



Colorado Automobile Dealers Association

*** * * IMPORTANT ALERT: Regulatory & Legal * * ***
Damage disclosure – new rule effective April 14, 2016

TO: CADA Members
FROM: Tim Jackson, CADA President
SUBJECT: New damage disclosure / ‘material particulars’ rule goes into effect April 14, 2016
DATE: March 29, 2016
ATTACHED: *Text of the new rule as submitted to the Colorado Secretary of State*

A new damage disclosure rule goes into effect April 14, 2016. CADA staff and outside counsel *Michael Dommermuth, Fairfield and Woods, P.C.* participated actively in a stakeholder process that began in May, 2015. This stakeholder group consisted of the dealer associations, Auto Industry Division staff, plaintiff attorneys, a Better Business Bureau representative, an Attorney General’s office representative and former members of the Motor Vehicle Dealer Board (MVDB). After numerous meetings and revisions, the Auto Industry Division submitted a final rule proposal to the dealer board in a formal rulemaking process. The board, after reviewing the entire record of the stakeholder process, considering further comments to the rule as proposed, recommended its own final changes, and formally adopted the rule.

It is our opinion that overall the new rule is a positive step forward in clarifying what was generally the enforcement position of the Auto Industry Division and reflects the way key terms have been interpreted by Colorado courts. There has been much confusion in recent years within the industry surrounding “material damage” and related disclosures—the prior rule provided little direction.

While we did not necessarily agree with all of the final language in the rule, the discussions surrounding it have been invaluable to understanding future enforcement and reflects compromise on the part of all for a rule that preserves the goal of consumer protection but also now provides more guidance to dealers. There is great value in specifically omitting completed or prior mechanical repairs and general maintenance items which CADA advocated to clarify and exclude.

The full text of the new rule is attached, more guidance and best practice recommendations will be coming soon. Additionally:

A webinar will also be offered on Tuesday, April 12th at 10:00am – a flyer is attached; there will be ample opportunity for Q&A.

Presented by *Michael Dommermuth, Fairfield and Woods, P.C*



Contacts: Tammi L. McCoy, Direct#: 303.282.1449
tammi.mccoy@coloradodealers.org

Tim Jackson, Direct#: 303.282.1448
tim.jackson@coloradodealers.org

Adopted / Revised Regulation 12-6-118(3)(i)
Statement of Authority, Basis and Purpose

Statutory Authority: Colorado Revised Statutes, Sections 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118, and, 12-6-118(3)(i).

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

- 1) Clarification of the following: a) the term, “material particulars”; b) the relationship of the term, “material damage,” to the term, “material particulars”; c) the process required for disclosure by the seller to the consumer or another dealer; and, d) the relationship of the term, “as is,” in the required disclosure process; and,
- 2) Listing, without limitation, the following: a) examples of what would be considered material particulars; and, b) examples of what would not be considered material particulars.

ADOPTED REVISED REGULATION:

Regulation 12-6-118 (3) (i)

~~A copy of the completed contract form shall be given to the purchaser when signed by both parties.~~

~~A dealer, wholesaler, or auction dealer shall disclose on the contract form when a motor vehicle is known by the dealer, wholesaler or auction dealer to be a salvage vehicle as defined in C.R.S. 42-6-102(10.6), or when a motor vehicle is known to have sustained material damage at any one time from any one incident.~~

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

1. “CONTRACT” MEANS ANY WRITTEN AGREEMENT, SUCH AS A PURCHASE AGREEMENT, BUYER ORDER OR INVOICE, BETWEEN A DEALER AND A BUYER FOR THE SALE OF A MOTOR VEHICLE, EXCLUDING THE RETAIL INSTALLMENT SALES CONTRACT (“RISC”).
2. “DEALER” MEANS A MOTOR VEHICLE DEALER, USED MOTOR VEHICLE DEALER, WHOLESALER, WHOLESALE MOTOR VEHICLE AUCTION DEALER, MOTOR VEHICLE AUCTIONEER, OR A REPRESENTATIVE OF THE DEALERSHIP.
3. “SELLER” MEANS DEALER.
4. “BUYER” MEANS A RETAIL CONSUMER OR A DEALER.
5. “MATERIAL PARTICULARS” MEANS THOSE DETAILS CONCERNING A VEHICLE FOR SALE THAT ARE ESSENTIAL OR NECESSARY FOR A REASONABLE PROSPECTIVE BUYER TO KNOW PRIOR TO MAKING THE DECISION TO BUY OR NOT TO BUY A VEHICLE.

B. DISCLOSURE PROCESS

PRIOR TO THE SIGNING OF THE CONTRACT, THE SELLER SHALL PRODUCE A WRITTEN DOCUMENT DISCLOSING ALL KNOWN MATERIAL PARTICULARS. BOTH THE SELLER AND BUYER MUST SIGN THE DOCUMENT. THE DOCUMENT IS DEEMED TO BE PART OF THE CONTRACT. A SIGNED COPY OF THE CONTRACT AND THE DISCLOSURE DOCUMENT SHALL BE PROVIDED TO THE BUYER AT THE TIME OF SALE. THE SELLER SHALL RETAIN A COPY OF THE CONTRACT AND THE DISCLOSURE DOCUMENT.

C. “AS IS” STATEMENT

A STATEMENT BY THE SELLER TO THE BUYER THAT A VEHICLE IS SOLD “AS-IS” DOES NOT RELIEVE THE SELLER OF THE DISCLOSURE OBLIGATIONS IMPOSED BY THIS REGULATION, NOR DOES IT RELIEVE THE SELLER OF ANY OTHER DISCLOSURE OBLIGATIONS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW. AN “AS-IS” STATEMENT SOLELY DISCLAIMS IMPLIED WARRANTIES UNDER PROVISIONS OF THE “COLORADO UNIFORM COMMERCIAL CODE,” TITLE 4, C.R.S.

D. NON-EXCLUSIVE LIST OF “MATERIAL PARTICULARS”

MATERIAL PARTICULARS INCLUDE BUT ARE NOT LIMITED TO ANY OF THE FOLLOWING:

- 1. THE MOTOR VEHICLE IS A “SALVAGE VEHICLE” AS THAT TERM IS DEFINED IN THE COLORADO “CERTIFICATE OF TITLE ACT,” PART 1 OF ARTICLE 6 OF TITLE 42, C.R.S.**
- 2. THE MOTOR VEHICLE HAS SUSTAINED DAMAGE, WHETHER REPAIRED OR NOT REPAIRED, OF THE FOLLOWING TYPES:**
 - A. FRAME OR UNIBODY DAMAGE OF ANY GRADE OR TYPE; OR**
 - B. FLOOD, FIRE OR HAIL DAMAGE; OR**
 - C. ACCIDENT OR COLLISION DAMAGE.**
- 3. THE MOTOR VEHICLE HAS BEEN MODIFIED IN A WAY THAT IMPACTS WARRANTY COVERAGE.**
- 4. THE MOTOR VEHICLE HAD BEEN DECLARED A “TOTAL LOSS” BY AN INSURANCE COMPANY.**

5. THE MOTOR VEHICLE HAD BEEN STOLEN.
6. THE MOTOR VEHICLE HAD BEEN USED AS A POLICE VEHICLE, VEHICLE FOR HIRE, RENTAL VEHICLE, OR A LOANER OR COURTESY VEHICLE, IF SUCH USE IS CLEARLY ASCERTAINABLE FROM A TITLE BRAND, FROM INFORMATION OBTAINED FROM A PRIOR OWNER, FROM A VEHICLE IDENTIFICATION NUMBER (VIN), FROM A STATE-ISSUED IDENTIFICATION NUMBER, OR FROM ANY OTHER SOURCE.
7. THE MOTOR VEHICLE HAD BEEN PUT TO A USE OR HAD BEEN ALTERED IN SUCH A WAY THAT A REASONABLE PERSON WOULD CONSIDER UNUSUAL OR EXTRAORDINARY, SUCH AS USE AS A RACING VEHICLE.

E. MATTERS GENERALLY NOT CONSIDERED "MATERIAL PARTICULARS"

THIS LIST IS NOT INTENDED TO BE ALL-INCLUSIVE. MATERIAL PARTICULARS DO NOT GENERALLY INCLUDE THE ITEMS ON THE FOLLOWING LIST:

1. NORMAL WEAR AND TEAR.
2. COMPLETED OR PRIOR MECHANICAL REPAIR.
3. GENERAL MAINTENANCE.
4. REPAIR OR REPLACEMENT OF TIRES, WHEELS, GLASS, HANDLEBARS, MOLDINGS, RADIOS, IN-DASH AUDIO EQUIPMENT, OR THE LIKE, PROVIDED THAT THE REPAIR OR REPLACEMENT WAS COMPLETED IN A MANNER REASONABLY COMPARABLE TO MANUFACTURER'S SPECIFICATIONS AND PROVIDED THAT ANY REPAIRED OR REPLACED ITEM IS FUNCTIONING AT THE TIME OF SALE IN THE MANNER THAT A REASONABLE PERSON WOULD EXPECT.
5. TOUCH-UP PAINT FOR MINOR SCRATCHES, DENTS, OR DINGS.
6. COMPLETED RECALL REPAIR, PROVIDED THE REPAIR WAS DONE BY A DEALER AUTHORIZED BY THE MANUFACTURER TO PERFORM SUCH REPAIRS.