



## **IF YOU ARE LEAVING THE BUSINESS: A DEALER CHECKLIST**

### **Planning Tips and Questions to Ask**

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2008 will certainly go down as one of the most difficult years the United States economy has ever experienced. Each sector of the economy was affected. Particularly hard hit were new franchised passenger car and truck dealers. NADA membership data tells us that 930 new vehicle dealerships closed in 2008. The number of dealerships expected to close in 2009 may well be an additional 900. The industry's dependence on the credit markets and the failure of financial institutions to meet dealers and consumers needs have placed many dealerships in jeopardy.

If the credit freeze in the financial markets was not enough, some dealers also confronted the reality of manufacturers like Isuzu Motors America, Inc. and Sterling Truck pulling out of the United States (US) market. Jaguar and Land Rover were sold. Other brands are reported to be up for sale. In addition, the year ended with two of the Detroit-based companies, General Motors and Chrysler, receiving bridge loans from the federal government in order to avoid having to file for bankruptcy.

These circumstances involved factors that were completely beyond the control of dealers. Nevertheless, as dealers begin 2009, it is essential that those who have reviewed their business situation and made the difficult decision to close their doors or otherwise exit the business do so pursuant to a well thought out plan.

NADA has put together the following checklist to assist dealers in identifying some of the steps they need to take and questions they should discuss with their professional advisors if they find it necessary to exit the business. While NADA is not permitted to provide legal advice to dealers, this checklist should help dealers avoid certain pitfalls in going through what is a complicated process. Please note that no checklist can cover every aspect of each dealer's situation. Rather, this checklist is intended as a starting point. Dealers are strongly encouraged to retain professional advisors to assist them.

If you are a dealer who is planning to exit the business, an essential first step for you to take is to locate complete and current versions of your dealer sales and service agreement and other documents related to your business that will be needed so that your professional advisors can understand your situation and help determine an action plan. Now is the time to make sure that you have a complete set of your current agreements and other documents such as tax returns and agreements with vendors. In addition, you should have a copy of your state franchise law available for reference. Contact your state dealer association. They will either have a copy or be able to direct you to a source for it. State association contact information can be accessed at [www.nada.org/relatedorganizations/statemetros](http://www.nada.org/relatedorganizations/statemetros).

1. Review the terms of your dealer sales and service agreement to determine what kind of termination assistance is owed to you by your manufacturer. Assistance is usually provided for current model year inventory, parts, special tools, and brand signs. Some agreements provide for modest facility payment such as a one year payment of rent. Be sure to determine what the manufacturer views as the current model year. 2008 model year vehicles may not be covered.

In some agreements, it is optional for a manufacturer or distributor to pay termination assistance and some may not be obligated to pay if it is the dealer who voluntarily terminates the agreement. You should also review your state dealer franchise law to see what it requires a manufacturer to pay a dealer upon termination. Again, the requirements may be different or not apply if you voluntarily terminate your agreement. Some agreements and state laws provide for assistance only when it is a manufacturer who is terminating an agreement. If your state has a termination provision in its law, and most do, the payment you are entitled to may be more than what is provided for in your dealer agreement.

2. Determine your outstanding obligations. A systematic review of your monthly payment schedule will help identify recurring expenses and contracts that have extended terms. This will assist you in determining if you have any continuing obligations under these agreements. Review agreements with vendors to determine the grounds for terminating the agreements and the liability in doing so. The agreement with your computer vendor is a major one to review to determine the cost of early termination. Review agreements and any special relationships you have with other vendors such as with cleaning companies and lease agreements with equipment companies.
3. If you have entered into a site control or other agreement with a manufacturer or other entity involving the dealership real estate, review the agreement for any repayment obligation you may have. Some agreements require dealers to pay a manufacturer if a dealer terminates the franchise agreement prior to the required term. Some site control agreements contain punitive terms when a franchise agreement is terminated early.
4. Examine your dealership's zoning status. The right to occupy the facilities for dealership purposes may lapse if the facility is not used as a vehicle dealership for a period of time. If so, dealers may want to take steps to protect the use by immediately renting the facility to a used car dealer or even opening a small used car dealership.
5. Determine your chargeback liability. In connection with vehicle loans, review whether you have liability based on rate participation or whether you have deals which limit chargebacks. Also examine potential liability for extended service agreements and other finance and insurance products sold to consumers. Who is listed as responsible for performing service repair or paying refunds due to early cancellation of these agreements? Remember, termination or exiting the business does not mean the end of chargebacks.
6. Understand your legal obligations to your employees in terms of notice of the dealership closing (the federal WARN Act), employee retirement plan wind down or termination requirements, and medical and other benefit issues.
7. Determine any commitments or agreements you may have made to a general manager or executive about future ownership.

8. If your dealership is on LIFO, carefully evaluate your options as they relate to LIFO to determine the most tax-efficient manner to wind down the business. Consult your tax advisor to determine what makes the most sense for your particular set of facts and circumstances.
9. Is your dealership brand part of a manufacturer consolidation effort? If so, consider approaching the appropriate dealer or dealers to see if you can sell your franchise as a way of exiting the business. You should also consider approaching your manufacturer if you are in a market where brand consolidation is underway. Note that before pursuing a sale to another dealer or to your manufacturer you should first determine the amount you are entitled to if you voluntarily terminate the franchise.
10. Understand freight charges and handling fees for repurchased items.
11. Understand when you will get your money.
12. Additional Considerations:
  - Dealers should investigate the impacts of ceasing business on loan covenants to related operations. Real estate loans to an affiliated company, and lines of credit for other ventures of the dealer, may be wrapped up in overall loan agreements that depend on a functioning dealership. If the company is no longer operating, that may be a breach of the loan agreement leading to the right of the finance source to call the loans for breach of the covenant to maintain operations. Dealers should review loan obligations for affiliated companies to determine the impact of ceasing operations and negotiate a change to the agreements if necessary prior to termination.
  - Dealers should consult with their accountants and their lawyers to understand the process and impacts of liquidating their operating company once they have terminated operations. What is the process? What will be the impacts of outstanding financial obligations on the ability to liquidate? What impact will the financial obligations have on the dealer, personally, because of personal guarantees? How can the dealer best protect a real estate affiliate, other operating companies, and the dealer personally from claims resulting from the liquidation of the operating company?
13. Get an agreement before you resign your franchise.

It is important for dealers to understand that termination of a franchise is not a set process. Expect your manufacturer to strictly construe its repurchase obligations. It is a mistake to assume that manufacturers will automatically buy back the new motor vehicles, parts, special tools, and brand signs referenced in 1 above. Decisions made without understanding the process can be terribly wrong and the losses incurred when inventory and others assets are not repurchased can amount to hundreds of thousands of dollars.

This checklist is intended as a general guide to assist you in organizing your exit strategy and is not intended to be a complete checklist of your responsibilities. It is highly recommended that you retain professional advisors to assist you. Reviewing this checklist prior to contacting professional advisors may save you time and money.

For additional assistance, a recorded archive of the NADA virtual seminar *Tough Times, Tougher Dealers: Protecting Your Dealership Assets*, is available through the Management Education department at [www.nada.org/trainingevents/meseminars](http://www.nada.org/trainingevents/meseminars).

Also available is the NADA publication titled, *A Dealer Guide to Valuing an Automobile Dealership*, at [www.nada.org/mecatalog](http://www.nada.org/mecatalog).

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