

SECTION I

TROUBLE SHOOTING

DEALER LICENSING BUREAU RESPONSIBILITIES

Selling motor vehicles without a license; penalty. It shall be unlawful and constitute a misdemeanor, punishable by a fine not to exceed \$2,500.00, for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, or salesperson without a license issued by the Director. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of business as a vehicle dealer.

In October 1995, the Dealer Licensing Bureau computerized the licensing process and implemented a FileNet Imaging system that stores imaged documents by folder ID. In April 2007 the Dealer Licensing Bureau implemented a Web-Based Application, this system automatically issues a folder ID when the original application is received and entered into the system. When the license number is ready to be issued, a dealer number is given corresponding with the range of numbers that identifies the type of license issued. The dealer number can change depending on the license type.

<u>License offered</u>	<u>Cost</u>	<u>D# Range</u>
New & Used Vehicle Dealer	\$75.00	0001-1499
Used Vehicle Dealer	\$75.00	1500-3950
Salvage Vehicle Dealer	\$75.00	3951-4100
Auction Motor Vehicle Dealer	\$75.00	4101-4150
Wholesale Dealer	\$75.00	4200-4450
Manufactured Home Dealer	\$50.00	4701-4900
Lending Agency	\$50.00	5000-5199
1 st or 2 nd Stage Converter	\$50.00	5200-5350
Manufactured Home Manufacturer	\$200.00	5351-5500
Manufactured Home Factory Branch	\$50.00	5501-5600
Manufactured Home Distributor	\$50.00	5601-5625
New & Used Manufactured Home Dealer	\$50.00	5626-5875
Used Manufactured Home Dealer	\$50.00	5876-5999
1 st & 2 nd Stage Manufacturer	\$225.00	6000-6899
Insurance Company	\$75.00	6900-6999
Factory Branch	\$75.00	7000-7999
Distributor Branch	\$75.00	8000-8400
Distributor	\$75.00	8401-8999
Salvage Vehicle Dealer	\$75.00	9000-9450
Title Service Agent	\$75.00	
New & Used Salesperson	\$25.00	0001-1499
Used Vehicle Salesperson	\$25.00	1500-4450
Used Vehicle Salesperson	\$25.00	4701-4900
Factory Representative	\$50.00	5351-5600
Factory Representative	\$50.00	5601-5625
Distributor Representative	\$50.00	5626-5875
New & Used Mfg. Home Salesperson	\$15.00	5876-5999
Used Mfg. Home Salesperson	\$15.00	6000-6899
Mfg. Home Factory Representative	\$25.00	7000-7999
Mfg. Home Distributor Representative	\$25.00	8000-8999
Mfg. Home Broker Salesperson	\$15.00	9000-9850

LICENSE REQUIREMENTS

All statutory and business requirements must be met prior to the issuance of a license. There are six field investigators that make routine inspections to ensure requirements are maintained. During these inspections, they also provide training and answer any questions the dealer may have. If requirements are not met the field investigators may issue a civil penalty. The dealer may elect to contest the penalty and request a hearing. Hearings may result in the suspension, revocation, and/or a civil penalty.

Location requirements:

- Lot and location either owned or leased separate from your residence;
- Sufficient office facilities to conduct business;
- A place to receive mail at your licensed location;
- Have an operable phone listed in the business name;
- The licensed location must be zoned by the county/city for business and must be licensed type specific.
- Automobile liability insurance listed in the business name;
- Personal Property Tax Certification must be signed by the County Treasurer validating that all personal property taxes have been satisfied.

New vehicle/new mfg. home dealers require a franchise agreement for each additional or supplemental location. **K.S.A. 8-2404**

Salvage dealers must have salvage storage certificate which is issued through KDOT. **K.S.A. 8-2404**

Title Service Agents are required to carry a \$25,000 Surety Bond form. **K.S.A. 8-2603**

The following license types are required to carry a \$30,000 Surety Bond form D-20. **K.S.A. 8-2404**

- | | |
|---------------------------|--------------------------|
| ▪ Auction Vehicle Dealer | ▪ Salvage Vehicle Dealer |
| ▪ Converter | ▪ RV Broker |
| ▪ New/Used Vehicle Dealer | ▪ Converter |
| ▪ RV Broker | |

Franchise Certification form D-100 or KDOT form D-35 may be required. **K.S.A. 8-2404**

30 DAY PERMITS

30 Day Permits are sold in packs of 10. Only 1 permit can be sold to an individual per vehicle. Exceptions are when the permit is destroyed due to weather conditions; lost or stolen a copy of a police report is required. If stolen, a second permit can be issued as long as the expiration date remains the same. The permit registration is **never** to exceed 30 days.

K.S.A. 8-2409

Requirements: 30-Day Permit Order form D-30 completed in full w/\$30.00 per 10 permits. Dealers cannot purchase 30 day permits from the County Treasurer's Office, they can only be obtained through the Dealer Licensing Bureau. Dealers must be current on Monthly Sales Reports. Allow approximately 2 weeks turn around time to receive permits by mail. Dealers CANNOT sell or provide 30 Day Permits to any other dealer. Permits must be obtained through the Kansas Department of Revenue.

\$30,000 SURETY BOND

Some licenses require a \$30,000.00 surety bond. The surety bond is similar to an insurance policy. If an individual sues a dealer and wins, a judgment can be filed with the Director of Vehicles office and if approved the bond company reimburses the individual up to \$30,000.00. The bond is required at the time of application and maintained throughout the license. When a bond cancellation is received a compliance letter is sent to the dealer. **K.S.A. 8-2404(i)**

Requirements: Bond form D-20 completed by a bond company registered in Kansas. Bond must be approved by Kansas Department of Revenue. Power of Attorney must be dated on or before bond witness date & must accompany bond.

72 HOUR AUCTION PERMITS

A Kansas-based auctioneer may purchase 72-hour transport permits that authorize the purchaser of a vehicle to operate such vehicle for 72 hours with the bill of sale. Only one permit may be used by the same purchaser for the same vehicle.

72-hour auction permits are \$3 each; sold in quantities of 3.

BOND RIDERS/ENDORSEMENTS

Many changes that take place in your dealership affect your bond. You should always contact your bond company anytime you make changes.

A rider is required when: Your firm name changes, same entity and address changes. **K.S.A. 8-2404(i)**

New bond required when: There is an entity change (individual to partnership, etc.). Transfer of Ownership (New owners must obtain their own bond). Major change takes place in business, such as name, address & adding owners all at once.

BOND CANCELLATION

If your bond is canceled, a new bond or reinstatement is needed rescinding the bond cancellation. The new bond effective date must be on or before the previous bond's cancellation date.

K.S.A. 8-2404 (i)

CERTIFICATE OF DEPOSIT

A Certificate of Deposit can be used in lieu of the \$30,000.00 surety bond; however, we are required to hold the CD in our possession for 2 years after the license is terminated or until a bond is maintained for 2 years. Your CD will be deposited in the State Treasurer's office for safekeeping. **K.S.A. 8-2404(j)**

Requirements:

- Certificate of Deposit completed by your lending agency.
- *D-19 form must be completed by your lending institution and forwarded with the original CD.*

CONVERTER

First stage converter means any person who is engaged in the business of affixing to a chassis supplied by a first stage manufacturer, distributor or other supplier specially constructed body units to result in motor vehicles, used as but not limited to, buses, wreckers, cement trucks and trash compactors.

K.S.A. 8-2401

Second stage converter means any person who is engaged in the business of adding to, subtracting from or modifying previously assembled or manufactured vehicles and sells the resulting converted vehicles at retail or wholesale. **K.S.A. 8-2401**

COUNTY CHANGE

If you are relocating your dealership to a different county:

K.S.A. 8-2404(g)

Requirements:

- Original application completed in full; form D-17.
- Zoning and Tax Certification must be for new location/county.
- \$25.00 fee required.
- Approval must be obtained by the Dealer Licensing Bureau, then the Bureau will forward to the Dealer Licensing Field Investigator for inspection and approval.
- Rider is requested for bond with new address listed.

CREDENTIALS: CERTIFICATES, TAGS, ETC.

When a dealer number is issued, a license certificate, a letter of authority for each plate ordered, a handbook, memos that have been sent since the handbook was revised, 30 Day permit order form & monthly sales report forms are delivered to the dealer by the field investigator. When a dealer changes their business name, location or dealer number a new certificate with the correct information will be delivered to the dealer. When a dealer changes his business name or location and employs salespersons, new salesperson certificates will be sent as well.

DEALER PLATES

Dealer plates are issued to dealers for demonstration purposes. Owners and their spouses can legally drive on dealer plates as long as the vehicle is in the dealership inventory for sale. Licensed salespersons that work 20 hours or more a week are also authorized to drive on dealer plates. Newly licensed Dealers are issued 3 dealer plates to begin, their business may require more dealer plates and can be requested if sales warrant additional plates to be issued. Dealers must have 5 sales per tag to maintain or increase their tag quantity. We will automatically decrease tags at renewal time if sales are too low. The first automobile/motorcycle plate is \$275.50 and each additional plate is \$25.50. Manufactured Home and Trailer plates are \$25.50 each.

K.S.A. 8-136 K.S.A. 8-2406

DISPLAY SHOW PERMIT

Only New Vehicle Dealers can apply for a Display Show Permit to display new vehicles at a location other than their primary location, such as a mall. There can be no sales from this location.

A Display Show Location request can be made for 3 months (\$15.00), 6 months (\$30.00), and 12 months (\$90.00).

K.S.A. 2435

Requirements:

- Display Show application completed in full; form D-12b.
- Application must be submitted no less than 10 working days prior to the show date. **WILL BE ENFORCED**
- Location must be zoned for the display of new vehicles.
- Location must be within dealer's area of responsibility.

DRIVE AWAY TRANSPORTER TAGS

These tags are to be used to transport vehicles from one location to another only. The plates cannot be used on vehicles owned by the driver/company.

Requirements:

- Application; D-14 completed listing owner name and the company to be responsible for tags.
- Must have liability insurance.
- Must explain what tags will be used for.
- Drive Away plates are renewed annually in December each year.

FULL PRIVILEGE DEALER PLATES

After issuance of the first dealer license plate, (K.S.A. 8-2406) a full-privilege license plate may be issued to a licensed manufacturer or dealer of vehicles. There is a limit of 10 plates per dealer. The fee is \$350.50 per plate. A full privilege plate may be transferred from one vehicle to another owned by dealer.

K.S.A. 8-2425

The assignment is completed only to the following:

- A member of the immediate family
- An employee of the dealer or manufacturer
- A corporate officer

A full use plate may not be used:

- when providing wrecker or towing service
- on a rental or leased vehicle
- to permit vehicles to haul commodities in excess of two tons
- to Lending Institutions

Requirements:

- Form D-4 completed with \$350.50 per plate.
- Renewed annually with license renewal.
- Expire January 31st each year.
- Decal is used to update tag expiration.

GOING OUT OF BUSINESS

In the event a dealer wishes to terminate his license, he must forward all credentials to our office (i.e., certificate, tags, permits, etc). The file is noted and the tags are destroyed, the permits are given to VIPS (Vehicle Information Processing System) to "void" and the certificate is scanned to the folder to show that the dealer is terminating his license. Fees are not prorated. **K.S.A. 8-2408**

INSURANCE

Dealers are required to obtain and maintain liability insurance. The Division of Vehicles requires the minimum set by the Insurance Commissioner's office. Currently, the minimum is \$25,000.00 liability per person for bodily injury, \$50,000.00 per occurrence, and \$10,000.00 covering property damage. No dealer's license shall be issued, maintained or renewed unless the applicant or holder of the license shall have on file with the division a current approved insurance policy. **K.S.A. 8-2405**

INSURANCE CANCELLATION

In the event your insurance policy is canceled, you must contact your insurance agent and request a new Certificate of Insurance be forwarded to the Division of Vehicles to verify coverage. If you have changed to a new insurance company, your new company must forward a certificate effective on or before the cancellation date of the previous policy. **Upon the effective date of cancellation of any insurance policy required under this section, the license to engage in business as a dealer shall be void. K.S.A. 8-2405**

KDOT

If you are licensed as Salvage Vehicle Dealer; the Kansas Department of Transportation must certify that the location meets the Beautification Laws of Kansas. **K.S.A. 8-2404(t)**

Requirements: D-35 completed and signed by KDOT.

LOCATION CHANGE/LICENSE TYPE CHANGE

Requirements:

- Application completed; form D-12a.
- Zoning for appropriate type of vehicles.
- Approval must be obtained by the Dealer Licensing Bureau, then the Bureau will forward to the Dealer Licensing Field Investigator for inspection and approval.

Franchise Dealers:

- D-100 is required for supplemental location for all line-makes.

Salvage Dealers:

- D-35 KDOT Salvage Compliance is required for all locations.

LOST TAG

Should one of your dealer tags become lost or stolen, you must:

- Contact your local police department, highway patrol or sheriff's office, report your lost or stolen tag and obtain a copy of the police report.
- Write a letter on your dealership letterhead listing the lost or stolen tag, including the suffix letter. If you would like to request a replacement tag indicate this and send \$3.00 per plate in addition to a copy of the police report to the Division of Vehicles, Dealer Licensing Bureau, Docking State Office Building, Topeka, Kansas 66626-0001.
- A dealer who locates a tag that he previously reported lost or stolen, must return the tag(s) to the Dealer Licensing Bureau, with an explanation as to why the tag is being returned.

Denial, suspension or revocation of license; grounds; notice and hearing; licensee responsibility for agents; appeals; prohibited acts.

*(a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds: (18) has failed to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed; **K.S.A. 24-10***

MAJOR COMPONENT PART

Salvage vehicle dealers shall file a quarterly report on a form prescribed and furnished by the division, listing all vehicles for which the major component part containing the vehicle identification number or engine number if manufactured prior to 1981, has been disposed of or sold. The Certificate of Title or transfer certificate for all vehicles listed must accompany the quarterly report. **K.S.A. 8-2408(b)**

MANUFACTURERS/DISTRIBUTORS

Manufacturers and Distributors are required to obtain and maintain a license to sell new vehicles and new manufactured homes to Kansas dealers for resale in this state. Regardless of their location, manufacturers/distributors pay an annual fee and send a Franchise Agreement (D-100) to the designated Kansas dealer, which enables the dealer to sell their specific line make of vehicle, trailer, RV, motorcycle & manufactured home. **K.S.A. 8-2404(b)**

MANUFACTURERS/DISTRIBUTORS

Requirements:

- Original application.
- Must be licensed to supply Kansas New Vehicle Dealers with vehicles or mfg. homes.
- License is renewed annually.
- \$225.00 fee for manufacturer.
- \$75.00 fee for distributor.

MONTHLY SALES REPORTS

In-State Dealers, Lending Agencies, Auctions and In/Out of State Converters are required to file a monthly sales report listing all vehicles sold. The report is used to compile data for the issuance of 30-Day permits and renewal of the license. A Sales Report Coversheet must accompany the report each month, even when reporting zero sales. The coversheet has a bar code and lists total sales for that month. Delinquent monthly sales reports will stop the issuance of 30-Day permits, the ordering of additional plates, renewal of your license and the possibility of resulting in a hearing. Your reports must be received in our office no later than the 20th of the following month. **K.S.A. 8-2408**

RECORD RETENTION

Monthly Sales Reports: a minimum of four years
 Renewals a minimum of four years
 Copies of titles &
 Corresponding paperwork: a minimum of four years
 Sales Tax forms: a minimum of four years

All records and certificates of titles on all vehicles owned by dealers are subject to inspection and investigation by any employee of the Kansas Department of Revenue, Division of Vehicles or any member of the Kansas Highway Patrol and should be made available during regular business hours.

MONTHLY SALES REPORTS – FORM ASSIGNMENT

D-1 FORM	D-2 FORM	D-3 FORM
New & Used Dealers Used Vehicle Dealers Lending Agencies Wholesale Vehicle Dealers Used Mfg. Home Dealers Mfg. Home Broker	Salvage Vehicle Dealers <u>D-2MCP FORM</u> Salvage Vehicle Dealers (this report must be sent in quarterly in addition to the D-2 form)	Auction Vehicle Dealers

REASSIGNMENT ADDENDUMS

A Reassignment Title Addendum allows one additional reassignment addendum to any certificate of title and will allow a rider to be attached to Kansas Titles by out of state dealers.

RENEWAL

All licenses, with the exception of salesperson licenses expire December 31st each year. Renewals are mailed to dealers the week of Thanksgiving and are due prior to December 31st. It takes approximately 6 weeks to obtain plates from the tag manufacturer. Any license not renewed by February 15th will be expired and must complete an original application to become licensed.

K.S.A. 8-2404(d)

SALESPERSON LICENSES

Individuals selling vehicles for a dealer or manufacturer are required to obtain and maintain a Salesperson License. The salesperson applicant is required to take a test prior to being licensed. Salesperson licenses are renewed in June of each year. A temporary license may be issued in lieu of the license certificate. Temporary license cannot exceed 45 days and salesperson must be under direct supervision until license certificate is issued.

K.S.A. 8-2404; K. S. A. 8-2433; K.S.A. 58-4207

Requirements:

- Application forms; D-22a or D-22b.
- \$25.00 Vehicle Salesperson fee.
- \$15.00 Manufactured Home Salesperson fee.
- \$50.00 Factory or Distributor Representative fee.

ST-8 FORMS

Statement of Kansas State and Local Retail Sales Tax paid to the Dealer. (sales tax receipt form)

If the vehicle is to be taken out of state use the **ST-8B Exemption Form** and record sale on the monthly Dealer Sales Report.

ST-8 books are provided by the Dealer Licensing Bureau.

SUPPLEMENTAL LOCATION

Vehicle dealers may obtain a supplemental location within the same county for a fee, as long as their local zoning official approves the location. There is a \$35.00 fee for each supplemental location. The supplemental location is renewed when the dealer license is renewed each year. New vehicle dealers can have a supplemental location in a county other than their licensed primary location to sell new vehicles only, as long as the location is within their Relevant Market Area.

K.S.A. 8-2404(f); K.S.A. 8-2430

Requirements - Salvage Dealers:

D-35 KDOT Salvage Compliance is required for all supplemental locations.

Requirements:

- Application completed; form D-12a.
 - \$35.00 fee.
 - Zoning for appropriate type of vehicle sales.
 - Approval must be obtained by the Dealer Licensing Bureau, then the Bureau will forward to the Dealer Licensing Field Investigator for inspection and approval.
- *New/Used dealer supplemental locations must to go through the Relevant Market Area process prior to approval. No supplemental locations can be operational until the approval process is completed and approval granted.

TITLE SERVICE AGENT

A Title Service Agent is defined as any person who acts as an agent for a fee in making application for or obtaining:

- (1) A certificate of title of ownership of a vehicle;
- (2) registration for or the license plate or plates for a vehicle;
- (3) renewing the registration of a vehicle;
- (4) temporary registrations for a licensed Kansas vehicle dealer;
- (5) title assignment addendums for a licensed Kansas vehicle dealer;
- (6) sales tax receipt books for a licensed Kansas vehicle dealer.

"Vehicle title service agent" shall not include any person who is licensed under the provisions of K.S.A. 8-2401 et seq., and amendments thereto, or any person who engages as a vehicle title service agent only for commercial vehicles, as defined under K.S.A. 8-1,100, and amendments thereto.

TITLE WORK

Questions concerning title work call 785/296-3621 then select from the following options:

Dealer Titles: select option 4; then, for dealer title: option (2), or title in name of customer of dealer option (4)

Lien Release: option (5); then, for lien release/E-Lien option (5)

Title work may be carried into the Division of Vehicles the next working day after the initial application has been completed and "hand-carry" requested at the County Treasurers Office.

TRADE SHOW

A temporary Trade Show License for the purpose of displaying new trucks, truck tractors, or semitrailers or new recreational motor vehicles can be obtained with proper application and a fee of \$50. The trade show cannot exceed four consecutive days. The trade show cannot be at a vehicle dealers primary or supplemental location. No sales transactions may occur at the trade show location. A disclaimer that the truck, truck tractor, semitrailer or recreational vehicle is for display purposes only shall be placed on vehicles. Prior approval must be obtained from manufacturers and converters of each line-make of truck, truck tractor, semitrailer or recreational vehicle to be displayed at the trade show. Any dealer displaying at trade show, shall be licensed in this state or in another state and pay a participant fee of \$35. **K.S.A. 8-2444**

TRANSFER OF OWNERSHIP

If you sell your dealership:

Requirements of the Seller

- Completion of the top of Owner Transfer (form D-23)
- Complete listing of tag inventory

Requirements of the Buyer

- Application (form D-17)
- Owner Transfer (form D-23)
- \$30,000 Surety (Bond or Certificate of Deposit)

New & Used Vehicle or New & Used Manufactured Home Dealer

In addition to the above, a Franchise Agreement (form D-100) must be completed verifying Manufacturer's franchise agreement(s).

Salvage Vehicle Dealer

In addition to the above, a KDOT Certificate of Compliance (form D-35) must be completed and signed by the Kansas Department of Transportation, certifying that the location still meets the Beautification Laws of Kansas.

Application/Transfer Fees

Negotiations on fees paid per seller and buyer are the responsibility of both active parties. No application or transfer will be accepted or considered unless all applicable fees and above mentioned requirements are received. In order to obtain a transfer all documentation must be received together. Do not remit any forms separately.

BUYERS GUIDES

Federal Trade Commission
www.ftc.gov

DEALER FORMS

www.ksrevenue.org

ODOMETER STATEMENTS

Can be obtained from

Kansas Automobile Dealers Association
Merchants National Bank Building
8th & Jackson, Ste. 1110
Topeka, KS 66612
785-233-6456

SALES TAX

Questions & Forms
785-296-3199

A DEALER'S GUIDE TO THE USED CAR RULE

Most car dealers who sell more than five used vehicles in a 12-month period must comply with the Rule. Banks and financial institutions are exempt from the Rule, as are businesses that sell vehicles to their employees, and lessors who sell a leased vehicle to a lessee, or a buyer found by the lessee.

The Used Car Rule applies in all states except Maine and Wisconsin. These two states are exempt because they have similar regulations that require dealers to post disclosures on used vehicles. The Rule applies in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa.

This booklet defines the Rule's requirements, explains how to prepare and display the Buyers Guide, and offers a compliance checklist.

You must post a Buyers Guide before you "offer" a used vehicle for sale. A vehicle is offered for sale when you let a customer inspect it for the purpose of buying it, even if the car is not fully prepared for delivery.

Previously titled or not, any vehicle driven for purposes other than moving or test driving, is considered a used vehicle, including light-duty vans, light-duty trucks, demonstrators, and program cars that meet the following specifications:

- a gross vehicle weight rating (GVWR) of less than 8,500 pounds;
- a curb weight of less than 6,000 pounds; and
- a frontal area of less than 64 square feet.

Exceptions to the Rule are:

- motorcycles;
- any vehicle sold for scrap/parts, if dealer submits title document to the appropriate state authority & obtains a salvage certification;
- agricultural equipment.

THE BUYERS GUIDE

A disclosure document that gives consumers important purchasing and warranty information, the Buyers Guide tells consumers:

- what type of warranty the vehicle is being sold with;
- what percentage of the repairs costs a dealer will pay under warranty;
- that oral promises are difficult to enforce;
- to get all promises in writing;
- to keep the Buyers Guide for reference after the sale;
- the major mechanical and electrical systems on the car, as well as some of the major problems that consumers should look out for; and
- to ask to have the car inspected by an independent mechanic before they buy.

If you conduct a used car transaction in Spanish, you must post a Spanish language Buyers Guide on the vehicle before you offer it for sale.

The Buyers Guide must be posted **prominently** and **conspicuously** on or in a vehicle when a car is available for sale, and in such a way that both sides are readable. That means you can hang the Guide from the rear-view mirror inside the car or on a side-view mirror outside the car. The Guide also can be attached to a side window. A Guide in a glove compartment, trunk or under the seat is **not** conspicuous.

You may remove the Guide for a test drive, but you must replace it as soon as the test drive is over.

VEHICLE INFORMATION

At the top of the Guide, fill in the vehicle make, model, model year, and vehicle identification number (VIN). Write in a dealer stock number if you wish.

DEALER INFORMATION

On the back of the Guide, fill in the name and address of your dealership and the name and telephone number of the person the consumer should contact with complaints. You may use a rubber stamp or preprint your Guide with this information.

OPTIONAL SIGNATURE LINE

You may include a signature line on the Guide and you may ask the buyer to sign to acknowledge that he or she has received the Guide. If you opt for a signature line, you must include a disclosure near it that says: *"I hereby acknowledge receipt of the Buyers Guide at the closing of this sale."* This language can be preprinted on the form. The signature line and the required disclosure must appear in the space provided for the name of the individual to be contacted in the event of complaints after the sale.

WARRANTY INFORMATION

An FTC Buyer's Guide must be properly completed and displayed in all vehicles for public sale. Kansas Law forbids the selling of vehicles "as-is", as well as any attempt by the dealer to limit or disclaim the implied warranty. In Kansas there are basically two types of warranties that cover vehicle transactions, expressed warranties and implied warranties.

The basis of warranty law under the Magnuson-Moss Warranty Act, is that goods sold carry with them certain warranties as to their quality and performance, and that if the goods do not meet these standards, then the buyer has a remedy. The seller's good faith, ignorance of the product defect, or best efforts in making or selling the goods are not defenses. If the goods do not meet the promised warranty standard, the buyer has remedies as specified by various warranty laws.

The two major types of warranties are express and implied. Express warranties are created affirmatively by the seller, and implied warranties are created by law (KSA 50-639). There is also a warranty of good title promising that the seller can pass good title to the buyer for any goods sold. There may be express and implied warranties from both the seller and the manufacturer. There can be, and usually are, multiple warranties in the same transaction. Warranties are construed as consistent with each other and cumulative wherever possible.

EXPRESS WARRANTIES

Express warranties can arise through the seller's or manufacturer's affirmation of fact or promise description of the goods, or a sample or model. The express warranty is that the product will meet these representations. The affirmation of fact or description may be oral or written. A written warranty certificate is obviously an express warranty. Advertising, oral statements volunteered by the seller, the seller's statements in response to the buyer's questions, and even statements or promises made after the sale are also express warranties.

IMPLIED WARRANTIES

The implied warranty of merchantability is not created by the seller's statements or conduct, but is implied in the sale of new or used goods (vehicles) whenever the seller is a merchant with respect to the goods. The implied warranty is created by law and not by the seller. The implied warranty of merchantability promises that the goods (vehicle) are fit for the ordinary purpose for which they are used. The goods (vehicle) must be able to do the ordinary job with reasonable safety, efficiency, and comfort.

Ownership Transfer by POWER OF ATTORNEY SECURE POWER OF ATTORNEY

The general power of attorney, form TR-41, can be used when a vehicle is exempt from odometer disclosure statement requirements. The seller authorizes a person(s) or dealership to sign the title on the owner's behalf. A general power of attorney may only be used once per transaction. The power of attorney must be the original document and is to be attached to the application. A power of attorney will not be returned. A secure power of attorney is to be used when a vehicle is subject to odometer disclosure statement requirements and the title is being held by an out-of-state lienholder, is an e-title or the original title has been lost and a dealer is applying for a duplicate for the owner. The actual odometer disclosure statement is on the secured power of attorney and the information is transferred from the secured power of attorney to the title assignment. The secured power of attorney is the official odometer disclosure statement. The second secured page/copy of the Kansas secure power of attorney is to be attached to the title, the top or first page is returned to the Kansas Division of Vehicles. If another state's power of attorney is attached to the title, it must be a "secure" page or copy (complies with Federal 49 CFR Part 580 § 3 and 13).

SECURE POWER OF ATTORNEY

QUICK REFERENCE GUIDE

- a) When a customer trades a vehicle in to a dealership and the title is held by the lien holder, or is an e-title/paperless, or is lost and an application for duplicate title will be necessary, **complete section "A" of the Secure Power of Attorney**. (Owner on the face of the title appoints the dealership as power of attorney and completes the odometer disclosure statement-mileage.)
- b) When a vehicle for which section "A" of the Secured Power of Attorney has been completed is sold, but the dealership has not received the title, **complete section "B" of the Secure Power of Attorney**. (New buyer of the vehicle appoints the dealership as power of attorney and completes the odometer disclosure statement-mileage.)
- c) When the title has been received by the dealership and the mileage and status listed on the face of the title are not in conflict* with the mileage reported in section "A" of the Secure Power of Attorney, **complete section "C" of the Secure Power**. (Sections "A" and "B" must be completed before section "C" is necessary.)

*Refer to Certification-Section C in this document for the definition of "in conflict".

WHAT IS A SECURE POWER OF ATTORNEY AND WHEN IS IT NEEDED

A Secure Power of Attorney is a form that is printed with security features that is controlled by sequential numbering and has three sections. The reason for all of these details is this form is not only used to appoint someone as power of attorney, it is the form the odometer disclosure statement is made between the buyer and seller. Federal law prohibits the same person to act as both buyer and seller with regards to the odometer disclosure.

This form is used when the vehicle being traded in or sold to the dealership requires an odometer disclosure statement (ODS) and the title is being held by the lien holder, or is a paperless title (title will not be issued by the state until all liens are released), or if the owner has lost their title and a duplicate will need to be applied for and issued. An ODS is required when the vehicle is an auto or light truck (registered for 16,000 pounds or less) and is 10 years old or less.

This form is not required as long as the customer will return to the dealership to assign the vehicle title over to the dealership. However, with the State of Kansas becoming a paperless title state in 2003, the use of this form will become more common place.

VEHICLE DESCRIPTION

This field is located at the top of the form and must be completed in its entirety.

TRANSFEROR'S POWER OF ATTORNEY TO DISCLOSE MILEAGE-- SECTION A

This section must be completed when the transferor (individual or business listed on the front of the title as owner) is appointing the transferee (dealership taking the vehicle in as trade or purchase) as their attorney-in-fact for the purpose of recording the mileage reported on the secure power of attorney onto transferor's title and to assign the title to the transferee/dealership.

The transferor/owner on the face of the title is to complete all the information in section "A" except for the transferee's information at the bottom of this section.

An authorized agent of the dealership is to sign and hand print their personal name as the transferee's signature and printed name. The dealership's name and address is to be entered next to the transferee's dealership name and business street address, city, state and zip.

The goldenrod copy of the form is to be given to the transferor/owner on the face of the title after all parties have completed section "A".

TRANSFEEE’S POWER OF ATTORNEY TO REVIEW TITLE DOCUMENTS AND ACKNOWLEDGE DISCLOSURE – SECTION B

Section “A” must have been completed before Section “B” can be used. Section “B” is used when the vehicle has been sold before the title has been received from the lien holder or the duplicate title has been received from the state.

In Section “B” the transferee will be the buyer/customer and the transferor will be the seller/dealership. The transferee/buyer must complete the top portion of this section. The transferor/dealership will complete the bottom portion of this section. Preferably, the same authorized agent of the dealership that signed and hand printed their personal name as the transferee’s signature and printed name under section “A” will do the same in section “B”. However, as long as the person that signs and hand prints their name is an authorized agent for the dealership, it could be a different person.

The yellow copy of the form is to be given to the transferee/customer after all parties have completed section “B”.

CERTIFICATION - SECTION C

Section “A” and “B” must have been completed before Section “C” is to be used.

The dealership completes section “C” when the title has been received and the dealership is certifying that the mileage stated on the secure power of attorney is greater than that listed on the title and the mileage status follows the proper order of progression.

If the mileage and/or the mileage status stated on the secure power of attorney is in conflict with the mileage and/or the mileage status listed on the title, the secure power of attorney is void.

The phrase “in conflict” means the mileage itself is a lower number on the secure power of attorney than the title. The mileage status has a progression or an order that must be followed. If the mileage status does not follow this progression, then it would be “in conflict”.

The order of progression is:

1. Actual can stay actual or, change to exceeds mechanical limits (exceeds) or not actual.
2. Exceeds can stay exceeds or change to not actual. The mileage status cannot be declared as actual after exceeds has been declared.
3. Not actual MUST stay as not actual. The mileage status cannot be declared as actual or exceeds after not actual has been declared.

TRANSFERRING INFORMATION FROM SPOFA TO TITLE ASSIGNMENT(S)

- Once the dealership has received the title, the information on the secure power of attorney is to be transferred to the appropriate assignment space on the back of the title.
- Information in section “A” will be transferred into the first assignment from the owner(s) on the face of the title to the dealership.
- If the vehicle has been sold (before the dealership received the title), the information in section “B” will be transferred into the second assignment (first dealer reassignment) from the dealership to the buyer(s).
- The same person from the dealership can sign as both buyer and seller. When signing as the power of attorney, sign the name of the seller (first assignment) and/or buyer (second assignment) followed by the name of the person that actually signed denoting the power of attorney. Example: John Smith by Jane Doe-SPOfA (1st Assignment-John Smith is the seller and Jane Doe works for the dealership)

Distribution of Copies

The original or top copy of the secure power of attorney is to be submitted to the Titles and Registrations Bureau with a copy of the front and back of the title assigned using the secure power of attorney. Mail to: Kansas Department of Revenue; Titles and Registrations Bureau; Docking State Office Building; Topeka, Kansas 66626-0001.

The second copy, which is also a secure copy, is to be attached to the actual title and given to the new buyer.

The pink copy, along with a copy of the front and back of the title assigned using the secure power of attorney, is to be retained by the dealership for five (5) years.

The yellow copy is to be given to the transferee/customer after all parties have completed section “B”. (The goldenrod copy will have been previously given to the transferor listed in section “A”.) If section “B” is not used, the yellow copy may be disregarded.

The goldenrod copy is to be given to the transferor/owner on the face of the title after all parties have completed section “A”.

There is a fee for the Secure Power of Attorney and it must be obtained from the Kansas Auto Dealers Associates. The Titles and Registrations Bureau does not have or provide the Secure Power of Attorney.

Secure Power of Attorney (and general power of attorney) are covered on page 1-17 in the County Treasurer’s Manual.