



Greater New York
Automobile Dealers
Association



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Bielser



AutoTrieve can help change how you scan and manage documents, reduce labor costs, maximize retail space, avoid audit penalties, and gain control of your business information while protecting customers' personal info.

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DMV-DIRECT

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GNYADA's vehicle registration and titling service, DMV-DIRECT, has been dealers go-to source for fast, convenient, & reliable DMV services.

DMV-DIRECT provides many DMV related services, including:

- Permanent Registration Issuance
- Duplicate Titles In 3 To 5 Days
- Out-of-State Registration & Title Processing for 42 States
- On-Site Connecticut Plates Issuance
- Dial-In Information Verification
- In-Transit Processing
- Duplicate Registrations
- Registration Renewals
- Title-Only Transactions
- Plate Surrenders
- Dealer Plate Renewals
- Rental Plate Renewals
- Repossessed Vehicles Processing
- MV-82 & Transmittal Forms Supplied
- Boat Registrations – Renewed and Duplicates
- Trailer Plates
- Commercial Plates



SAVE THE DATE

NADA

2023 | **SHOW**

DALLAS • JANUARY 26-29

nadashow.org





January Education and Training Classes

January 12

DMV Billers' Workshop:
Processing Out-of-State
Transactions

Time: 10:00 am to 1:00 pm

January 17

Post This Not That!
(New)

Time: 10:00 am to 4:00 pm

January 24

GNYADA Sales Academy
(2-day class)

Time: 10:00 am to 4:00 pm

January 25

GNYADA Sales Academy
(2-day class)

Time: 10:00 am to 4:00 pm

January 26

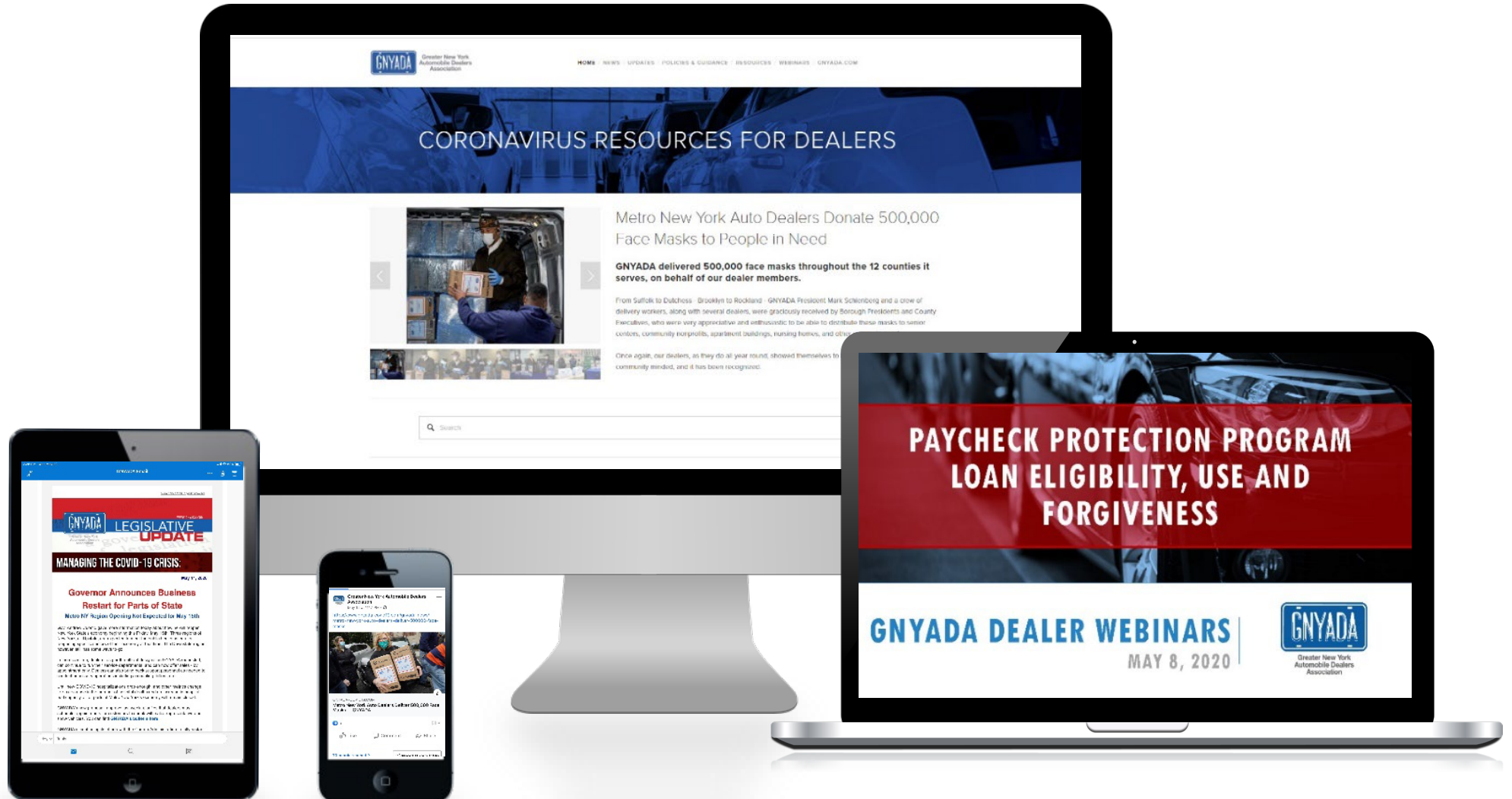
Essential Skills for New
Service Advisors
(New)

Time: 10:00 am to 4:00 pm



Visit www.gnyada.com/education to Register

www.gnyada-covid19.com





THE AG IS WATCHING:

How to avoid an AG investigation

GNYADA Dealer Webinar

Presented by:

LaBonte Law Group
PLLC



Disclaimer

Nothing in this presentation or the oral remarks that accompany it is intended as legal advice.

Dealers should consult with their counsel or the LaBonte Law Group for legal advice specific to their dealership operations.



Seminar Topics

- ❑ Current investigations by consumer agencies;
- ❑ Lease buyout charges;
- ❑ Rules for selling a vehicle over MSRP;
- ❑ Dealer fees;
- ❑ Advertisements;
- ❑ Documenting the sale of value-added products;
- ❑ Credit discrimination;
- ❑ Conducting a self-audit; and
- ❑ Repair Shop Violations.



Overview

- ❑ The NY AG, the NYC Department of Consumer and Worker Protection and the Federal Trade Commission are all targeting dealership sales practices. A number of dealers are currently under investigation for lease buyout charges, dealer fees and the sale of value-added products.
- ❑ We will discuss permissible sales and advertising practices and provide tips on how to stay in lawful compliance.
- ❑ We will also review how you can conduct a self-audit to determine if you are potentially at risk for civil penalties and/or fines.



Current Investigations by Consumer Agencies

Recent Examples from 2022:

California: \$1.7 million in penalties for 670,000 F&I violations plus 10 year ban. 650,000 misleading ads (promising special interest rates and prices with no down payment or credit check). 20,000 power booking violations (claiming vehicle components which were not present);

NY AG: Lease Buy Out investigation results in nearly \$400,000 in refunds to consumers for fees not included in the original lease agreement; and

NYCDCWP: Suspends dealer and issues \$800,000 in penalties for deceptive trade practices, false advertising and generating fake financing pre-approvals of consumers.



Current Investigations by Consumer Agencies

Prime topics for investigation include:

- ❑ selling vehicles for more than the advertised price;
- ❑ misrepresenting vehicles and accessories;
- ❑ charging unlawful fees;
- ❑ selling recalled used vehicles without providing NHTSA info;
- ❑ failing to provide Truth in Lending Act disclosures; and
- ❑ failing to maintain proper records.

NYAG is currently investigating dealerships for violations related to improper dealer fees and unauthorized aftermarket products in sales agreements.



Lease Buyout Charges

- Dealers may only charge a customer the fixed purchase price that is listed in the customer's lease agreement;
- The purchase price may not be increased; but the dealer may add:
 - any fees listed in the lease agreement;
 - any official state fees (registration, license, and title fees);
 - value added products (service contracts, warranties, etc. authorized by the customer); and
 - applicable taxes.



Lease Buyout Charges

- Do not charge the customer for:
 - doc fees;
 - administrative fees; or
 - any other fees not included in the original lease agreement.

- These rules apply any time the customer exercises the purchase option in a lease; regardless of how the customer pays for the buyout.



Rules for Selling a Vehicle Over MSRP

- ❑ NYS does not require a dealer to place an addendum on a Monroney Label if the dealer is selling the vehicle for less or more than the posted MSRP.
- ❑ However, NYC, Westchester and Rockland counties do require additional pricing disclosures. For example:
 - The following should be printed clearly and conspicuously posted on the vehicle if the seller offers any new item for more than the MSRP:
 - ❑ Actual selling price;
 - ❑ The MSRP; and
 - ❑ Identify the MSRP as the price suggested by the manufacturer.
 - Dealers can meet these requirements by posting an additional price sign directly next to or below the Monroney Label.



Rules for Selling a Vehicle Over MSRP

- ❑ Best practice is to post a new price disclosure next to or below the Monroney Label;
- ❑ This disclosure may be changed from time to time if the market price for the vehicle increases or decreases. This practice should help to avoid violations of item pricing laws and claims of deceptive trade practices.
- ❑ Be careful with your print and Internet based advertising. If you change the price for the vehicle and fail to adjust your print and Internet ads you may be found in violation of the advertising regulations and be subject to claims of deceptive trade practices and fraud.



Dealer Fees

- ❑ The NYAG is currently reviewing several months of sales records from one NY dealership looking for improper dealer prep and administrative fees.
- ❑ The NYAG considers most dealer fees to be illegal and a deceptive trade practice.
- ❑ Questionable fees include (but are not limited to):
 - Delivery fees;
 - Destination fees;
 - Used Car Preparation fees;
 - Customer Appreciation Package fees; and
 - Dealer Preparation fees.

Dealer Fees

- ❑ Previously the NYAG entered into a \$136,000 settlement with a New York dealership who added a \$499 “administrative fee” to the purchase price of all used vehicles.
- ❑ The fee was pre-printed on the initial sales agreement near other pre-printed fees and taxes that consumers are required to pay when purchasing a vehicle.
- ❑ During the course of the investigation the dealership could not provide evidence of extra or additional services or benefits provided to customers in return for payment of the fee.
- ❑ The NYAG argued that consumers were improperly led to believe that the “administrative fee” was mandatory and non-negotiable.
- ❑ The dealer agreed to repay a total of \$86,826 to 174 customers who were charged the administrative fee, plus the dealership agreed to reform its advertising practices and pay \$50,000 in costs and penalties to the state.



ADVERTISING

- ❑ New York State Advertising Guidelines state that the listed sale price of a vehicle in an advertisement must include all charges except for tax, title and registration fees.
- ❑ Charging anything other than the advertised price for the vehicle risks a violation of the Advertising Guidelines and may be subject to additional deceptive trade practice charges.



ADVERTISING

The most common violations found by the NY AG in prior investigations are:

- ❑ **Internet Advertising:** Recommendation - Do NOT post a price on a vehicle or enter into a contract with a customer for a price that is more than the advertised price;
- ❑ **Dealer Fees:** Recommendation - Do NOT charge fees, such as the doc fee, unless it was included in the advertised price. The advertised price must include everything except registration fees, title fees, and taxes;
- ❑ **Financing:** Recommendation – Clearly and prominently disclose any requirement that the customer must finance the vehicle through the dealership to obtain an advertised price (i.e. directly next to the price and in a font size that is easily readable); and
- ❑ **Bait and Switch:** Recommendation - Do NOT advertise a vehicle for a price which does not truly reflect the actual selling price and do not post ads of very low priced vehicles which are no longer in inventory.



Documenting the Sale of Value-Added Products

- ❑ The NYAG is actively investigating dealerships concerning the purchase price for aftermarket products such as service and maintenance contracts, tire and wheel protection and similar products.
- ❑ Specifically the AG is looking at instances where the dealer included the products in the purchase price and did not itemize them on the Retail Installment Contract.
- ❑ This is a violation of the Federal Truth in Lending Act and is also considered a deceptive trade practice.



Documenting the Sale of Value-Added Products

- ❑ Failure to itemize may also be a breach of your individual agreements with the banks providing consumer financing.
- ❑ Vital for all dealerships to insure that their staff is properly itemizing all supplemental items purchased by the customer on the Buyer's Order, Bill of Sale, Retail Installment Contract and/or Lease Agreement.

Credit Discrimination

- ❑ GNYADA recently reported that the NY AG and the CFPB filed a lawsuit against Credit Acceptance Corporation alleging that the company deliberately issued predatory loans at inflated prices without disclosing hefty credit fees and important loan terms to borrowers.
- ❑ This is on the heels of the NYS Dept. of Financial Services settling a discrimination suit with Rhinebeck Bank for claims of finance discrimination. NYSDFS investigated the dealer markups permitted by Rhinebeck Bank between 2017 and 2021 and claimed that the bank discriminated against Hispanic, Black, and Asian residents.
- ❑ The AG has made several attempts over the past few years to investigate dealerships for the same claims as alleged against Rhinebeck Bank. Therefore, it is strongly recommended that all dealerships use NADA's Fair Credit Policy and Fair Credit Compliance Program to minimize your exposure. This program assists dealers by creating documentation of the dealer's nondiscriminatory reason(s) for providing a rate spread for one consumer that is different than the rate spread for another consumer.



Conducting a Self-Audit

- Monthly review of 5-10 deals (include at least 1 of each of the following transactions: cash, finance, lease, in-transit and lease-buyout).
- Verify proper disclosure and itemization of all aftermarket products:
 - Cash - verify 8300 reporting and OFAC;
 - Finance - verify privacy notice, risk based pricing notice, red flag, aftermarket itemization;
 - Lease - verify privacy notice, red flag and aftermarket itemization;



Conducting a Self-Audit

- Verify proper disclosure and itemization of all aftermarket products (Continued):
 - In transit – verify sales tax exemption qualifications.
 - Lease Buy Out – verify charges vs original lease terms.
 - Advertisements – check 5 ads for recently sold vehicles for actual sale price. If sold for more than advertised price verify reasons for revised terms. Review ads for proper and conspicuous disclosures. Check to see if vehicles are popping up on other sites and if the disclaimers and information are accurate.



Conducting a Self-Audit

Here is a list of do's and don'ts to review with all staff and managers:

- ❑ Keep sales records for a period of at least six (6) years;
- ❑ Have legal counsel review ads to ensure compliance;
- ❑ Maintain employment policies requiring full compliance with all federal, state and local laws and regulations and implement a training program;
- ❑ Routinely audit your deal jackets to ensure compliance and to uncover any potential problems before a complaint is filed by a customer;
- ❑ Do not sell a vehicle for more than the advertised price (only taxes, title and registration fees may be excluded from an advertised price);



Conducting a Self-Audit

Here is a list of do's and don'ts to reviewed with all staff and managers (Continued):

- ❑ Do not charge reconditioning fees, preparation fees or any other dealer fees except for the DMV approved \$175 documentation fee (which should be included in the advertised price);
- ❑ Do not advertise that there is “guaranteed approval” for credit unless you are prepared to be the lender/creditor on the finance agreement if the customer is rejected by all lenders (beware, holding more than a few financing agreements annually will require you to become a licensed lender with NYS); and
- ❑ Designate 1 or more employees with the responsibility of handling customer complaints. Quick resolution of complaints can reduce the likelihood that the customer seeks outside assistance (AG, attorney, etc.)



REPAIR SHOP VIOLATIONS

Some of the most common repair shop violations include:

1. CR 82.5(b) - Performing services not authorized;
2. VTL 398-(d)(2) - Charging in excess of an estimate without customer's consent; and
3. VTL §398-e1(g) - Charging non-specific items such as “shop supplies” or “shop fees”

Authorization:

- ☐ Make sure you have the customer sign a work order listing all services requested. Your work order should have proper disclosures for all fees you charge for the services performed; including storage fees.
- ☐ If car is dropped off after hours or if you need to request authorization for additional repairs note the time and date of the call, who you spoke to, and what was discussed (recommended that the call be with the actual owner or registered owner of the vehicle).
- ☐ Best practice is to have customer text or e-mail you authorization.



REPAIR SHOP VIOLATIONS

Invoices:

- Your invoice must contain (at least):
 - Customer and vehicle description;
 - List of all parts supplied;
 - List of all labor performed;
 - Costs for parts and labor;
 - Status of any part used which is not new;
 - Odometer reading (in and out);
 - Terms of any guarantee for repair work;
 - DMV Facility Number; and
 - Description of the problem reported by the customer.



REPAIR SHOP VIOLATIONS

As previously reported by GNYADA here is a summary of how dealers may handle or charge for shop supplies.

USED OIL:

- ☐ New York Environmental Conservation Law prohibits dealers from charging for waste oil;
- ☐ During regular business hours, dealers must accept up to five gallons of used oil per day from an individual;
- ☐ Dealers are required to post a sign stating " We Accept Used Oil for Recycling at No Charge."

BATTERIES:

- ☐ New York requires repair shops to accept up to two batteries per month from an individual at no charge;
- ☐ Dealers are required to post a sign that states: "It is illegal to discard vehicle batteries. State law requires us to accept vehicle batteries at no charge for recycling."

SHOP SUPPLIES:

- ☐ Dealers may charge for shop supplies used (nuts, bolts, solvents, cleaners, etc.);
- ☐ All such supplies/parts must be itemized separately on all estimates and repair orders and disclosed in all advertisements;
- ☐ Do not sue preprinted fees or percentage based fees.



REPAIR SHOP VIOLATIONS

WASTE DISPOSAL:

- ☐ Repair shops may charge a customer a reasonable fee for waste disposal;
- ☐ The charges must be individually itemized in all advertisements, estimates and repair orders;
- ☐ Repair shops should not use a flat fee or a percentage charge for the waste disposal charges;
- ☐ Do not label your disposal fees as a “hazardous waste fee” as some of the waste you are generating is not hazardous (for example, oil filters are not hazardous waste if properly drained and crushed prior to disposal).

TIRES:

- ☐ Dealers may not charge for accepting waste tires that are similar in size and quantity to the number of tires purchased by your customer;
- ☐ New York State requires sellers of new tires to collect a \$2.50 Waste Tire Fee for every new tire sold;
- ☐ The fee must be itemized on all estimates, repair orders and in advertisements;
- ☐ You may incorporate other disposal costs into the price of the new tire;
- ☐ An official tire recycling sign must be posted.

GNYADA has a supply of Oil, Tire and Battery disposal signs available at no charge to its members. Call 718-746-5900 to request any signs.



Q & A

❑ For more information contact:

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The LaBonte Law Group specializes in all aspects of dealership operations, including, employment law, franchise matters, consumer issues, DMV, AG/DCA complaints and audits, buy/sells, litigation, warranty parts/labor increases and training.