



CONDUCTING PART OF THE SALES TRANSACTIONS AWAY FROM THE DEALERSHIP: DO'S + DON'TS

With the growing impact of Coronavirus (COVID-19), dealerships are exploring options to execute documents and deliver vehicles to the consumer away from the dealership. It is possible to have a customer sign documents at a location other than a new motor vehicle dealership, as further discussed below. However, a dealership has to establish appropriate procedures to ensure it is being compliant and meeting its obligations.

The general rule in Ohio law states that no new motor vehicle dealer shall sell, display, offer for sale, or deal in motor vehicles at any place other than the established place of business. However, in 2015 the Revised Code was amended to allow for two important exceptions. Those include:

- A new motor vehicle dealer does not violate the established place of business restriction if a customer executes the purchase or lease agreement at a location outside of the established place of business; and
- A commercial transaction with the sale or lease of a heavy-duty vehicle may be negotiated and the paperwork signed at the customer's business location.

Therefore, Ohio law allows a customer (not the dealership) to sign the purchase or lease paperwork away from the dealership. Keep in mind that the transaction should be fully negotiated before the vehicle is delivered to the customer. Additional considerations a dealership needs to be aware of prior to implementing this process include:

- **Lender Prohibitions.** Dealers should remain mindful that some lender agreements may require all paperwork to be signed at the dealership. While lenders are moving away from this requirement, particularly with the developing issue. You should review your lender agreements and get written confirmation from the lenders that they will permit a customer to sign away from the dealership if its agreement does not permit the practice.
- **Liability Insurance Coverage and Workers' Compensation Claims.** Moving a portion of the transaction process away from the dealership may open you to insurance coverage issues. Dealerships should review your liability coverage to ensure that any issues that would occur away from the dealership would be covered under your policy. Moreover, it increases the risk of Workers' Compensation claims.
- **Compliance Procedures.** Your dealership must comply with all of the normal compliance practices, including but not limited to: Identity verification and Red flag procedures, providing properly filled out documents, such as buyers orders, retail installment contracts, deposit receipts, and other documents related to the vehicle sale or lease, and notarization requirements, which would require signature in the presence of a notary, the dealer, or a licensed salesperson pursuant to Ohio law.
- **Consumer Protection.** While Ohio law allows a customer to execute purchase

agreements at a location other than the dealership, consumers may still raise claims for unfair or deceptive acts. Dealers should consider proactively how they will address any issues that arise at time of delivery, including questions about the transaction itself, the vehicle, or paperwork, prior to implementing their partially remote transaction process.

- **Logistical Issues.** Another common concern is the general logistics and how the transaction is conducted. For example, how are the terms negotiated? Who will deliver the car and witness the signatures? How many staff members should go? What happens if the customer has a question? Before implementing a transaction that is partially away from the dealership, the logistical issues should be addressed.

Another common question is whether conducting a portion of the transaction at the consumer's home would open a dealership to the three-day right of rescission under the Home Solicitation Sales Act ("HSSA"). Please note that the HSSA has a specific exemption for goods and services sold or provided by automobile dealers and salespersons licensed by the registrar of motor vehicles under Chapter 4517. of the Revised Code. Therefore, having the customer sign their paperwork at their home would not result in a 3-day right of rescission.

ELECTRONIC SIGNATURES

Additionally, dealers are exploring whether or not they can use paperless transactions and electronic signatures through programs such as DocuSign. The federal Electronic Signatures in Global and National Commerce Act, or E-SIGN, enacted in 2000, permits the e-contracting of vehicle sales and leases. The Act states that a contract or signature, "may not be denied legal effect, validity, or enforceability solely because it is in electronic form." Provided that the customer is provided required notices and agrees to conduct the transaction via electronic means, the E-Signature Act will govern the transaction. Under the Act, a digital signature is just as enforceable as a paper or "wet" signature. Additionally, over 47 states, including Ohio, have Uniform Electronic Transaction Act (UETA) laws which allows e-signatures so long as there is no specific requirement for a wet ink signature.

Does this mean that all documents can be signed electronically? While most documents can be signed electronically, there are still a few "wet ink" signatures you will need in a typical transaction. For example, if you have a physical certificate of title presented with a trade in, the back of the title will need to be properly filled in and signed by hand. The Ohio BMV will allow the Federal Odometer Statement to be signed with a stylus pen, fingertip, or other electronic method (so long that it is not a typed name), when done in-person with a dealer or licensed salesperson.

Finally, with the implementation of the Ohio Notary Modernization Act in 2019, Ohio notaries are now permitted to conduct both electronic notarizations and remote notarizations using electronic signatures and electronic notarial seals. An electronic notarization is a notarial act performed by a notary public using his or her electronic seal and electronic signature on a digital document where the principal signs the document in person before the notary. The requirements are the same as a traditional notary. An online notary, however, is a notarial act performed by a notary who has been authorized to perform online notarizations when a signer personally appears before the notary using audio-visual technology instead of being physically present in the same location as the notary. An online notarization requires the use

of an online notarization system to perform the act as the signer is not located in the same location as the notary. There are different requirements to comply with these provisions and interested dealers should review OADA's previous summary on the Ohio Notary Modernization Act as well as consult with legal counsel or service providers to determine the best course of action for your dealership.

Finally, given the evolving situation there are additional challenges a dealer has to be aware of prior to implementing this process. One such challenge is that most lender agreements require you to timely perfect a lien in the name of the lienholder. Failure to timely do so could result in you being required to repurchase the paper. The most common example is in the event that the consumer files for bankruptcy protection within a certain time period. If local Clerks begin closing or severely restricting hours and operations, this may be a risk that the Dealership needs to account for in timely titling and perfecting the lien of the vehicle.

CONCLUSION

In summary, if you are interested in selling vehicles to customers without them visiting your dealership:

(1) you may allow customers to sign their sales paperwork, including retail installment contracts and lease agreements at their homes. But:

- Check your lender agreement and/or discuss this with your lender to confirm they will allow customers to sign documents at a location other than your licensed location.

(2) Documents may be signed with an electronic signature on a mobile device or computer, assuming you have the customer's consent to transact electronically and comply with ESIGN and Ohio law. HOWEVER:

- Check your lender agreement and/or discuss with your lender whether they have any limitations regarding what they will allow to be signed electronically. Lenders may require that e-signatures utilize certain specified technology or they may dictate the platform you use.
- Federal Odometer Statements may be signed with an electronic signature using a fingertip, stylus pen, or other means, so long as it is not type-written but only if an in-person verification of the customer's identification is completed by a licensed dealership employee.
- Powers of Attorney for titling purposes must be notarized. A notary needs to witness the customer's signature. A notary can do so in person or a notary who has met specific requirements to be considered an "on-line notary" may witness signatures remotely by video-conference with specific, preapproved programs. Check the Ohio Secretary of State's website to locate an "on-line notary" [HERE](#). Alternatively, Ohio law allows a licensed salesperson or the dealer to witness a customer signing a POA for title transfer, and then a notary may act as witness to the salesperson's or dealer's signature.
- Because a dealership must verify a customer's identity for titling purposes and to comply with Red Flags ("know your customer") requirements, the odometer statement may be signed electronically, but only after in person verification, and a notary, salesperson or dealer must witness signing of POAs in person, OADA recommends that if dealers are delivering vehicles off-premises, licensed salespeople should deliver vehicles and witness

signatures of these documents.

- Provide a copy of all documents signed by the customer electronically either via email] or in hard copy.

(3) Health and Safety Considerations require taking precautions for both employees and customers:

- For the safety of all individuals, use gloves when handling documents, pens, and keys.
- Wipe down steering wheels, seats, and other high-touch areas at time of delivery.
- Maintain at least a six-foot distance when possible when visiting the customer.

(4) Maintain Security and Privacy:

- Documents sent to and from customers electronically should be sent in a secure manner.
- Follow your dealership's policies and procedures for safeguarding all customer records.

If you have any additional questions or concerns, please feel free to reach out to OADA legal counsel, Sara Bruce or Matt Chacey. Sara can be reached at (614) 923-2243 or sbruce@oada.com. Matt can be reached at (614) 923-2232 or mchacey@oada.com.