

Recall Recap

BULLETIN

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We have been receiving requests from dealers for a recap of a presentation done during our spring workshops on vehicle recalls. The following contains that information plus some updates to bring things current.

It appears that there is much misinformation in the dealer community, a good bit of which is fostered by inaccurate or deliberate misleading statements made by various manufacturers, as to what is and is not legal under federal recall legislation. Attached is a chart published by the NADA that outlines current federal law with regard to recalls. Indiana does not have any statute involving recalls, therefore no state law applies.

- As you can see from the attached chart, the topic is broken up between new and used vehicles. With regard to new vehicles it is relatively simple. If a vehicle is under an open recall you may sell or lease the vehicle but cannot deliver the vehicle until the recall is remedied. Under federal law the manufacturer is supposed to provide financial assistance but some manufacturers have refused to do that even taking a position that if we give you any financial assistance we will take away interest credits so that the dollars will be the same. I believe that that approach is illegal under Indiana law, but in any event that position has not been challenged to this point.
- Most of the confusion deals with used cars and the position of some manufacturers that a dealer for that manufacturer may not sell a used car from the dealer's inventory if there is an open recall. There is nothing in federal law that prohibits the sale of that vehicle with notice to the consumer. This is true despite manufacturer publications to the contrary. Some manufacturers are under consent orders with the Federal Trade Commission and as part of their consent order settling other kinds of cases have agreed with the Federal Trade Commission to try to force dealers from selling any vehicle that is under recall. Obviously you should check each vehicle, preferably before taking the vehicle in trade, to see if it is under any sort of recall, stop sale or stop drive. Of these, stop drive is the most severe meaning that the vehicle should be parked or bull penned until the defect is remedied. If the recall is a stop sale recall then new vehicles may not be sold period. If it is a stop sale recall involving used cars it would be prudent to the dealer not to sell that vehicle even with notice to the customer.
- At least one manufacturer is taking the position that sale of a used vehicle subject to recall somehow violates the franchise agreement and would subject the dealer to punishment. We do not believe that that would stand under Indiana law. What is disturbing is that there is at least one reported case of a recalled vehicle that was involved in an accident after being sold. The dealer's insurance company has initially refused to cover the injuries sustained by the occupants of the vehicle thus leaving the dealer exposed. Another Texas case has found that a dealer has an affirmative obligation to check for recalls even when a vehicle is in for routine service. This is not the case in Indiana but it may be a harbinger of things to come.
- At the very least a dealer should disclose an existing recall to a buyer by attaching a copy of the open recall to a suggested form of notice to the customer of a recall. That form is reproduced here and may be utilized by the dealership.
- Unfortunately there is substantial confusion about the Takata air bag recall occasioned by the fact that there are too many airbags to ultimately be replaced. The National Highway Traffic and Safety Administration has determined that the airbags are most likely to malfunction in warm humid climates. Therefore, they are requiring a staged recall based upon the number of years the vehicle has been in service and the area of the country in which the vehicle is located. If that is the case then the dealer may decide to sell the used vehicle with notice particularly if the vehicle is a different make than the dealer's franchise.
- At least one manufacturer is taking a position that if a new or used vehicle of that make is sold that the dealer will assume all responsibility for any damage or injury occasioned by the manufacturer's negligence under product liability law. Again, we believe that that is contrary to Indiana franchise which specifically states the manufacturer must indemnify the dealer for any liability due to defective products.
- Some dealers have asked if they can have a customer release the dealer in advance from liability or waive any claim they would have against the dealer for the sale of a vehicle under recall. We sincerely doubt that any such waiver would stand up in court and would suggest that the dealer comply with the information contained in this memorandum.
- It should be kept in mind that a dealer may be the target of any law suit by selling a vehicle with an open recall of any sort. Inventive plaintiff's attorneys would try to link the recall into the case as an element of an accident case potentially claiming some negligence in the sale of the vehicle particularly if the recalled part was a factor in the accident. The sale of used vehicles with minor recall issues is a business risk decision that dealer's will need to make on a vehicle by vehicle basis.

For further information you may contact Ron Smith, Jeff Halbert or Joel Nagle at 317-684-5000.

Important: Your vehicle may have a recall.

Our dealership makes every attempt to provide an unequalled sales and service experience for our customers. In the past several months, many vehicle manufacturers regardless of make have issued a number of safety recalls voluntarily or mandated by the National Highway Traffic Safety Administration (NHTSA). Primarily, these recalls involve air bag systems manufactured by Takata Corporation but do address other mechanical problems. Because of the number of airbag recalls (approximately 34 million vehicles), replacement parts are not readily available. Installation of new airbags will only be handled by dealerships that have franchises for that particular make of vehicle. We attempt to inspect each pre-owned vehicle that we place for sale and correct any item for any defects that we note. On most recalls we are not an authorized repair facility for that particular manufacturer and the recall repair may not be completed at the time of sale.

We are selling this vehicle to you "as is", with all faults and our dealership has disclaimed any other warranty of any kind in connection with your purchase. We do offer, on some vehicles, a parts and service discount for a limited period of time after you buy the vehicle. That service arrangement does not change the "as is" nature of the sale.

You may have received a vehicle history report from a third party service provider, such as Carfax[®], AutoCheck[®] or a similar service. We have explained to you that our dealership is not responsible for any information contained in that report since it comes from a third party provider, which is a wholly independent company, and that the provider is solely responsible for the accuracy of any information appearing on the vehicle history report.

To determine whether your vehicle has an active recall you may visit: <https://www.nhtsa.gov> or <https://vinrcl.safercar.gov/vin/>. You may enter your vehicle identification number into the appropriate box when prompted to do so. If your vehicle is in fact subject to a recall it may be available on this website if the manufacturer has furnished the government with the appropriate data. You need to check these sites periodically because the information varies and not all recalls may be listed at the time that you check. Our dealership may or may have not have checked to see if such a recall exists. If we have checked and determined that a recall is pending we will, as a service to you, provide information on the recall and direct you to an authorized franchise dealer that will ultimately make the repair. By signing below you are acknowledging that we have provided you a copy of this notice and that you have read and understand the terms of the notice.

Our dealership stands ready to help you at any time during the course of your ownership and will be happy to provide appropriate service to your vehicle during your ownership. Thank you for your understanding in this matter.

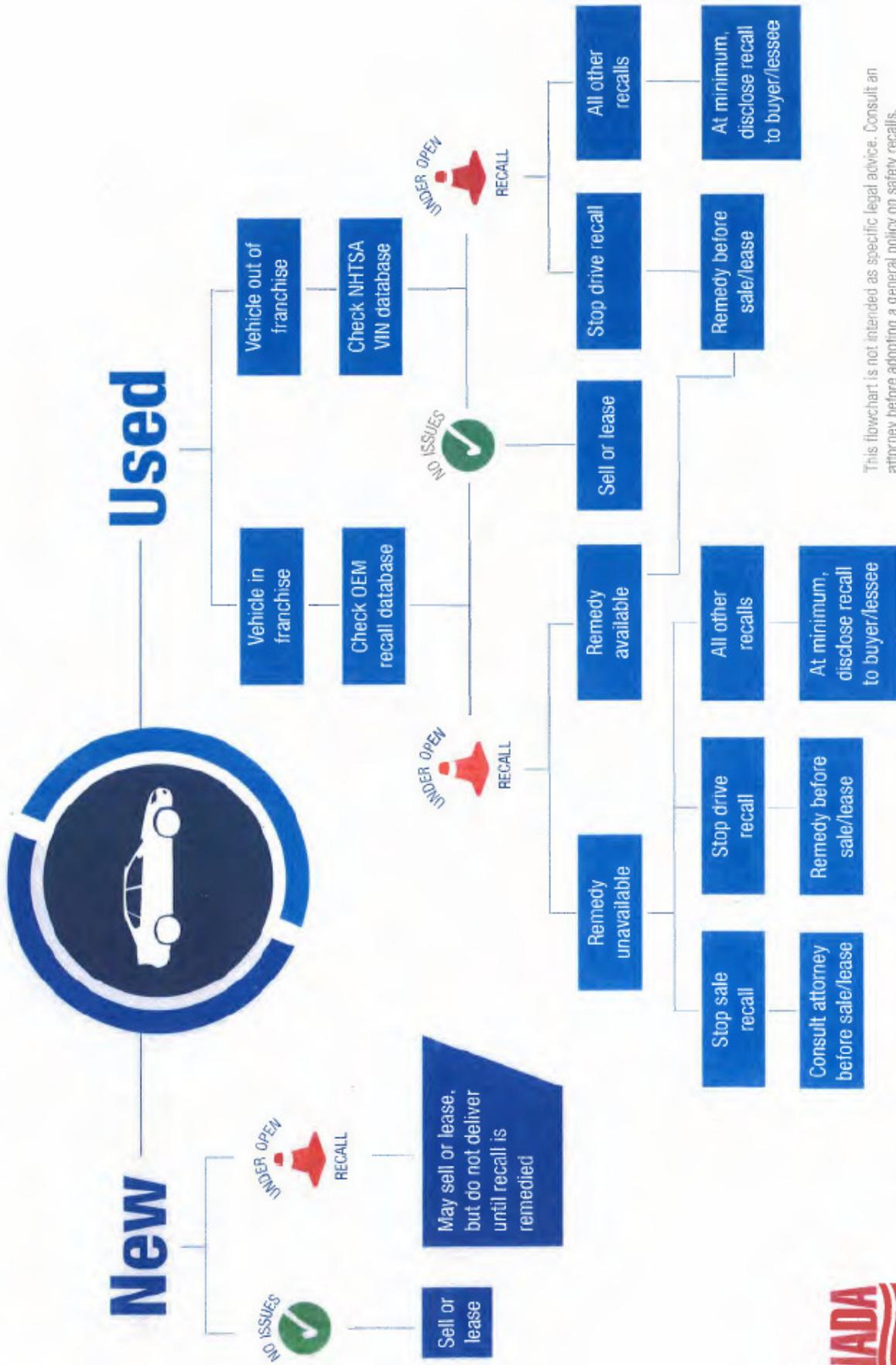
Acknowledged as Received and Understood

Customer

Customer

Vehicle Recalls

What you need to know



This flowchart is not intended as specific legal advice. Consult an attorney before adopting a general policy on safety recalls.

