

Retail Consignments Best Practices/Guidelines

The following information is provided to inform registrants about best practices and should not be construed as a legal opinion. You are encouraged to review the relevant sections of the *Motor Vehicle Dealers Act 2002* (“the Act”) and its regulations and to consult with your lawyer if you have any questions.

For the purpose of this document, a retail consignment is any agreement between a motor vehicle dealer (“the consignee”) and a person (“the consignor”) who is not a registered dealer whereby the consignor provides a motor vehicle they own for the purpose of resale by the dealer.

The Consignment Agreement

Sections 45 and 46 of the Regulations to the Act set out what a dealer is required to include in a consignment agreement with a consignor who is not a registered dealer. The following list includes information required by the Regulations and information recommended by OMVIC. For further information about the consignment agreement, review Sections 45 and 46 of the [Regulations](http://www.e-laws.gov.on.ca) at <http://www.e-laws.gov.on.ca>.

General Information: the name, address and contact information of the dealer and the consignor.

Vehicle Information: a description of the vehicle including the year, make, model, colour, body type, stock number, and VIN

Distance Travelled Disclosure: the odometer reading and distance travelled (if different). If distance travelled is unknown, a disclosure of the actual distance travelled as of a specified date, if available OR a disclosure the actual distance travelled is substantially higher than what is shown on the odometer.

Consignment Terms: an indication of what the consignor agrees to pay the consignee upon sale of the vehicle. This could be a percentage of the sale price, a flat fee or some combination. Dealers are required to provide a breakdown of what the fee is for e.g. commission, administration, cleaning, storage, safety, repairs etc. An estimate of the selling price and a minimum selling price must also be disclosed. Consignment terms should be initialled by the consignor. OMVIC also recommends consignees indicate whether a fee is payable if the vehicle is not sold.

Acknowledgement of Trust: you will be required to open a trust account in the name of the “Motor Vehicle Dealers Act 2002 and to file this information with OMVIC. The agreement should disclose of the consignee’s obligation to hold all monies received regarding the consigned vehicle in trust for the consignor until the purchase is completed. Specify that this includes any trade-in allowance given by the consignee in connection with the sale of the consigned vehicle. The consignor should initial this section. The “Acknowledgement of Trust” is an OMVIC recommended section and not required by regulation. (For further information, see “Trust Account” below).

Insurance: the name of the insurance company, policy number, expiry date, name of agent, agent's phone number.

Warranties: an indication of whether the consigned vehicle comes with a warranty and the warranty information such as the warranty name, number of months and/or kilometres, warranty description and whether the warranty is transferrable. A section on warranties is recommended by OMVIC but is not required by regulation.

Lien Disclosures: an indication of whether the consigned vehicle has a lien on it and the lien details e.g. net amount and name of creditor. A "Lien Disclosure" section is recommended by OMVIC but is not required by regulation (For further information, see "Liens and Encumbrances" below)

Consignor's Disclosure: a list of all the items required to be disclosed by you under section 42 of the regulations for the consignor to review and disclose required information. This section should be signed by the consignor (For further information about disclosure, review Section 42 of the [Regulations](#).)

OMVIC Disclosure: See suggested wording on page 4. The OMVIC disclosure is recommended by OMVIC but is not required by regulation

Vehicle Registration: A disclosure that the consignor is not required to provide you with the original signed ownership until after the vehicle is sold. (For further information, see "Vehicle Registration" below)

Termination Date: when the consignment agreement is terminated

Consignor's & Consignee's Acceptance: the signature of both parties confirming they agree to enter into a consignment based on the terms set out in the consignment agreement. OMVIC recommends including a notification to the consignor they are entitled to receive a copy of the agreement immediately after it is signed.

Terms and Conditions

- OMVIC recommends the consignment agreement include the following terms and conditions. Any terms and conditions are required to be disclosed in a clear, comprehensible and prominent manner. when and how the consignor will be notified the vehicle has been sold (OMVIC recommends no more than 2 days after the sale).
- how long after the sale the consignor will get paid (OMVIC recommends no more than 30 days after the sale)
- confirmation from the consignor they have disclosed all material facts regarding the history and condition of the vehicle
- confirmation the vehicle will remain registered to the consignor until it is sold
- confirmation from the consignor they have ownership and possess the right to sell the vehicle
- (covered in Liens and Encumbrances below?)an indication of what charges will be deducted from the sale proceeds (e.g. lien payouts, selling fees, consignment fees etc.)
- who will be responsible for maintaining insurance on the vehicle (confirm with your insurance provider)

- who assumes risk of loss or damage to the consigned vehicle while on consignment (confirm with your insurance provider) what efforts the consignee will use to promote/advertise the consigned vehicle
- (do we want to invite this possibility?) whether the consigned vehicle is going to be used for any other purpose than offering it for sale or confirmation the consignee won't use the vehicle for purposes unrelated to the agreement. Obtain written authorization from the consignor if you intend to use the consigned vehicle for any other purpose than stated in the agreement.
- under what circumstances the consigned vehicle may be removed from the consignee's registered premises or confirmation the vehicle will remain at the registered premises.
- what happens if the consigned vehicle is not sold as of the termination date and (if any fee applies to the consignor) the amount of the fee or how it will be calculated (e.g. for consignment or storage)
- under what circumstances the consignment agreement can be terminated prior to the termination date, if any (e.g. by mutual consent)
- under what circumstances (if any) the consignee will carry out any repairs, alterations, servicing, obtaining safety or reconditioning of the vehicle (see "While offering a vehicle on consignment" below)

You must provide the consignee with a copy of the consignment agreement immediately after it is signed.

Liens and Encumbrances

Dealers have an obligation pursuant to the *Sale of Goods Act* to ensure any vehicles they offer for sale are free of liens or encumbrances. Accordingly, before taking any vehicle on consignment, consignees should;

- run a lien check on the vehicle. Section 45(6) of the [Regulations](#) to the Act requires the consignee to use best efforts to obtain a Used Vehicle Information Package ("UVIP") from the consignor. This document will show Ontario liens and brands (e.g. salvage, rebuilt, irreparable) UVIP will not show accident history. OMVIC recommends consignees obtain one of the more comprehensive vehicle history reports available.
- have the consignor confirm (in writing) whether the vehicle has a lien on it confirm the consignor is the owner of the vehicle by checking their driver's license and vehicle registration ensure any liens are paid out before the purchase is completed. Consignees should deduct the lien amount from the proceeds the consignor would be entitled to receive and pay this amount to the lien holder from the trust account immediately after the purchase is concluded

Disclosure

Dealers have an obligation under the *Consumer Protection Act* to disclose all material facts about the vehicles they sell. Dealers must also provide the buyer with information pursuant to Section 5 of the Code of Ethics when trading with another dealer, or Section 42 of the Regulations to the Act when trading with a non-dealer. This applies equally to any vehicles sold on consignment. In order to meet these obligations, dealers taking vehicles on consignment should not rely solely on disclosures made by the consignor but should perform their own due diligence to ensure the proper disclosures are made to the buyer. Dealers should take steps to confirm the quality and condition of the vehicle before agreeing to take it on consignment. Dealers should,

- obtain specific written disclosures from the consignor confirming whether statements required under Section 42 of the [Regulations](#) would apply to the vehicle

- perform a vehicle history search (i.e. in addition to a UVIP obtained from the consignor) and have the vehicle inspected by a qualified mechanic
- provide all relevant information to the buyer before they enter into an agreement to purchase the vehicle

Vehicle Registration

The consignee is not authorized to transfer vehicle registration out of the consignor's name until the vehicle is sold in accordance with the consignment agreement. However, consignees may obtain the original ownership from the consignor when the consignment agreement is entered into.

While offering a vehicle on consignment

The consignee must ensure the vehicle is clearly indicated on their lot as a consigned vehicle. This can be done by keeping consigned vehicles in a separately marked area of the lot or by putting a sign in each vehicle. This is required by Section 45(7) of the Regulations. In addition, it is recommended the consignee obtain the consignor's prior written consent to,

- sell the vehicle for an amount less than the Minimum Selling Price
- use the consigned vehicle for any other purpose besides offering it for sale
- remove the consigned vehicle from their registered premises for more than 24 hours
- affect any alterations, repairs, servicing or recondition other than what is specified in the original consignment agreement. This applies whether or not the consignee intends to charge the consignor for these services. This does not apply to repairs to be made as part of an agreement with the buyer for which the consignor will not be responsible

Trust Account

When a consigned vehicle is sold, Section 58(5) of the Regulations requires the consignee to "hold the amounts in trust until the purchase is concluded". (Note: deposits in excess of \$10,000 must also be deposited to the trust account). This means any payments received from the buyer must be deposited in the dealer's trust account. Dealers must set up an account at an institution that is a bank, a loan or trust corporation, a credit union or an authorized foreign bank under Section 2 of the Bank Act. The name on this account should contain the words "Motor Vehicle Dealers Act, 2002 Trust Account" and the registered name of the dealership. If there is not enough room for both, dealers can just use the words "Trust Account" and their registered name.

When a consigned vehicle is sold

The consignee should promptly notify the consignor—no more than 2 days after the vehicle is sold. Section 48(5) requires monies be held in trust "until the purchase is concluded". Accordingly, the consignor should be paid promptly out of the trust account. Consignees should pay the consignor no later than 30 days after the vehicle is sold regardless of whether or not the purchaser has paid in full. Section 45(8) of the Regulations also require the consignee to make "best efforts to ensure the consignor and the purchaser of the motor vehicle promptly receive a copy of the sales contract".

Trade ins

As a result of a consignment arrangement, the consignor is entitled to receive the proceeds of the sale of their consignment vehicle (including any trade-in allowances given by the consignee to the purchaser) less any amounts disclosed to the consignor under Section 45(4)10. Accordingly, any trade-in vehicle or the proceeds from their sale should be treated as trust assets to the extent necessary to ensure the dealer can meet its obligations to the consignor.

Consignment Records

Consignment records, including trust account statements and monthly reconciliations must be maintained at the dealer's location in accordance with the Act. Section 60 of the *Highway Traffic Act* also requires that dealers enter consigned vehicles into their garage register. It is also recommended dealers maintain a separate file for each consignment containing all documentation relating to the consigned vehicle (including but not limited to lien searches, UVIPs, vehicle history searches, repair/service records, consignment agreement, condition reports, insurance information, warranties, copy of vehicle registration and consignor's driver's license, bill of sale and payment information).

OMVIC DISCLOSURE

Please note the following is an OMVIC-recommended disclosure statement and is not required by regulation.

ATTENTION – In case of any concerns with this consignment agreement, you should first contact the consignee. If concerns persist, you may [contact OMVIC](#).

You may be eligible for compensation from the [Motor Vehicle Dealers Compensation Fund](#) if you suffer a financial loss from this consignment and the consignee is unable or unwilling to make good on the loss. You may have additional rights at law. Please contact OMVIC at 1-800-943-6002 or by email at omvic@omvic.on.ca.