or recreational vehicle in the possession of the seller to ensure the title is in the seller's name. If the seller does not have the title in their possession, because the title is being held by a lien holder, the dealer should check the vehicle registration in the possession of the seller to verify that the motor vehicle, recreational vehicle or mobile home is registered in the seller's name. The dealer should also check with the lien holder to ensure that the lien holder does have possession of the title. If the information does not match, or it is incorrect, or incomplete, the dealer should be very skeptical about taking such a vehicle on trade. The dealer should verify that any liens on the title are satisfied. If the lien is not satisfied, it is recommended that the dealer contact the lien holder to verify the amount of payoff before listing the amount on the sales contract. Section 319,24(5)(a), F.S., requires that a motor vehicle dealer shall pay and satisfy an outstanding lien within ten working days of acquiring ownership of a motor vehicle with an outstanding purchase money lien.

The dealer should verify the odometer reading and verify the vehicle identification number on the motor vehicle, recreational vehicle or mobile home is identical to the ownership documents. The owner of the trade-in does not have to be the purchaser of the motor vehicle receiving the benefit of the reduction in sales price. The owner must approve of the trade-in. The title should also be checked for rebuilt or any other title brands.

**b. VIN VERIFICATIONS**

***319.23(3)(a)(1), 319.23(3)(a)(2), F.S.***

Any time a used vehicle is to be titled in Florida for the first time, a form must be completed which verifies that the public vehicle identification number on the vehicle is identical to that on the paperwork accompanying the vehicle and by which a Florida title will be sought. Licensed Florida dealers, law enforcement officers, Florida notaries public, and Florida Bureau of Motor Vehicle Field Operations, Regional Office Compliance Examiners may verify the VIN and attest to its accuracy by completing the VIN verification form (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82042, Vehicle Identification Number and Odometer Verification).

A dealer should verify the vehicle identification number on the motor vehicle, mobile home, or recreational vehicle and compare it with the VIN appearing on the proof of ownership documents. This should be done by physically checking the vehicle's public VIN plate and comparing it with the number appearing on the customer's proof of ownership. A dealer should also check the pillar post to determine if a vehicle has been rebuilt or assembled from parts. A dealer should also check the pillar post to determine if a vehicle has a rebuilt or "FLA" Decal affixed.

As noted earlier, the licensing laws prohibit a dealer from engaging in false, misleading, or deceptive advertising. An advertisement should not have the tendency to mislead or deceive the consumers.

Pursuant to section 319.14 (6) Florida Statutes, “any person who removes a rebuilt decal from a rebuilt vehicle with the intent to conceal the rebuilt status of the vehicle commits a felony of the third degree, punishable as provided s. 775.082, s. 775.083, s. 775.084.”

VIN verification for a vehicle that is brought into Florida from another country can be conducted only by a Bureau of Motor Vehicle Field Operations, Regional Office Compliance Examiner.

**c. POWER OF ATTORNEY**

A dealer should have the consumer complete a power of attorney form, giving the dealer authority to sign for the consumer on the sale of a trade-in vehicle. Only a secure power of attorney may be used when odometer disclosure is required. This form will be necessary should the dealer lose the title and have to apply for a duplicate title or, in the case of a lien, allow for transfer of the title once the lien has been satisfied. In cases where vehicles are traded in and the title is lost by the owner or is being held by a lien holder, it will be necessary to have the owner complete a secure power of attorney at the time of delivery. The secure power of attorney is designed to allow the dealer to record the odometer reading and place it on the title assignment to comply with federal law (visit the Department's website at <http://www.flhsmv.gov/html/forms.html> to access form HSMV 82995, Motor Vehicle Power of Attorney/Odometer Disclosure).

**d. ODOMETER DISCLOSURE STATEMENT**

***320.27(9)(b)4, F.S.***

When accepting a trade-in on a motor vehicle, a dealer is obligated to obtain an odometer disclosure statement from the seller. This form must be completed and signed by both the customer as the seller and the dealer as the purchaser and must accurately reflect the current odometer reading (visit the Department's website at <http://www.flhsmv.gov/html/forms.html>, to access form HSMV 82042, Vehicle Identification Number and Odometer Verification, form HSMV 82995, Motor Vehicle Power of Attorney/Odometer Disclosure, or form HSMV 82993, Separate Odometer Disclosure

Statement and Acknowledgement). The dealer should physically check the odometer reading on the vehicle. If the seller's title is being held by a lien holder or lost, a secure power of attorney form (visit the Department's website at <http://www.flhsmv.gov/html/forms.html>. to access form HSMV 82995, Motor Vehicle Power of Attorney/Odometer Disclosure) should be used to capture the odometer disclosure statement.

The Department may deny, suspend or revoke any license issued to a motor vehicle dealer for failure to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase of the motor vehicle.

**e. CURRENT REGISTRATION/ LICENSE PLATE TRANSFER**

When a customer purchases a vehicle using a trade-in as part of the transaction, the license plate from the trade-in vehicle should be removed and transferred to the new vehicle. In order for a dealer to correctly complete the transfer, the dealer must obtain a current vehicle registration on the traded vehicle from the customer. Failure to comply with this process will result in the customer being assessed the new wheels on the road tax. (Visit the Department's website at <http://www.flhsmv.gov/html/forms.html> to access form HSMV 83033, Notification of Transfer of Registration License Plate).

If a customer is not purchasing a vehicle but is selling a vehicle outright to a dealer, the license plate is to be given back to the customer. Remember, in Florida, the license plate remains with the owner. It does not go with the vehicle. Florida law requires dealers to process license plate transfers electronically via their Electronic Temporary Registration (ETR) vendor.

The Electronic Temporary Registration (ETR) system provides dealerships with the ability to submit license plate transfer information to the department electronically at the time of sale and transfer of the metal license plate and to have a new registration printed confirming the transfer. Below is an explanation of how the electronic process will work:

If a customer purchases a vehicle from a dealer and has a metal license plate to transfer to their new vehicle, the dealer uses the ETR system to enter the individual's personal and vehicle information. This information is verified against the Department's motor vehicle database and if everything is in order, it allows the transfer of the registration to the new vehicle. The dealer may then move the customer's metal license plate to the customer's new vehicle. The customer will be able to leave the dealership displaying his permanent metal license plate on the rear of their vehicle.

An ETR dealer may issue a pre-printed temporary license plate <http://www3.flhsmv.gov/dmv/Proc/RS/RS-31.pdf>, only in case of an ETR system outage. The dealer must report the issuance to the department electronically within one business day (excluding weekends and holidays) of issuing the temporary license plate. Please review additional requirements for issuing a pre-printed temporary license plate as provided in procedure RS-31 Temporary License Plates at the following link at <http://www3.flhsmv.gov/dmv/Proc/RS/RS-31.pdf>.

If the ETR system does not allow the metal plate to be transferred, the dealer must issue a temporary print on demand license plate or visit the tax collector's office to transfer the metal plate.

#### Non-ETR or Non-EFS Dealers

A dealer that does not use the EFS or the ETR system must visit a tax collector's office to have the appropriate transaction performed by the Tax Collectors Office before allowing the customer to drive the vehicle off the lot. The appropriate transaction may be the issuance of a temporary license plate, the temporary transfer of a metal license plate, or the issuance of the permanent title and registration.

#### No Metal Plate to Transfer

If the customer does not have a metal license plate to transfer, the dealer must issue a temporary print on demand license plate or visit the tax collector's office to purchase the metal plate.

Memos and Dealer advisories from the Department on Electronic Transfer of Metal Plates can be accessed at <http://www.flhsmv.gov/dmv/DlrAdv/DAindex.html>. More information on ETR can be accessed at <http://www.flhsmv.gov/etr/etr.html>, and information on EFS can be accessed at <http://www.flhsmv.gov/html/DMV/EFS.html>.

**f. NOTIFICATION TO DHSMV**

When a licensed dealer acquires a motor vehicle or mobile home as trade-in, the dealer must mark title as “sold” and notify the Department of the trade-in within 30 days, by submitting a completed HSMV form 82040, Certificate of Title With/Without Registration.

**4. TAKING A VESSEL IN TRADE**

Licensed Motor Vehicle dealers who take a vessel as a trade-in cannot reassign the vessel title to the new buyer. The dealership is required to take title in the dealership’s name prior to selling the vessel. A motor vehicle dealership is only licensed to deal in motor vehicles. Therefore, they cannot sell miscellaneous items, such as vessels, prior to taking title into the dealership’s name. When the dealership is applying for the title in their name, they must indicate on the HSMV 82040, Application for Certificate of Title With/Without Registration, that they are taking the vehicle into their inventory for resale so that no sales tax would be collected. The registration should be transferred with a registration use of “non-use,” so the Florida number can be transferred and no base tax is charged.

If a vessel dealer is taking a vehicle in on trade; the vessel dealer would also need to take title in their name prior to selling the vehicle. The vessel dealer must indicate on the form HSMV 82040, Application for Certificate of Title With/Without Registration that the vehicle is in their inventory for resale, so sales tax would not be due. The vessel dealer cannot issue any temporary tags.

## **5. COLLECTING SALES TAX**

### **DR 15**

It is the responsibility of a dealer to collect the proper amount of sales tax due on any sales transaction. The sales tax collected is paid by the dealer to the Department of Revenue, not to the county tax collector's office. The rules regarding applicable sales tax in unique situations, such as the sale of a vehicle to a non-resident who will title and register the vehicle in another state or foreign country, should be obtained from the Department of Revenue.

The dealer must register with the Department of Revenue and obtain a sales tax number. By doing so the dealer acts as the agent of the state and is responsible for collecting sales tax on each taxable transaction and, paying use tax on items used by the business that were tax-exempt or removed from inventory and not resold. All taxes collected must be submitted to the Department of Revenue, and the dealer must maintain complete and accurate records of all sales and purchases.

Some counties levy a discretionary sales surtax on most transactions that are subject to sales tax and use tax. It is the dealer's responsibility to collect the surtax along with the state sales tax and use tax and remit both taxes to Department of Revenue. The surtax applies only to the first \$5,000 of the selling price of each motor vehicle.

A dealer who refuses to register with Department of Revenue prior to opening a business will have to pay a registration fee of \$100 to the DOR. This fee may be waived by Department of Revenue if they find that the oversight was not intentional.

Florida law allows qualified purchasers who live out-of-state a partial tax exemption on motor vehicles purchased in Florida. A non-resident only pays Florida sales tax at the sales tax rate imposed in the non-resident's own state. In no case will more than the Florida sales tax rate of 6% be collected.

Some states require their residents to pay sales tax in order to register the vehicles in that state.

Discretionary sales surtax does not apply on the vehicle, but does apply on any applicable service.

No sales tax will be due in Florida from an out-of-state buyer if the buyer's home state does not impose sales tax on motor vehicles.

As per the Department of Revenue, certain vehicles may not be subject to Florida sales and use tax. The sale of a motor vehicles or recreational vehicles through a motor vehicle auction licensed by the Department of Highway Safety and Motor Vehicles to other motor vehicle dealers also licensed by the Department of Highway Safety and Motor Vehicles are deemed to be sales for resale. Therefore, the selling dealer (motor vehicle auction) is not required to collect Florida sales tax on such sales. Furthermore, the motor vehicle auction is not required to obtain resale certificates for these transactions. Refer to Rule 12A-1.039(4), Florida Administrative Code (FAC).

**6. CHARGING PROPER TITLE AND REGISTRATION FEES**

***320.08, F.S.***

A dealer can only charge the purchaser the actual fees authorized by statute for title and registration transfers. These will be the fees charged by the county tax collector's office for transferring title and registrations. Overcharging of these fees without refunding the overcharge is unlawful and could result in disciplinary action against the dealer's license. The dealer is responsible for refunding the overcharged amount to the purchaser. Private tag agency fees cannot be included in the category of title and registration fees.

**7. ISSUING TEMPORARY TAGS**

***320.131, F.S., 15C-1.003, 15C-1.004, F.A.C.***

The Department requires that motor vehicle dealers issue all temporary tags via an electronic system. This allows the law enforcement to verify the validity of a temporary license plate through the Florida Real Time Vehicle Information System (FRVIS).



The license plate stock for electronic temporary registration is purchased from the ETR vendor.

Several providers have been certified to provide this service to the motor vehicle dealers. More information can be accessed on-line at <http://www.flhsmv.gov/etr/etr.html>. The dealers that do not desire to contract with an ETR vendor must have temporary tags issued at the Tax Collector's Office.

More information on temporary license plates is available at the Department's website at <http://www.flhsmv.gov/>, and under procedure RS31 that can be accessed at <http://www3.flhsmv.gov/Division of Motorist Services/Proc/RS/RSContents.html>.

Memos and Dealer advisories from the Department on Electronic Transfer of Metal Plates can be accessed at <http://www.flhsmv.gov/dmv/DlrAdv/DAindex.html>.

If a purchaser of a vehicle is not transferring a tag from a trade-in vehicle, the dealer may issue a thirty-day temporary tag for use on the vehicle via their ETR vendor. Before issuing the first temporary tag the dealer must have all necessary information, including proof of insurance, to be able to transfer the title and register the vehicle during the thirty-day period. For information on temporary tag issuance access the Dealer Advisories at the Department's website at <http://www.flhsmv.gov/dmv/DlrAdv/DAindex.html>.

Pursuant to section 320.131(l), Florida Statutes, "The Department is authorized and empowered to design, issue, and regulate the use of temporary tags to be designated "temporary tags" for use in the following cases:

- (a) Where a dealer license plate may not be lawfully used.
- (b) For a casual or private sale, including the sale of a marine boat trailer by a marine boat trailer dealer. A "casual or private sale" means any sale other than that by a licensed dealer.
- (c) For certified common carriers or driveaway companies who transport motor vehicles, mobile homes, or recreational vehicles from one place to another for persons other than themselves.

(d) For banks, credit unions, and other financial institutions which are not required to be licensed under the provisions of s. [320.27](#), s. [320.77](#), or s. [320.771](#), but need temporary tags for the purpose of demonstrating repossessions for sale.

(e) Where a motor vehicle is sold in this state to a resident of another state for registration therein and the motor vehicle is not required to be registered under the provisions of s. [320.38](#).

(f) Where a motor vehicle is required to be weighed or emission tested prior to registration or have a vehicle identification number verified. A temporary tag issued for any of these purposes shall be valid for 10 days.

(g) Where an out-of-state resident, subject to registration in this state, must secure ownership documentation from the home state.

(h) For a rental car company which possesses a motor vehicle dealer license and which may use temporary tags on vehicles offered for lease by such company in accordance with the provisions of rules established by the Department. However, the original issuance date of a temporary tag shall be the date which determines the applicable license plate fee.

(i) In the resolution of a consumer complaint where there is a need to issue more than two temporary tags, the department may do so.

(j) While a personalized prestige or specialty license plate is being manufactured for use upon the motor vehicle. A temporary tag issued for this purpose shall be valid for 90 days.

(k) In any case where a permanent license plate cannot legally be issued to an applicant and a temporary license plate is not specifically authorized under the provisions of this section, the Department shall have the discretion to issue or authorize agents or Florida licensed dealers to issue temporary license plates to applicants demonstrating a need for such temporary use.

(l) For use by licensed dealers to transport motor vehicles and recreational vehicles from the dealer's licensed location to an off-premise sales location and return. Temporary tags used for such purposes shall be issued to the licensed dealer who owns the vehicles.

The Department is authorized to disallow the purchase of temporary tags by licensed dealers, common carriers, or financial institutions in those cases where abuse has occurred. Procedure on temporary license plates RS 31 can be accessed at <http://www3.flhsmv.gov/dmv/Proc/RS/RS-31.pdf>.

#### **8. NON-USE AFFIDAVIT**

If a purchaser will not be operating a motor vehicle or recreational vehicle on the streets and highways of the state, the purchaser may complete a non-use affidavit at the dealership. The dealer can transfer the title with this affidavit and will not have to have the vehicle registered. The Division strongly cautions dealers to avoid the possible legal implications by ensuring that a purchaser has insurance before being allowed to drive a vehicle off the dealership property. The dealer must ensure that vehicles sold with a non-use affidavit are removed from the lot other than by being driven.

#### **9. GETTING PROPER INFORMATION FROM PURCHASER/LIENHOLDER**

If a purchaser has arranged financing independent of the dealer, the dealer must obtain the correct name and address of the lien holder from the purchaser in order to properly record the lien.

#### **10. SALE OF MANUFACTURED/MOBILE HOMES**

Under the laws of Florida, Mobile Home Dealers are required to register with the Department information regarding the person(s) they have employed as salesperson(s). Form HSMV 84045, has been created to assist mobile home dealers and mobile home brokers in registering their existing salesperson(s), adding new salesperson(s), and deleting salesperson(s). Mobile home salespersons must also use this form to update their **change of residential address** information. Please note, that a post office box is not acceptable. Mobile home dealers and mobile home brokers are not required to submit fingerprint card(s) or fees for the initial registration, additions or deletions of salesperson(s) with the Bureau of Motor Vehicle Field Operations, Regional Office.

Every mobile home dealer must register with the Department, within 30 days after the date of hire, the name, local residence address, and home telephone number of each person newly employed by the licensee as a mobile home salesperson. A licensee may not provide a post office box in lieu of a physical residential address. Form HSMV 84045, Registration of Mobile Home Dealer's Salesperson(s) must be used by a mobile home dealer to add new hires with the Bureau of Motor Vehicle Field Operations, Regional Office.

Every mobile home dealer must notify the Department of the termination or separation from employment of each mobile home salesperson employed by the dealer on a quarterly basis **(March 31, June 30, September 30, and December 31)**. Form HSMV 84045, Registration of Mobile Home Dealer's Salesperson(s) must be used by a mobile home dealer to update salesperson(s) status information with the Bureau of Motor Vehicle Field Operations, Regional Office.

Each time a mobile home salesperson employed by a licensee changes his residence address, the salesperson must notify the Bureau of Motor Vehicle Field Operations, Regional Office within 20 days after the change using form HSMV 84045, Registration of Mobile Home Dealer's Salesperson(s).

As of July 13, 1994, Federal requirements were enacted which created specific wind zone requirements for the construction of mobile homes. Mobile homes, which are to be sold and set up in a particular wind zone, must be constructed to meet Federal requirements for that wind zone. A mobile home dealer may only sell mobile homes built to the requirements for that area. The mobile home dealer is responsible to check the DATA PLATE in the mobile home to ensure that it is built for the proper wind zone where it is sold and set up. Mobile home dealers may contact their local mobile home Compliance Examiner or mobile home regional office for information.

## **FEDERAL LAW SECTION 3288.5, RETAILER NOTIFICATION OF SALE**

At the time of signing a contract for sale or lease for a manufactured home, the retailer must provide the purchaser with a retailer notice. This notice may be in a separate document from the sales contract or may be incorporated clearly in a separate section on consumer dispute resolution information at the top of the sales contract. The notice must include the following language:

“The U.S. Department of Housing and Urban Development (HUD) Manufactured Home Dispute Resolution Program is available to resolve disputes among manufacturers, retailers, or installers concerning defects in manufactured homes. Many states also have a consumer assistance or dispute resolution program. For additional information about these programs, see sections titled, “Dispute Resolution Process” in the Consumer Manual required to be provided to the purchaser. These programs are not warranty programs and do not replace the manufacturers or any persons, warranty program.”

### **11. MANUFACTURED HOME SET-UP**

#### ***320.8249, F.S.***

A mobile home dealer is responsible for assuring the proper set-up of a mobile/manufactured home, unless it is stated in the contract that the purchaser will arrange to have the home set-up. If a dealer transports a manufactured home to the permanent site and is responsible for the set-up, the dealer is responsible for any and all damages that may occur in transit and are caused by the dealer’s personnel during the set-up process. If a dealer contracts with a professional installation crew to perform the set-up operation, the dealer is still responsible to the purchaser for assuring that proper set-up is performed.

The mobile home dealer is responsible to ensure that all necessary permits are obtained prior to delivery and set up. The contractor is required by s. 320.8249, F.S., to be licensed as a mobile home installer. Any person who engages in mobile home installation/set up is required to be licensed as an installer. Installer licenses are obtained through the Manufactured Housing Section, Division of Motorist Services, in Tallahassee at 850-617-3004.

Completion of an eight-hour training seminar is required. The training seminar is provided by the Bureau of Mobile Home and Recreational Vehicle Construction. After completion of the seminar, information is provided for the applicant to take an examination administered by a third party testing agency.

A licensed mobile home dealer is not required to obtain a separate mobile home installer's license provided that a full time bonafide employee has successfully attended an eight-hour training course. Mobile home dealers who wish to be approved for the set up of mobile homes sold from their inventory should also contact the Installer Licensing Section in Tallahassee.

Mobile home dealers, who become authorized to set up their own mobile homes, must also purchase installer decals from the Manufactured Housing Section, Division of Motorist Services. The decals are \$10 each, and must be purchased in lots of five. The installer decal must be affixed to the mobile home prior to set up. The decal shall be affixed next to the HUD Label. A contracted crew may also be required to obtain a license and post a bond by local building and zoning departments.

## **12. HUD LABELS**

A mobile home dealer is responsible for assuring that a manufactured home has a HUD label affixed to each section. If a mobile home is a double wide it will have two HUD labels. The HUD labels are silver and red in color and are affixed to each section of the mobile home. All mobile homes are constructed to Federal Safety Standards and a Federal Housing and Urban Development (HUD) label is affixed to the rear of each mobile home.

## **13. INFORMATION CARD**

A mobile home dealer is responsible for completing an information card on each manufactured home sold and for sending the card to the manufacturer. The card is supplied by the manufacturer, but the information on this card is provided by the purchaser of the mobile home.

**14. VENTILATION IMPROVEMENT INFORMATION SHEET**

A dealer is responsible for delivering a ventilation improvement information sheet to a mobile home purchaser prior to consummation of a sale. The information sheet must include a description of the available ventilation option(s) and, for mechanical systems, the rated capacity in air changes per hour or cubic feet per minute. This form is provided by the manufacturer.

**15. INITIAL REGISTRATION FEE**

***320.072(1), F.S.***

Florida law provides for an additional \$225 initial registration fee to be imposed upon the initial application for registration of certain motor vehicles. This fee is often confused with and referred to as an impact fee; however, the fee is more correctly known as the new wheels on the road fee. Dealers are required to collect this fee when an appropriate registration is not being transferred to a newly purchased vehicle and a new license plate is being purchased. Every attempt should be made by dealers to determine whether a customer has an appropriate registration to transfer to a newly purchased vehicle at the time of sale. More specific information on this requirement can be obtained from a local tax collector's office.

**16. TAMPERING WITH MOTOR VEHICLE AIR POLLUTION CONTROL EQUIPMENT**

Section 316.2935(1), F.S., provides that: "It is unlawful for any person or motor vehicle dealer as defined in s. 320.27, F.S., to knowingly and willfully sell, transfer title to, or operate a motor vehicle in Florida that has been tampered with." Tampering refers to dismantling, removal, or rendering ineffective of any air pollution control device or system, which has been installed on a motor vehicle by the vehicle manufacturer except to replace such device or system with a device or system equivalent in design and function to the part that was originally installed on the motor vehicle. At the time of sale or transfer of title of a motor vehicle, the seller shall certify in writing, to the purchaser or person to whom title is being transferred, that the motor

vehicle has not been tampered. (To view s. 316.2935, F.S., or any other Florida Statute, visit the Florida Senate's website at <http://www.flsenate.gov/statutes>.)

For a first violation of s. 316.2935, F.S., violators shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., **except that a motor vehicle dealer shall be guilty of a misdemeanor of the first degree punishable as provided in s. 775.082 or s. 775.083, F.S.**

Enforcement of the anti-tampering statute is assigned to the Department of Environmental Protection (DEP) and any law enforcement officer in the state. The DEP promulgated Rule Chapter 62-243, F.A.C., to provide further guidance on this matter (visit the Department of State's website at <http://election.dos.state.fl.us> and click on Administrative Code/Weekly link to view a copy of Rule Chapter 62-243, F.A.C.). Included in this guidance is a listing of pollution control devices, which dealers must check pursuant to completing the certification statement that the vehicle has not been tampered with. In this regard, the dealer is required only to verify that the devices are in place and not obviously damaged. It is important for dealers to be aware further that Rule 62-243.100, F.A.C., provides that no person or motor vehicle dealer as defined in s. 320.20, F.S., shall **offer or display for retail sale or lease**, any tampered motor vehicle. Thus, even offering a tampered vehicle for sale or lease is illegal.

Pursuant to enforcing the anti-tampering statute, authorized DEP employees may check dealer lots to ensure that the vehicles displayed for sale have not been tampered with. When they find such violations they will issue a notice of violation to the dealer, which may be used as evidence pursuant to criminal prosecution pursuant to the anti-tampering statute.

Rule 62-243, F.A.C., includes a suggested form to use for certifying that the vehicle has not been tampered with. In Hillsborough County, the Environmental Protection Commission has a different form (visit Hillsborough County's Environmental Protection Commission's website at <http://epchc.org/air.htm> to access the Acceptable Certification Statement form) for this purpose, which must be used by dealers in that county.



It is important that every dealer read and understand the provisions of s. 316.2935, F.S., and Rule Chapter 62-243, F.A.C., and provide a written certification, stating the vehicle has not been tampered with, to each buyer of a used motor vehicle.

**D. PROCESSING OF TITLE AND LIEN WORK**

***319.23(6), F.S.***

**1. DEALER TO APPLY FOR TITLE**

Under the laws of Florida the obligation is on every dealer who sells a motor vehicle, mobile home, or recreational vehicle to apply for transfer of title (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82040, Application for Title With/Without Registration) or for a duplicate title on behalf of the purchaser. Under no circumstances, if a vehicle is to be titled and/or registered in Florida, is a dealer permitted to give the paperwork to the customer and advise the customer to apply for transfer of title. The obligation is the dealer's and the Division of Motorist Services holds the dealer accountable for that responsibility.

A dealer processing titles and registrations sold from licensed supplemental locations must use the correct suffix (example: VF-0000000-1 or VF-0000000-2) of the location on all title and registration work processed through a tax collector's office or tag agency. A mobile home dealer is responsible to transfer all titles for each mobile home. If the mobile home is a double wide or triple wide, a title is issued for each half or floor. In each case of transfer of a motor vehicle or mobile home, the application for the certificate of title, or corrected certificate, or assignment or reassignment, shall be filed within 30 days from the delivery of the motor vehicle or mobile home to the purchaser. The dealer applicant shall be required by law to pay a penalty of \$10, in addition to all other fees and penalties required by law, for failing to file such application within the specified time.

## 2. TITLE IN POSSESSION

### ***320.27(7), F.S.***

Anytime a dealer offers a motor vehicle, mobile home, or recreational vehicle for sale, the dealer is required to have a title, proper indicia of ownership, or a Manufacturer's Certificate of Origin (MCO) in their possession. The law requires the title or MCO be in the possession of a dealer from the time of acquiring the motor vehicle, recreational vehicle or mobile home until the time of disposal. It is unlawful for a dealer to possess a motor vehicle, recreational vehicle or mobile home with an open title (one that has not been duly assigned or transferred by the seller (consignor) to the dealer (consignee).

(Division of Motorist Services recognizes one exception: If there exists a written consignment agreement between the seller and the dealer, accompanied by a power of attorney giving the dealer authority to sell the motor vehicle, and transfer title, such an agreement will be recognized even though the seller may not wish to depart with possession of the title until the dealer presents the agreed upon money for the sale.)

Reasonable indicia of ownership according to Rule 15C-7.002, F.A.C., shall include:

- a. A duly assigned certificate of title;
- b. In the case of a new motor vehicle, a manufacturer's certificate of origin issued to or reassigned to the motor vehicle dealer;
- c. A consignment contract between the owner and the dealer with a secure power of attorney from the owner to the dealer authorizing the dealer to apply for duplicate certificate of title and assign the title on behalf of the owner;
- d. A court order awarding title to the vehicle to the dealer;
- e. A salvage certificate of title;

- f. Photocopies of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer, i.e., floor plan;
- g. A copy of a canceled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be, but has not yet been, received by the dealer;
- h. A vehicle purchase order or installment contract for a specific vehicle identifying that vehicle as a trade-in on a replacement vehicle; and
- i. A duly executed odometer disclosure statement as required by Title IV of the Motor Vehicle Information and Cost Savings Act of 1972 (Public Law No. 92-513) as amended by Public Law No. 94-364 and Public Law No. 100-561 and Part 580, Title 49, Code of Federal Regulations, bearing the signatures of the titled owner(s) of a trade-in vehicle. Section 319.225(40) and 320.27(9)(b)(4), Florida Statutes provide more information on the requirement of odometer disclosure statement.

### **3. TRANSFER WITHIN 30 DAYS**

#### ***319.23(6), F.S.***

Florida statutes require that a dealer actually apply for the transfer of title and registration on behalf of a purchaser within thirty (30) days of the date of purchase or date of delivery. If the title is not available, the dealer must apply for a duplicate title. Once a duplicate title is issued, the dealer must then apply for transfer of the duplicate title to the purchaser immediately. If the time frames are not met, there is a statutory late fee assessed, and the dealer's license may be subject to administrative sanctions.

### **4. LATE PENALTY**

#### ***319.23(6), F.S.***

Any person, including a dealer, who fails to transfer title within the thirty-day requirement, as specified by law, must pay a late penalty of \$20 at the time of applying for transfer.

Governmental agencies are not exempt from this requirement. When a dealer fails to act within the required time period, the late penalty cannot be passed on to an ultimate purchaser. The fee schedule can be accessed at <http://www.flhsmv.gov/DHSMVfees.htm>.

## **5. CUSTOMERS WHO WILL TITLE AND REGISTER OUT OF STATE**

The only exception to the requirement that a dealer apply for title on behalf of an ultimate a purchaser is when the purchaser intends to title and register the vehicle in another state. In that case, the dealer must give the purchaser all the necessary paperwork to apply for title and registration out of state. The dealer may issue one thirty-day temporary tag, which will allow the purchaser to drive the vehicle to the state in which it will be registered and titled. The purchaser must provide proof of insurance to receive a temporary tag. The fact that the vehicle is to be titled in another state, however, does not exempt the purchaser from paying or the dealer from collecting the applicable sales tax due on the sale of the vehicle. The Department of Revenue can provide further information and forms needed by customers to ensure credit for taxes paid (visit the Department of Revenue's website at <http://sun6.dms.state.fl.us/dor/>).

## **6. PROOF OF INSURANCE REGISTRATION REQUIREMENT**

***320.02(5)(a), F.S. 319.23(7)(b) F.S.***

In order for a dealer to successfully process an application for a transfer of title into the name of a purchaser, the dealer must also apply for registration of the vehicle or have the purchaser sign an affidavit to the effect that the vehicle will not be used on the roads, streets, and highways in Florida. The purchaser must provide the dealer with proof of insurance. This is generally in the form of a copy of the insurance identification card. The tax collector's office will not process an application into an ultimate purchaser's name unless accompanied by proof of insurance. Failure to obtain proof of insurance may prevent the dealer from processing the application for transfer of title within the thirty day time period which can, and often does, result in administrative action being initiated against the dealer's license. Proof of insurance must be verified by the dealer before the first temporary tag is issued.

## **7. ACCOUNTS RECEIVABLE LOT (ACR LOT)**

Some dealers may choose to provide financing to customers who purchase vehicles from them. This type of dealership is commonly referred to as an ACR lot, or a "buy here, pay here" lot. In order for the dealer to meet the statutory requirements, the title to a vehicle sold must be transferred to the purchaser with a lien recorded in favor of the dealer and if the purchaser defaults on the contract and it becomes necessary, the vehicle can be repossessed by the dealer. A dealer is not allowed to delay the title transfer until the vehicle is paid for in full. The thirty (30) day title transfer requirement applies regardless of any outstanding balance owed on the vehicle. A dealer doing his own financing is required to be licensed by the Florida Department of Financial Services and failure to do so may carry severe penalties.

## **8. LIEN RECORDING**

***319.28, 319.24(5)(a), F.S.***

The proper way to ensure that a purchaser pays any outstanding balance owed a dealer is by recording a lien on the vehicle when applying for the title in the purchaser's name (visit <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82139, Notice to First Lien holder of Subsequent Lien). The lien must be satisfied before the purchaser owns the vehicle free and clear. In Florida, the first lien holder retains possession of a title until the lien is satisfied and only then will a clear title be issued in the name of the owner (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82260, Lien Satisfaction). The process of recording a lien guarantees the protection of laws to each party involved in the transaction. If a lien is reassigned, (one lien holder replaces the existing lien due to lien interest being reassigned), an application for assignment of lien must be completed (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82139, Notice to First Lien holder of Subsequent Lien) to ensure the new lien holder information is properly recorded.

## **9. WHOLESALE TRANSACTIONS**

### **a. DRAFTS**

Sometimes, the ownership of a motor vehicle, recreational vehicle, or mobile home will pass from one licensed dealer to another without being sold to a private individual. Such transactions between licensed dealers are called wholesale transactions. In Florida, it is a common practice for dealers (motor vehicle dealers more frequently than mobile home or recreational vehicle dealers) to buy and sell vehicles from each other on a wholesale basis using drafts, payable at some time in the future by a financial institution. Usually it takes several days or longer for a draft to clear a bank or financial institution from which payment is to be made. Technically the draft system, a common business practice in Florida, does not comply with the statutory requirement that a duly assigned title must be in the possession of the owner of a vehicle from the time of acquiring the vehicle until the time of disposing of that vehicle. This means that, even in wholesale transactions, a completed title must accompany the transaction. Although the Division of Motorist Services recognizes the existence of drafts, the Division of Motorist Services holds the dealers involved in these transactions responsible for obtaining titles or proper indicia of ownership before offering these vehicles for sale, wholesale or retail, as required by law.

### **b. TITLE REASSIGNMENTS**

In wholesale transactions, the process of transferring ownership from one dealer to another, without requiring the actual issuance of a new title in each dealer's name, is by a process called reassignment of title. The reassignment is a form which, when completed, represents the transfer of ownership of the vehicle. Reassignments are found on the reverse side of the manufacturers' certificates of origin (M.C.O.), certificates of origin, certificates of title, and on separate forms. There are two types of separate forms in use. One may be used to reassign vehicles that are exempt from federal odometer disclosure requirements (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82101, Application for Duplicate or Lost in Transit/Reassignment for a Motor Vehicle, Mobile Home, or Vessel Title Certificate. The other type of form is a secure reassignment form designed to be

used with non-conforming titles in order to document odometer readings in accordance with federal law (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82994, Motor Vehicle Dealer Title Reassignment Supplement).

**c. AUCTIONS: SPECIAL PROVISION**

Dealers who are licensed as motor vehicle auctions, holding a license prefixed with the letters VA are given special consideration by the legislature recognizing that auctions generally provide a forum for sellers to dispose of vehicles through the bid process. Since auctions are not considered buyers or transferees or sellers or transferors in this auction process, Florida law exempts auctions from the need to complete reassignments unless an auction owns the vehicle. In lieu of completing the reassignment, the auction simply includes the auction name, address, and dealer license number in the appropriate spaces provided on the title certificates and reassignments. This information indicates that the vehicle has gone through the auction and that the auction is in the sequence between the seller and the next buyer. Any independent motor vehicle dealer (VI) wishing to use the bid process as a forum to sell by acting as an auction, without the benefit of an auction license (VA), must complete dealer reassignment forms on all transactions. Auctions (VA) may sell recreational vehicles taken in as a trade-in by a motor vehicle dealer only to a licensed recreational vehicle dealer.

**10. VIN VERIFICATIONS**

***319.23(3)(a), F.S.***

Any time a used vehicle is to be titled in Florida for the first time, a form must be completed which verifies that the public vehicle identification number on the vehicle is identical to that on the paperwork accompanying the vehicle and by which a Florida title will be sought. Licensed Florida dealers, law enforcement officers, Florida notaries public, Florida Tax Collector employees, and Bureau of Motor Vehicle Field Operations, Regional Office, Compliance Examiners may verify the VIN and complete the VIN verification form (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82042, Vehicle Identification Number and Odometer Verification). Only a Bureau of Motor Vehicle Field

Operations, Regional Office Compliance Examiner or supervisor can verify the VIN of a vehicle entering Florida from another country.

## **11. ODOMETER READINGS**

***319.225(4), 320.27(9)(b)(4) F.S.***

Beginning in 1983 all certificates of titles issued in Florida must have the correct odometer reading, at the time of transfer, and the odometer reading must be recorded on the front of the title. This is called the odometer declaration statement. The law further requires that upon a transfer of ownership of any vehicle, the seller must enter the current odometer reading and the date on which it is read in the appropriate space on the Certificate of Title. Dealers are also required to enter odometer readings each and every time a vehicle is purchased or sold. Space is provided on dealer reassignment forms to enter this information. In addition to the state requirement, since April 29, 1990, federal regulations require licensed motor vehicle dealers to obtain from the seller, on the purchase of any motor vehicle, a federal form called an Odometer Disclosure Statement which must be accurately completed and which must indicate the reading on the vehicle at the time of acquisition (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 82993, Separate Odometer Disclosure Statement and Acknowledgement). In addition, every licensed dealer must complete an Odometer Disclosure Statement at the time of selling or disposing of a vehicle. Federal regulations require dealers to keep both the acquisition Odometer Disclosure Statement and the sale Odometer Disclosure Statement in their file for a minimum of five years. Florida's conforming title certificate, secure power of attorney, and secure dealer reassignments (visit the Department's website at [www.flhsmv.gov](http://www.flhsmv.gov) to access form HSMV 82995, Motor Vehicle Power of Attorney/Odometer Disclosure and form HSMV 82994, Motor Vehicle Dealer Title Reassignment Supplement) comply with federal regulations and contain the necessary odometer disclosure information.

## **12. FAST TITLE SERVICE**

Assuming all paperwork is complete and accurate, the time it takes to have a title issued and returned to an owner or lien holder by mail is relatively short. However, for those who may



need expedited service, most county Tax Collectors can provide a fast title service. Fast title service guarantees, for an additional payment over and above the normal fees, that if all paperwork is properly in order, a title will be issued immediately. The fee schedule can be accessed at the Department's website at <http://www.flhsmv.gov/DHSMVfees.htm>.

### 13. SERVICES OF COUNTY TAX COLLECTORS

With very few exceptions, all title and registration work is to be processed by dealers of motor vehicles, mobile homes, or recreational vehicles in Florida. It will be processed through a county tax collector's office or one of the tax collector's branch agencies commonly referred to as tag agencies. The tax collectors serve as agents for the Department of Highway Safety and Motor Vehicles for accepting and performing initial processing work on title and registration applications. Most titles are issued at a Tax Collector's Office. The tax collector's office does issue license plates and registrations. All dealers must process all paperwork through the tax collector. The Division will not accept applications for titles or registrations directly through the mail or in person. All such inquiries are referred to the tax collector's office. The system that has been designed not only expedites the processing of all applications fairly and equally, but also ensures that the work processed is complete and accurate. The tax collectors' employees are well qualified and trained in the legal and procedural requirements for completing necessary paperwork to process title and registration applications. These highly skilled employees can provide answers to most questions that are asked and, when answers are not readily available, they know whom to contact to get correct answers as quickly as possible.

14. **Electronic Titles:** The Division of Motorist Services has implemented an [electronic lien and titling system](#) (e-title) designed to assist lienholders as well as vehicle owners. An e-title is a motor vehicle or mobile home, or vessel title held in electronic form by the Department. An e-title proves ownership of a motor vehicle, mobile home, or vessel the same way a paper title does. Maintaining the title to a vehicle electronically eliminates the risk of losing it and having to pay title fees to obtain a duplicate. It is also an effective fraud deterrent because potential thieves will not have access to the title. If the lien on the vehicle has been satisfied and the title is electronically maintained, the Department is encouraging owners to maintain their titles

electronically. Customers may still request that a paper title be printed at any time. Titles are mailed to the address reflected on the owner's motor vehicle record and are generally mailed within two (2) days of receipt of the request. To request a paper title, the owner can visit the Division of Motorist Services website or if a paper title is wanted immediately, many [tax collector offices](#) offer same day title printing for \$10.00. An owner does not need to request a paper title prior to trading in their vehicle with a Florida dealership.

A dealer can verify whether a title is an e-title by accessing [www.flhsmv.gov](http://www.flhsmv.gov) and clicking on "Motor Vehicle Check." A dealer may sell such a vehicle after verifying the title is an e-title without having a title printed. Once verification is made, ownership can be transferred to the dealer using a secure reassignment form (HSMV 82994). The dealer can then continue to use the reassignment form to reassign to other dealers or to finally sell the vehicle at retail. There may be occasions where an auction will require a dealer to furnish a paper title for a vehicle the dealer is trying to sell through the auction and the dealer will have to obtain it.

#### **15. DIVISION OF MOTORIST SERVICES PROCEDURES MANUAL**

The Division of Motorist Services utilizes comprehensive procedures, which provides in detail, the procedure and requirements for the various title and registration processes. The procedures are available on the Department of Highway Safety and Motor Vehicles' website free of charge. Visit [http://www3.flhsmv.gov/DIVISION\\_OF\\_MOTORIST\\_SERVICES/Proc/](http://www3.flhsmv.gov/DIVISION_OF_MOTORIST_SERVICES/Proc/). Newly licensed dealers are encouraged to consult the on-line manual when they have questions regarding registration or titling issues.

### **E. PROCESSING REGISTRATIONS**

#### **1. APPLYING FOR REGISTRATION**

As a general rule, a dealer who sells motor vehicles, mobile homes, or recreational vehicles will make application for transfer of the registration into the purchaser's name at the same time as application is made for transfer of the title. Both processes must be accomplished within thirty (30) days of the date of sale/delivery of the unit. The only situation in which a title would be applied for by a dealer without simultaneously applying for registration, would involve a case

where a motor vehicle or recreational vehicle is not to be driven or is not capable of being driven from the dealer's lot, in which case a non-use affidavit would accompany the title application. This will be discussed in more detail below.

A dealer processing titles and registrations sold from licensed supplemental locations must use the correct suffix (example: VF-000000-1 or VF-0000000-2) of the location on all title and registration work processed through a tax collector's office or tag agency.

**a. PROOF OF INSURANCE**

Any time a dealer sells a motor vehicle or recreational vehicle, the law requires the dealer to apply for title and registration on behalf of the purchaser. As part of this responsibility and as a condition of titling and registering a vehicle, the applicant must produce proof that the owner of the vehicle carries at least the minimum insurance required by law, which in Florida is personal injury protection (PIP) and \$10,000 of property damage liability insurance. No application for transfer of title or transfer of registration will be accepted in Florida by any tax collector's office or by the Division of Motorist Services unless it is accompanied by either proof of insurance or a non-use affidavit. A dealer may not be relieved of the responsibility of transferring title and registration in a timely manner, as the statute requires, simply because the dealer failed to obtain, or the purchaser failed to provide, the necessary proof of insurance. The Division places the responsibility on the dealer to obtain this information.

**b. NON-USE AFFIDAVIT**

If a vehicle purchased from a dealer is not to be driven but is, for example, to be transported on another vehicle or is purchased only for parts and will not be operated on the streets and highways of Florida, it need not be registered, provided the purchaser signs a non-use affidavit. In such a case, a title will be applied for without registration. Dealers must understand that the affidavits are not completed by the dealer, but by the purchaser and the non-use affidavit is not to be used in lieu of obtaining proof of insurance from the purchaser. Thus, a dealer may not accept a non-use affidavit completed by a purchaser and

then allow the purchaser to drive the vehicle off the dealer's lot. In such a case, perjury has been committed and the dealer is a party to that violation. Similarly, a dealer may not accept a non-use affidavit from a purchaser and then issue a temporary tag to a vehicle, which will be driven from the dealer's location. Again, there is an obvious case of perjury to which the dealer is a party. A separate non-use affidavit must be completed and signed by the purchaser. It is recommended that the dealer maintain proof of how the vehicle was removed from their dealership lot.

**c. LICENSE PLATE RATES**

The rates charged for license plates are based on a twelve (12 or 24) month registration, which, for motor vehicles begins on the first day of the owner's (purchaser's) birth month, with the exception of company owned vehicles that use the month of June; trucks weighing over 5,000 pounds, truck-tractors, semi-trailers and buses use a December birth month; and, mobile homes use a January birth month. However, license plate tax rates may be prorated in certain instances and are calculated from the month the vehicle is purchased or subject to registration. A license plate rate chart is available from the Division of Motorist Services and tax collectors' offices, which permit a dealer to calculate the fee due on any particular vehicle (visit the Department's website at <http://www.hsmv.state.fl.us/html/forms.html> to access form HSMV 83140, License Plate Rate). Link <http://www.flhsmv.gov/DHSMVfees.htm>. The fee schedule can also be accessed at <http://www3.flhsmv.gov/dmv/Proc/Fees/FeeContents.html>.

**d. CHARGING EXCESSIVE FEES**

Certain fees are established for license plate rates depending on the birth month of the purchaser, the type of vehicle purchased, and the month in which the vehicle is purchased. Title fees are established by law or rule of the Department. In any event, the title and registration fees applicable to a particular type of vehicle sold by a dealer are easily determined. A dealer is not permitted to charge title and registration fees in excess of those allowed by law. Any excess charges imposed by a dealer are in violation of the statute and

may subject the dealer's license to administrative sanctions imposed by the Division. The dealer must refund the excess money overcharged to the purchaser.

## **2. TRANSFER OF REGISTRATION**

License plates issued to private passenger cars and lightweight trucks weighing 5,000 pounds or less are transferable and interchangeable without any additional tax, transfer fee, or refund, providing proper application is made and applicable service fees accompany the application. At any time that a transaction occurs in which a tag may be transferred, the Division holds the dealer responsible for ensuring that a transfer is made rather than applying for and issuing a new tag for the newly purchased vehicle. It is often more convenient for a dealer to simply process the application for title and registration as a new vehicle without transfer, but when this occurs, the inventory of metal tags available statewide is seriously depleted. In addition, if there is a considerable period of valid time left on the registration, the act of issuing a new plate, when a transfer would otherwise be proper, causes the customer to lose money because pro rata refunds are no longer issued. Additionally, failure to transfer a tag when appropriate, subjects the dealer and customer to the "new wheels on the road", initial registration fee.

Although the law allows dealers thirty (30) days to apply for title and registration for their customers, another section of the statute requires that the owner of the motor vehicle have a registration certificate or a replacement motor vehicle registration certificate to be exhibited upon demand of any law enforcement officer. The dealer is required to process plate transfer via their ETR vendor. If the ETR system does not allow the metal plate to be transferred, the dealer must issue a temporary print on demand temporary tag or visit a Tax Collector office to transfer the plate. The requirement is that when the vehicle leaves the dealer's lot, the license plate displayed on it is matched to the vehicle it is on. A dealer may not apply for a "title only" after allowing a vehicle to be driven from their lot.

Normally, proof of insurance is not required when transferring a current license plate from a vehicle being disposed of to a newly acquired vehicle. The law provides that such transfer does not constitute a new registration and therefore, the necessity of requiring proof of insurance is not applicable. There is one exception. If such transfer is made during the last three months of

a registration tax period and the owner is paying for the following new twelve-twenty four month registration, then proof of insurance is required.

To process a transfer of a license plate, a dealer should acquire from the purchaser the registration on the trade-in vehicle. This will expedite the processing of the transfer registration.

**F. PRIVILEGES**

***320.13, F.S.***

**1. PURCHASE AND USE OF DEALER PLATES**

**a. WHO MAY USE**

Licensed motor vehicle and recreational vehicle dealers are entitled to obtain such dealer license plates as may be necessary to conduct their businesses. Mobile home dealers who also sell recreational vehicles may obtain and use dealer plates in connection with the sale of recreational vehicles. Wholesale dealers, salvage dealers, and those who are licensed and deal exclusively in mobile homes are not entitled to procure or use dealer plates. Dealers who sell motorcycles may obtain 4x6 inch motorcycle dealer plates to be displayed on motorcycles.

**b. WHEN DEALER PLATES MAY BE USED**

Dealer plates may be used on vehicles which are operated in connection with a dealer's business; on vehicles while being used for demonstration purposes, with or without a representative of the dealer in the vehicle; on vehicles which are in transit to or from a dealer's place of business; on vehicles loaned, without compensation, to a customer by a dealer while the customer's vehicle is being repaired by the dealer; on vehicles, such as service trucks, used by a dealer for hauling equipment or commodities, or making service calls, where compensation is not a consideration; and, on vehicles owned by the dealer while in inventory and for sale.

c. **WHEN DEALER PLATES MAY NOT BE USED**

Dealer plates may not be used on service trucks used for hauling or making service calls for compensation, on parts or supply trucks calling on retail or wholesale trade, or on wreckers (s. 320.13, F.S.). A licensed wholesale motor vehicle dealer does not have the privilege of using dealer license plates. Dealer plates are not to be used for private use by a dealer or family member, to evade proper registration, when the vehicle is not being used for dealer business.

d. **REPLACEMENT**

Dealer plates may be replaced if the originals have been destroyed, lost, or stolen, provided that the dealer has reported such loss to a law enforcement agency prior to the issuance of a replacement plate (visit the Department's <http://www.flhsmv.gov/html/forms.html> to access form HSMV 83146, Application for Replacement License Plate, Validation Decal, or Parking Permit). Although a use tax must be paid by a dealer for each plate obtained, the use tax is not required on replacement dealer plates.

e. **REGISTRATION PERIODS**

The registration periods for dealer license plates run concurrently with the dealer license period.

f. **MISUSE/ABUSE**

Misuse or abuse of dealer license plates can result in severe sanctions being taken against a dealer's license. The use of a dealer plate on the car of a member of a dealer's family, when the vehicle is truly not in inventory and for sale, but rather is being used without paying taxes or license fees, is a violation of the motor vehicle laws, as well as the sales tax laws of the state. A dealer plate may not be used for the purpose of testing or driving a vehicle, to determine whether a dealer wishes to purchase that vehicle. In essence, the use of dealer

plates must be confined to those purposes specified, authorized, and described in paragraph (b) on the previous page.

## **2. PURCHASE AND ISSUANCE OF TEMPORARY TAGS**

***320.131, F.S., 15C-1.003, 15C-1.004, F.A.C.***

### **a. AUTHORITY TO PURCHASE**

All Florida dealers must issue electronic temporary registration to consumers to whom they have sold vehicles (if the consumer does not have a metal plate to transfer) in accordance with section 320.96, Florida Statutes. Electronic Temporary Registration (ETR) is an electronic method for dealerships to report the issuance of temporary license plate. This is an effective way to capture the registration information associated with the issuance of temporary tags.

Dealers can visit the Department's website at <http://www.flhsmv.gov/etr/etr.html> to get more information on the list of providers authorized by the Department to provide this service. The site also gives a variety of information regarding the ETR program. Dealers that do not have access to the providers may contact the Tax Collector's office for the temporary license plate.

The pre-printed temporary license plates in possession of the dealer may be used by the dealer for trailers that are under 2,000 lbs, or when there is a system outage.

When a temporary license plate is being issued to a motorcycle, size (4x6) motorcycle temporary license plate must be used. This temporary license plate cannot be used on any vehicle other than a motorcycle.

Dealers licensed to sell motor vehicles and recreational vehicles retail are authorized to purchase pre-printed temporary tags for use when there is an ETR system outage, in multiples of five, from any tax collector's office or regional office of the Division of Motorist Services. A dealer purchasing tags must pay the required fee plus a service fee on each transaction (to access form HSMV 83090, Application by Florida Motor Vehicle,



Mobile Home, or Recreation Vehicle Dealer for Temporary Plates, visit the Department's website at <http://www.flhsmv.gov/html/forms.html>. When a dealer issues a preprinted temporary tag because of a system outage, the dealer must report that issuance via their ETR vendor within one business day.

Detailed information is available in Procedure RS 31 on Temporary License Plates. This procedure can be accessed at <http://www3.flhsmv.gov/dmv/Proc/RS/RS-31.pdf>.

**b. LIMITATIONS ON ISSUANCE**

A dealer may only issue temporary tags for vehicles sold by same dealer. Tags are not transferable between dealers, may not be bartered or sold between dealers, and may not be used more than once. Violations of these restrictions may result in severe administrative sanctions being taken against a dealer's license. Temporary tags are valid for no more than thirty (30) days from the date of issuance (visit the Department's website at <http://www.flhsmv.gov/html/forms.html> to access form HSMV 83091, Application for Temporary License Plate. Proof of insurance is required for the issuance of all temporary tags. For more information on dealer plate issuance, please access the Dealer Advisories at <http://www.flhsmv.gov/dmv/DlrAdv/DAindex.html>.

The issuance of a temporary tag in no way relieves the vehicle purchaser/owner of the requirement of having insurance coverage on the vehicle at any time it is operated on the streets and highways of Florida. Because civil liabilities may incur, dealers are strongly urged not to become a party to allowing an uninsured motorist to operate a motor vehicle.

A thirty (30) day temporary tag may also be provided to a resident of another state/country who purchases a vehicle in Florida and intends to transport that vehicle to their home state/country for proper titling and registration. Proof of insurance must also be obtained from out of state/country residents.

Dealers are required to account for each pre-printed temporary tag issued. A temporary tag log in numerical order must be maintained. The Compliance Examiner will conduct periodic inspection of records and will verify the accuracy of the records maintained by the dealerships regarding pre-printed stock of temporary license plates. Detailed information is available in Procedure RS 31 on Temporary License Plates. This procedure can be accessed at <http://www3.flhsmv.gov/dmv/Proc/RS/RS-31.pdf>.

**c. MISUSE/ABUSE**

The most common instances of misuse/abuse of temporary tags occur when a dealer issues more than two temporary tags to the same person for use on the same vehicle. This often occurs because a dealer has not properly carried out the dealer's responsibility of applying for title and registration within thirty (30) days of the date of sale/delivery, has sold a vehicle without properly having title in the dealer's possession at the time, or otherwise has been inattentive to the responsibilities and legal requirements of selling motor vehicles or recreational vehicles. The Division of Motorist Services holds dealers responsible for their conduct and will impose severe sanctions on any dealer who misuses or abuses temporary tag privileges. Even though fines may be levied against a dealer's license, or suspension or revocation of the license may be imposed, the Division may also deny the licensee the privilege of purchasing and issuing temporary tags, which may have a severe impact on a dealer's business.

Temporary tags may only be issued to vehicles in the dealer's inventory. Each tag must be issued for thirty (30) days. The ETR process will result in a Vehicle Registration being printed. In duplicate – one for the customer and one for the dealer jacket.

The ETR system will allow four temporary tags per vehicle (VIN number), with a maximum of two temporary tags per customer, as is currently required by statute. If a dealer needs to issue a third or fourth temporary tag, it must be to a different customer already in the database (previous customer number or driver license number)

consecutive temporary tags to be issued to the same vehicle no matter how many different customers were issued the plate.

If there is an ETR system outage, then the dealer may issue a pre-printed temporary tag and will complete a temporary tag registration (visit the Department's website at <http://www.flhsmv.gov/dmv/forms/BTR/83091.pdf> to access form HSMV 83091, Application for Temporary License Plate). The customer is given the white copy and the dealer retains the yellow copy in the deal jacket. Pre-printed temporary tags are to be completed using black permanent marker and must be issued for thirty (30) days. A temporary tag is void if it is altered. If a mistake is made while issuing a temporary tag, write void across the face of the incorrect tag and registration and issue another correct one. The issuance of a pre-printed temporary tag by a dealer must be reported to the department electronically through the dealer's ETR vendor within one business day. In addition, the dealer must also complete HSMV Form 82082, Off-Line Issuance of a Pre-Printed Temporary License Plate and explain why they did not issue the temporary tag via the ETR system. The 82082 must be maintained in the deal jacket and retained for five years.

Dealers are authorized to issue temporary tags in the name of their own dealership for vehicles being taken to and from a sale.

The dealer can obtain information about the ETR system by visiting:

<http://www.flhsmv.gov/etr/etr.html>.

## **2. ACCESSIBILITY TO TITLE AND REGISTRATION RECORDS**

One of the privileges accompanying a dealer license is the dealer's ability to obtain title and registration information from the Department's computer database. The information may also be obtained through any tax collector's main or branch office. The Department has also made available limited vehicle registration information on-line at the Department's website [https://www6.hsmv.state.fl.us/rrDivision of Motorist Servicescheck/mvchecking](https://www6.hsmv.state.fl.us/rrDivision%20of%20Motorist%20Servicescheck/mvchecking).

4. **TEMPORARY OFF-PREMISES SUPPLEMENTAL SALE PERMIT FOR MOTOR VEHICLE, MOBILE HOME OR RECREATIONAL VEHICLE DEALERS**  
***320.27(5), 320.77(7), 320.771(7), F.S.***

A Florida licensed motor vehicle, mobile home, or recreational vehicle dealer is permitted to participate in a temporary sale at a location other than at the licensed location for a period not to exceed ten (10) consecutive days. In order to participate in such sale, each dealer must obtain a temporary sale supplemental license permit issued by the Bureau of Motor Vehicle Field Operations, Regional Office. There is no charge for the permit but it must be in the licensed dealer's possession at the time of the temporary sale. Application forms for the permit, HSMV Form 84200, [Temporary Off-Premises Sale License Application by a Dealer](#), are available from any Compliance Examiner or from any Bureau of Motor Vehicle Field Operations, Regional Office or online at <http://www.flhsmv.gov/html/forms.html>. Applications for permits should be filed with the appropriate Bureau of Motor Vehicle Field Operations, Regional Office responsible for the dealership at least ten (10) days prior to the scheduled temporary sale to ensure the permit is issued before the sale begins.

To obtain such a temporary supplement permit for off-premise sales, motor vehicle dealers must:

- (1) Be a licensed motor vehicle, mobile home, or recreational vehicle dealer;
- (2) Provide written permission from the property owner to sell vehicles at that location or a notarized affidavit from the dealer certifying that property owner's permission has been granted.

During the sale, the dealer must:

- (1) Display a sign at the licensed supplemental location for the duration of the off-premise sale;

(2) Provide staff to work at the temporary supplemental location for the duration of the off-premise sale; and

(3) Meet any local government permitting requirements.

A **franchise motor vehicle dealer** must also provide documentation that the off-premise sale has been approved by the manufacturer, distributor, or importer with whom it has a franchise agreement. They must notify the manufacturer, distributor, or importer of their intent to have an off-premises sale five (5) days prior to the date of the off-premises sale and the manufacturer shall either approve or disapprove of the off-premises sale within two (2) working days of receiving the request. If the manufacturer, distributor, or importer does not notify the dealer within two (2) working days of the off-premises sale, it shall be deemed approved.

**These requirements do not apply** to a non-selling motor vehicle show or public display of new motor vehicles.

**RV dealers who participate in an off-premises sale involving the sale of new RVs must also provide the following:**

**(1) WITHIN THE DEALER'S AREA OF RESPONSIBILITY:**

A notarized affidavit, signed by the dealer applying for the off-premises license, stating that the sale will be held in the dealer's designated sales area.

Dealers selling new RVs will not be allowed to sell outside their area of sales responsibility unless they provide one of the following:

**(2) IN ANOTHER DEALER'S AREA OF SALES RESPONSIBILITY:**

A written agreement signed by the dealer, the manufacturer of the new RV's that will be sold at the off-premise sale site, and the dealer in whose designated area of sales responsibility the off-premise sale will occur in. The agreement must:

- a. Identify the RV line-make to be sold
- b. List the dates of the off-premise sale; and
- c. Affirmatively authorize the sale of the same RV line make.

**(3) OPEN AREA OF SALES RESPONSIBILITY:**

A notarized affidavit stating that the sale is not in any other dealer's area of sales responsibility and is in conjunction with a public show.

**(4) USED UNITS**

A notarized affidavit stating the dealer will use the off-premise sale for used RVs only.

**(5) MORE THAN 35 DEALERS IN A PUBLIC VEHICLE SHOW:**

A notarized affidavit stating the off-premise sale is in conjunction with a public vehicle show in which more than 35 dealers are participating and the show is predominantly funded by manufacturers. "Public vehicle show" means an event sponsored by an organization approved under s.501.(c)(6) of the Internal Revenue Code which has the purpose of promoting the welfare of the RV Industry and is located at a site that:

- a. Will be used to display and sell recreational vehicles
- b. Is not the location set forth on any dealer's license as its place of business
- c. Is not used for off-premise sales for more than 10 days in a calendar year

RV dealers selling used RVs do not have to meet any of the "Special Instructions for Recreational Vehicle Dealers Selling "New" Recreational Vehicles" requirements above, however all other requirements outlined in this procedure must be met.

## 5. CURBSTONING

**316.1951, 320.58, F.S.**

### ***Curbstoning***

Section 316.1951(1), Florida Statutes, provides that it is unlawful for any person to park a motor vehicle, as defined in section 320.01, Florida Statutes, upon a public street or highway, upon a public parking lot, or other public property, or upon private property where the public has the right to travel by motor vehicle, for the principal purpose and intent of displaying the motor vehicle thereon for sale, hire, or rental unless the sale, hire, or rental of the motor vehicle is specifically authorized on such property by municipal or county regulation, and the person is in compliance with all the municipal and county licensing regulations.

Section 316.1951(2), Florida Statutes, does not prohibit a person from parking their own motor vehicle or their other personal property on any private real property which the person owns or leases or on private real property which the person does not own or lease, but for which they obtain the permission of the owner, or on the public street immediately adjacent thereto, for the principal purpose and intent of sale, hire, or rental.

Section 316.1951(3), Florida Statutes, does not prohibit a licensed motor vehicle dealer from displaying for sale or offering for sale motor vehicles at locations other than the dealer's licensed location if the dealer has been issued a supplemental license for off-premises sales, as provided in s. [320.27\(5\)](#), and has complied with the requirements in subsection (1). A vehicle displayed for sale by a licensed dealer at any location other than the dealer's licensed location is subject to immediate removal without warning.

Section 316.1951(4), Florida Statutes, states that a local government may adopt an ordinance to allow the towing of a motor vehicle parked in violation of this section. A law enforcement officer, Compliance Examiner, code enforcement officer from any local government agency, or supervisor of the Department may issue a citation on form HSMV 84117 and cause to be immediately removed at the owner's expense any motor vehicle found in violation of subsection (1), except as provided in subsections (2) and (3), or in violation of subsection (5), subsection (6), subsection (7), or subsection (8), and the owner shall be assessed a penalty as provided in

section 318.18(21), F.S. by the government agency or authority that orders immediate removal of the motor vehicle. A motor vehicle removed under this sections shall not be released from an impound, or towing and storage facility before a release form prescribed by the department has been completed verifying that the fine has been paid to the government agency or authority that ordered immediate removal of the motor vehicle. However, the owner may pay towing and storage charges to the towing and storage facility pursuant to section 713.78, F.S. before payment of the fine or release form has been completed. Form HSMV 84060- "Authorization to Release Vehicle After Curbstoning Citation" is the department approved form for a person to complete and pay the fine to the department prior to getting the motor vehicle released from the impound or storage and towing facility.

Section 318.18(21), Florida Statutes, provides a fine of one hundred dollars for a violation of section 316.1951, F.S. for a vehicle that is unlawfully displayed for sale, hire or rental.

Section 316.1951(5), Florida Statutes, It is unlawful to offer a vehicle for sale if the vehicle identification number has been destroyed, removed, covered, altered, or defaced, as described in s. [319.33](#)(1)(d). A vehicle found in violation of this subsection is subject to immediate removal without warning.

Section 316.1951(6), Florida Statutes, It is unlawful to knowingly attach to any motor vehicle a registration that was not assigned or lawfully transferred to the vehicle pursuant to s. [320.261](#), F.S. A vehicle found in violation of this subsection is subject to immediate removal without warning.

Section 316.1951(7), Florida Statutes, It is unlawful to display or offer for sale a vehicle that does not have a valid registration as provided in s. [320.02](#). A vehicle found in violation of this subsection is subject to immediate removal without warning. This subsection does not apply to vehicles and recreational vehicles being offered for sale through motor vehicle auctions as defined in s. [320.27](#)(1)(c)4, F.S.

Section 316.1951(8), Florida Statutes, A vehicle is subject to immediate removal without warning if it bears a telephone number that has been displayed on three or more vehicles offered for sale within a 12-month period.



Section 316.1951(9), Florida Statutes, Any other provision of law to the contrary notwithstanding, a violation of subsection (5), subsection (6), subsection (7) or subsection (8) shall subject the owner of such motor vehicle to towing fees reasonably necessitated by removal and storage of the motor vehicle and a fine as required by section 318.18, Florida Statutes.

Section 316.1951(10), Florida Statutes, This section does not prohibit the governing body of a municipality or county, with respect to streets, highways, or other property under its jurisdiction, from regulating the parking of motor vehicles for any purpose.

Section 316.1951(11), Florida Statutes, A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in Chapter 318, F.S. unless otherwise mandated by general law.

A violation of this section is a non-criminal traffic infraction, punishable as a non moving violation as provided in Chapter 318, F.S. unless otherwise mandated by general law.

Curbstoners may be selling vehicles for which they do not possess a title or selling stolen vehicles. This kind of sale causes unreasonable competition with license motor vehicle dealers who have to incur various expenses and comply with the motor vehicle laws in order to be licensed by the Department. Dealers who violate the law are subject to the Department filing an administrative complaint to revoke their license.