

## **The Time is Right for Enhancing State Franchise Protections**

*by : Richard N. Sox, Jr., Esq.*

---

In the wake of the Chrysler and General Motors' bankruptcy proceedings, the time is right to enhance state franchise law protections. There has never been a time when dealers have a more sympathetic ear in state legislatures across the country. Your state representatives have tuned into the realization, albeit too late for many, that dealers are a strong employment and tax base for the state. State legislators are going to bend over backwards to do what they can to protect dealers that remain in the market.

To this end, several state and metro dealer associations have sought passage of sweeping changes to their state motor vehicle franchise laws. Many of these changes are aimed at the immediate problem of terminated Chrysler and General Motors dealers. These state franchise law amendments include providing terminated/rejected dealers a right of first refusal to own any Chrysler or GM franchise, as the case may be, which is added back into the market previously served by the terminated/rejected dealer. Other protections include an absolute prohibition on site control agreements. This amendment is directed at countering the 30-year site control agreement that Chrysler is asking its dealers to sign in exchange for receiving one of the missing Chrysler brands. The terms of the 30-year site control agreement are incredibly onerous, yet dealers are told they won't receive the trifecta of Chrysler brands, which the dealer needs to be viable, unless they sign off.

The conditions at state capitols around the country are also ripe for seeking passage of a more broad range of franchise protections, which will benefit all dealers for the long haul. Manufacturers have little pull with state legislators when they are viewed as being responsible for decimating the employment and sales tax base, which was historically provided by GM and Chrysler dealers. Now is the time to fill those holes in your state franchise laws that you have always wanted to see fixed. To this end, every state franchise law should contain the following key protections:

- Relevant market area protection against new points and relocations
- Termination benefits, whether the dealer or the manufacturer terminates the franchise, which includes repurchase of all new cars (no matter model year) with less than a certain amount of mileage, repurchase of parts and tools and payment of either fair market value of the franchise (calculated as of a date prior to the termination) or a fair rent payment for your facilities for up to two years
- Right to protest and stay any termination by the manufacturer
- Right to designate a family member as successor dealer, before or after the dealer principal's death, with extremely limited restrictions on denying that designation
- Right to transfer franchise to any other person unless the transferee doesn't meet very limited criteria (financial ability, good moral character and sufficient general business experience)
- Right to relocate within your relevant market area, as long as minimum and reasonable manufacturer requirements are met
- Protection from renovation or construction of a dealership facility unless dealer voluntarily agrees and manufacturer can justify the cost based upon written findings as to current and expected market conditions
- Restriction on discriminatory vehicle incentive/bonus programs
- Protection from unreasonable warranty and sales incentive chargebacks with a right of protest and stay of those chargebacks
- Twelve- to 18-month look-back period for factory audits
- Prohibition on restricting dealing with other brands

As I have repeatedly said in this column, in order to take advantage of the current environment in obtaining passage of enhanced franchise protections, dealers must get involved in the process. Dealers must support their dealer associations with their time and money to fund the lobbying effort. There is

nothing more powerful than to have a committee room full of dealers who live and work in the committee members' districts. In addition, in most states, the dealer association will need to hire an outside lobbying firm to assist with obtaining passage of the legislation. Good lobbying firms don't come cheap. However, when many dealers are contributing to the cause the individual cost is relatively minimal. When the cost of the dealer's time and money is compared to the direct value and benefit obtained from the enhancements to franchise laws, there is no choice but to pursue new franchise protections

### **Dealers must always be thinking about succession planning**

Last week I received the type of call that I absolutely dread, "My husband, the dealer principal passed away unexpectedly last week!" After giving my heartfelt condolences, my next question is, "Did he have a successor addendum completed with each manufacturer?" All too often the answer comes back, "No," as it did in this telephone call last week.

In some states, not having a successor dealer principal pre-approved by the manufacturer is not a big deal in that the state franchise law requires the manufacturer to accept a family member as the successor, unless that family member has committed a serious crime. In those states, it doesn't matter whether the family member has any experience – general business or specific to car dealerships.

In many states, the franchise laws provide that a previously approved successor must be granted rights to the dealer principal position unless that individual has committed a serious crime since the time of the initial approval. The key word here is "previously approved." In states with this type of franchise law, the family of the deceased dealer principal gets no help from the franchise law unless the manufacturer had pre-approved a successor.

However, in all too many states, there is not strong protection for approval of a family member as successor after the death of the dealer. In these states, manufacturers often take advantage of the death of the dealer principal to, at best, extract onerous promises from the family to renovate/relocate facilities or agree to specific sales volume numbers before agreeing to approve a successor dealer principal. At worst, some manufacturers use the death of the dealer principal and lack of a pre-approved successor to try to take the dealership away from the family all together. In these cases, the manufacturer wants to hand the dealership over to a "friend of the factory." I have personally seen Toyota Motor Sales attempt to take otherwise successful dealerships away from families on at least three separate occasions where the dealer had not obtained pre-approval of a successor.

No matter what state you find yourself within, it is very important for both manufacturer and family reasons, to have designated your chosen successor. Every dealer should identify a successor (which can change over time) and seek approval of that individual from your manufacturer(s). The process can take several months so it is important for dealers not to wait until, for example, their health begins to fail before making application for approval of the successor. Manufacturers tend to be much more lenient in the approval process of a successor when that approval is sought long before the dealer principal retires or passes away.

Any dealer who has not already designated a successor should make it a priority to begin that process right away. It is better for you to control the results of that process than leave it to your spouse, children or business partner to fight it out amongst themselves and the factory. Don't allow the manufacturer to put your family through a costly fight to keep control of the dealership you worked so hard to establish.

**Richard Sox** is a lawyer with the firm of Myers & Fuller PA, with offices in Tallahassee, Florida and Raleigh, North Carolina. The firm's sole practice is the representation of automobile dealers in their quest to establish a level playing field when they deal with automobile manufacturers.