

UCDA MEMBERS MAKING A DIFFERENCE

As we all know, charity begins at home.

UCDA Members are well known for their local generosity. There isn't a community in Ontario that hasn't been touched in some way by charitable contributions from local dealerships.

Whether to sports teams, hospitals, the arts, toy drives, clothing drives and other worthy causes member donations are too numerous to mention.

The UCDA Board of Directors wanted to combine the entrepreneurial spirit of our members with that charitable instinct. We plan to seek out small, local charities throughout Ontario that are making grassroots efforts to fight the dreaded disease of cancer in all its forms.

The UCDA has created a fund to support local charitable organizations adept at making a lot out of a little, like our members do every day. We want our contributions to make a real difference.



UCDA Executive Director, Warren Barnard, with Jim Hamilton, Steve Peck and Mark Campbell of the UCDA Charitable Giving Committee, presents a cheque to Cheryl Gotthelf of Candlelighters

Although our charitable giving can occur throughout the year, it was especially needed by one worthy organization in December.

Candlelighters assists families who have a child with a diagnoses of cancer. They support the family in a variety of meaningful ways as they begin, and

throughout, the child's difficult journey back to health.

Our donation will support Candlelighters' activities throughout the year and provided a much needed injection of cash for their annual holiday hamper initiative for families in need.

The UCDA Charitable Giving Committee and our Executive Director, Warren Barnard, were pleased to meet with Cheryl Gotthelf, Resource Development and Community Awareness Officer for Candlelighters, to personally present her with a donation on behalf of the used and new vehicle dealer members of the UCDA on December 11, 2015.

Amendments to *Repair and Storage Liens Act* ("RSLA") and *Consumer Protection Act* ("CPA")

To prevent, or at least reduce, perceived abuses in the vehicle towing and storage business, a number of significant amendments have been made to the *Repair and*

Storage Liens Act and Consumer Protection Act, 2002 as the Acts apply to the towing and service industry. The majority of the amendments take effect on July 1, 2016.

The following summary is based on information provided by Service Ontario.

Consumer Protection Act Regulations

Towing and storage providers will be required to give consumers:

- The name of the provider and, if different, the name under which the provider carries on business;
- The telephone number of the provider, the address of the principal place of business and information about other ways, if any, that the consumer can contact the provider, such as by fax, email or through a website;
- A current statement of rates; and
- The address of the location where the provider will take the vehicle.

In addition, a tow and storage provider must disclose if it has any interest in a location or facility where vehicles may be towed for repair, storage or appraisal.

This disclosure requirement will not apply in circumstances where a tow and storage provider provides services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized.

Authorization

A tow and storage provider will be required to get a written authorization from the consumer. If the consumer is unable to give authorization as a result of the circumstances – for example due to injury – it could be provided by a person acting on behalf of the consumer.

The authorization will need to include the name and contact information of the consumer or the person acting on their behalf, and the date and time the authorization was given. A copy of the authorization will need to be given to the consumer or the person acting on their behalf. If the authorization is not given in writing, it will need to be recorded in a way that will allow the person who gave the authorization to retain and make a copy of it.

An authorization will not apply in circumstances where a tow and storage provider provides services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized, such as a legal repossession.

Repair and Storage Liens Act Regulations

Notice

Where a storer knows or has reason to believe that the motor vehicle being stored was received from someone other than the owner or a person having the owner's authority, the 60-day notice period will be shortened to 15 days if the motor vehicle is registered in Ontario.

The notice period will remain 60 days for vehicles registered in another province or country.

Amendments provide that where documents are required to be or may be given under the RSLA, they can be sent electronically or faxed, in addition to the methods identified currently in the RSLA, such as by delivering the document personally or by certified or registered mail.

No RSLA lien can be claimed for tow and storage services that are subject to the *Consumer Protection Act*, unless these applicable provisions regarding disclosure, authorization, invoicing, insurance and disclosure of an interest has been complied with.

For example, if an authorization to tow and store a vehicle is required and none is obtained, no lien for the cost of towing or storage can be claimed.

Access to Vehicle

Tow and storage providers will need to give a consumer whose vehicle is towed or stored, or a person acting on their behalf, access to the vehicle without charge to remove all property contained in the vehicle belonging to or in the care of the consumer.

Access shall be provided from 9:00am to 6:00pm from Monday to Friday at the location where the vehicle is stored. A reasonable fee can be charged for access outside those times.

These access provisions would not apply in circumstances where a tow and storage provider provides tow and storage services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized, such as a legal repossession.

Credit Card Concerns

We've recently had a spike in calls from members who, for various reasons, have had credit card payments from customers reversed and funds debited from the member's merchant account.

Most credit card companies reserve the right to recover funds from a dealer if the card holder disputes the payment when the purchase is made without the card being present ... i.e. the card number is provided by phone, fax or email. These are known as "chargebacks".

A member recently sold and delivered a car to a buyer in Manitoba. The buyer had paid a \$1,000 deposit, out of the \$5,000 total price, by credit card. The authorization was received by fax. The purchaser later called the card company and apparently told them there had been a "fraud", saying he had not authorized the charge.

This was clearly untrue as the car had been delivered to him and he had accepted delivery! However, because the dealer did not have the card present when the deal was authorized, the credit card company accepted the purchaser's version of events and debited \$1,000 out of the dealer's account.

The purchaser has since changed his story, admitting he authorized the charge, but now claiming the car is not of the same quality as expected. Despite assistance from the dealer's card processing provider, the credit card company has refused to put the \$1,000 back into the dealer's account. The member is now suing the purchaser (who happens to be a lawyer!).

However, chargebacks can also occur when the purchaser and the card **are present** at the time of sale.

Another member recently had a \$2,000 deposit reversed shortly after the customer signed a contract and authorized the transaction, **in person, with the card present**.

In a third situation, a member repaired a vehicle, the customer paid by credit card and then was able to reverse the charge by complaining to the credit card company that the repair was not done properly. The credit card company calls this "Quality Assurance"!

If situations like this happen to you, the first call to make is to your card processing company. They may require forms to be submitted outlining your version of what happened and why the money removed should be returned to your account. If you are still having problems ... contact the UCDA.

MVDA Quiz

Starting with this edition of Front Line, you'll see a short quiz. Each month, we'll test your knowledge of various areas ranging from MVDA disclosure requirements to tax issues and more.

A word of warning ... we may throw some curve balls your way!

Hope you enjoy our little quiz. You may be surprised by what you thought you knew, but ...

You'll find the answers on page 4.

1. You find out a car you're selling was registered in Quebec 8 years ago, do you have to tell the buyer?

Yes No

2. The *Motor Vehicle Dealers Act, 2002* requires dealers to declare:

- (a) incident requiring repairs over \$3,000
- (b) estimates
- (c) police reports
- (d) all material facts
- (e) none of the above
- (f) a and d
- (g) a, b and d

3. OMVIC can order a dealer to refund a deposit.

True False

4. A dealer sells a vehicle to a resident of Alberta who takes delivery of the vehicle here in Ontario and drives it home. Tax should be charged at what rate?

- (a) 13%
- (b) 5%

5. A dealer sells a vehicle to a resident of Alberta and ships the vehicle to the buyer in Alberta. Tax should be charged at what rate?

- (a) 13%
- (b) 5 %

UCDA Lawyer at the Auction

The UCDA's Legal Services Director, Jim Hamilton, will be at Manheim Toronto on January 26th.

Hundreds of members know Jim through phone calls and emails, but have never had the chance to meet and talk to Jim in person.

Now's your chance!

Jim will be at the UCDA table at Manheim Toronto for the January 26th sale. Members will be able to ask Jim questions and discuss ongoing issues or concerns ... or just drop by to say "Hi".

If Jim is well received ... and we're sure he will be we expect he'll be making regular visits to the auction to chat with members.

Of course, when he's not at the auction, you can reach Jim at 1-800-268-2598 or at j.hamilton@ucda.org.

Why Do Lien Searches?

Well here's why!

It surprises us that some dealers are still prepared to risk thousands of dollars by not spending \$12.50 or less to do a UCDA Lien Search.

Like the dealer who called us last year and told us he paid \$42,000 to buy a vehicle from a company and **did not do a lien search**. Yes, there was an unpaid lien on the car.

The dealer sold the vehicle to a consumer who financed the purchase, meaning a second lien was registered on the vehicle (the lender, apparently relying on the dealer, also did not do a lien search). No one knew there was a problem until the first lien holder came calling!

No matter how this gets resolved, the cost to the dealer in time and money (including possible legal fees) will be substantial.

Dealers take trade-ins and buy vehicles worth thousands of dollars every day. Surely it's worth the small cost of a lien search for the peace of mind of knowing that something like this won't happen to you!

Don't risk the damage to your hard won reputation and bank account - search the VIN - no matter who you're buying from!

UCDA lien searches are just an easy on-line search, phone call or fax away.

Curbsider Update

2015 ended on a high note for followers of curbsider convictions in Ontario.

Barry's Frame & Alignment o/b 1616864 Ontario Inc. agreed to a fine of \$7,500 in London on October 19th when they pleaded guilty to a curbsiding offence.

SND Broadlands Solutions Inc. was fined \$15,000 after a guilty plea on the 26th of October and Mr. Paul Voogt o/a Mr. Auto was fined \$7,500 in Dorchester on November 30, 2015 for one count of curbsiding.

Finally, just before Christmas, Traian Kovacs pleaded guilty and was fined \$7,000 for one count of curbsiding.

Let us hope OMVIC keeps up the good work as we move into 2016!

Quiz Answers

1. **No**
The MVDA requires disclosure of a vehicle previously registered in another jurisdiction within the last 7 years.
2. **(f)**
The MVDA requires disclosure where an incident caused damage costing more than \$3,000 to repair as well as any fact that would affect the decision of a reasonable person to purchase or lease the vehicle.
3. **False**
OMVIC could take other action against the dealer, but only a judge can order the refund of a deposit.
4. **(a)**
Since delivery took place in Ontario, the dealer must collect and remit 13% HST. The purchaser can apply to Canada Revenue Agency for a refund of the Ontario portion of the HST (8%).
5. **(b)**
Since delivery took place in Alberta, which is not an HST province, the dealer is responsible for collecting and remitting only the 5% GST that would be paid in Alberta.

UCDA VEHICLE INFORMATION SEARCHES

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