



*South Carolina*  
**DEPARTMENT OF CONSUMER AFFAIRS**  
 293 Greystone Boulevard Suite 400  
 P. O. BOX 5757  
 COLUMBIA, SC 29250-5757

**Commissioners**  
**David Campbell**  
 Chair  
 Columbia  
**W. Fred Pennington, Jr.**  
 Vice Chair  
 Simpsonville  
**Mark Hammond**  
 Secretary of State  
 Columbia  
**William Geddings**  
 Florence  
**James E. Lewis**  
 Myrtle Beach  
**Renee I. Madden**  
 Columbia  
**Jack Pressly**  
 Columbia  
**Lawrence D. Sullivan**  
 Summerville

**Carri Grube Lybarker**  
 Administrator/  
 Consumer Advocate

**PROTECTING CONSUMERS SINCE 1975**

**DATE:** February 18, 2022  
**TO:** Motor Vehicle Dealers  
**FROM:** Carri Grube Lybarker, Esquire *Carri Grube Lybarker*  
 Administrator/Consumer Advocate  
**RE: MISLEADING AND DECEPTIVE MOTOR VEHICLE DEALER PRACTICES**

Recently the Department of Consumer Affairs (Department) has identified several concerns as a result of investigating complaints, receiving consumer tips, and conducting standard compliance reviews related to motor vehicle dealer practices in consumer transactions. The Department is issuing this notice to motor vehicle dealers to alert the industry of these issues and make clear the expectations under state and federal laws regarding consumer transactions:

1. Any required additional fees (including adjusted market value fee, dealer markup, dealer-installed options, etc.) must be included in the advertised price of a vehicle. Adding it onto the advertised price is misleading and deceptive.
2. Official fees listed on the contract must be limited to the amount that will be paid to the government entity charging the fees. Processing fees, if any, for tax, title, or the like must be absorbed by the dealer or included in the dealer's closing fee, which must be included in the advertised price.
3. Used cars do not have a Manufacturer's Suggested Retail Price (MSRP). As such, if a dealer represents to a consumer that the value of a used car is MSRP or the consumer's price for a used car has been discounted from the MSRP, that representation is misleading and deceptive.

The Department's analysis regarding the adding of extra fees to the advertised price, inflating official fees in the contract, and using MSRP for used cars is explained below.



### **Adding Extra Fees to the Advertised Price**

A motor vehicle dealer is required to sell a vehicle for the advertised price unless a limited exception applies:

1. Dealer clearly and conspicuously states the consumer must present or mention the advertisement;
2. Dealer posts a coupon the consumer must present to receive a discount on the purchase price; or
3. Advertisement states the price and terms are good only for a specific period of time and that time has elapsed.<sup>1</sup>

Section 37-2-308(C) of the Code states, “A motor vehicle dealer may not advertise in a manner that is false, deceptive, or misleading, or that misrepresents a vehicle offered for sale.” The Department interprets this language to mean that a dealer may not advertise the price of a vehicle only to thereafter impose additional, non-governmental fees which increase the total purchase price. The dealer must include any *required* fees in the advertised price of the vehicle. The dealer is prohibited from advertising a vehicle for a specific amount and subsequently adding fees to that advertised price when the consumer does not have the option to remove or reject the associated item or service.

#### *Adjusted Market Value Fees*

The Department has become aware of a prevalent trend of motor vehicle dealers adding an adjusted market value fee on top of the advertised price of new and used vehicles. These fees may range from a few hundred dollars to over \$10,000 for highly sought-after vehicles. The Department understands the motor vehicle industry faces an unusual inventory shortage due to supply and demand issues brought on by the COVID-19 pandemic and the global microchip shortage has only exacerbated the issue. Nonetheless, the Department wants to emphasize the importance of meaningful disclosures to consumers and to remind dealers of applicable advertising and disclosure requirements.

The Department received a complaint from a consumer who was drawn into a dealership based on the advertised price of a vehicle and subsequently informed by the dealer that an additional adjusted market value fee of \$3,000 would be added to that price. This dealer’s practice of drawing a consumer in with only a portion of the vehicle’s total sale price disclosed and later revealing other fees the consumer would have to pay is a violation of Section 37-2-308(C). Any adjusted market value fee must be included in the advertised price of a vehicle. Furthermore, to facilitate informed consumer decisions, dealers should clearly disclose the adjusted market value fee as a separate line item charged on top of the MSRP.<sup>2</sup> An example of a proper adjusted market value disclosure for a new vehicle is as follows:

---

<sup>1</sup> See Department’s Administrative Interpretation 2.308-1602 available at <https://consumer.sc.gov/business-resources/laws/administrative-interpretations/chapter-two>.

<sup>2</sup> Such disclosures should also be made on the window stickers of vehicles in a dealership’s lot.




---

MSRP	\$49,999
Adjusted Market Value	+\$1,000
<b>Final Sale Price</b>	<b>\$50,999</b>

---

While it is ultimately the consumers' decision to pay the additional adjusted market value fee if they so choose, it is important for dealers to clearly disclose the fee to consumers in advertisements and on sales documents.

### *Dealer Add-Ons*

The Department also has become aware of dealers who are failing to include required add-on fees (e.g., refurbishment fee, inspection fee, security system) in the advertised price. In one example, the dealer advertised a 2018 truck for \$36,399. During the test drive, the consumer learned that a \$1,200 refurbishment fee would be added to the advertised price. When the consumer stated he did not want to have the refurbishment done, he learned the refurbishment had already been completed but not included in the advertised price. Again, this dealer's practice of drawing a consumer in with only a portion of the vehicle's total sale price disclosed and later revealing other fees the consumer would be required to pay is a violation of Section 37-2-308(C) and the Department's 2016 Interpretation (see footnote 1).

### **Inflating Official Fees in the Contract**

The Department has learned that motor vehicle dealers are inflating official fees when listing them on the consumer contract. Official fees are defined as "fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan." S.C. Code Ann. § 37-1-301(17)(a)(i).

In a recent example, the Department observed a dealer listed the title transfer fee as \$50.00 instead of the flat fee of \$15.00 charged by the Department of Motor Vehicles. The extra \$35.00, which the dealer considers a processing fee, is not an official fee and must not be included in the official fee amount listed on the contract for transferring title. In another example, the Department saw an itemization that included a closing fee, a "Tag Fee" of \$57.50 (\$15 + \$40 + \$2.50), and a "Title Processing Fee" in the amount of \$50.00. This Title Processing Fee is prohibited. If the dealer wants to charge a consumer for the dealer's costs for processing the transfer of title, this cost must be included in the dealer's closing fee or absorbed by the dealer as a cost of doing business.<sup>3</sup>

The closing fee is "a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer." S.C. Code Ann. § 37-2-307(A)(B). Any costs for

---

<sup>3</sup> Any processing fees for ELT are only incurred in a credit transaction. As such, any ELT processing fee must either be included in the finance charge or absorbed by the creditor or dealer as a cost of doing business. See Department's Administrative Interpretation 2.202, 3.202-1702 available at <https://consumer.sc.gov/business-resources/laws/administrative-interpretations/chapter-two>.



administrative work to transfer the vehicle, therefore, must be included in the dealer's closing fee. Said another way, any "processing fee" associated with these official fees **cannot** be charged unless it is included in the permitted closing fee.

Any excess over the official fee as listed in a contract separately from a closing fee is an excess charge the dealer will be required to refund to the consumer. Furthermore, the closing fee must be included in the advertised price of the vehicle. S.C. Code Ann. § 37-2-307(A)(2).

### **Using MSRP for Used Cars**

The Department is aware of dealers representing discounts on used vehicles as savings off of the MSRP. South Carolina law requires "[d]iscounts or savings on the sale or lease of a *new* motor vehicle indicated in an advertisement must be those that are deducted from the [MSRP] as stated on the Monroney Sticker." Section 37-2-308(D) (emphasis added). MSRP, however, is not applicable to used cars and using MSRP to represent or advertise the value of a used vehicle is deceptive and misleading, a violation of Section 37-2-308(C). Further, advertising or representing to a consumer that the sales price reflects a discount or savings off of the MSRP is deceptive and misleading, a violation of Section 37-2-308(C).

### **Contact Information**

If you have any questions regarding this memorandum, we encourage you to submit them in writing to [Legal@scconsumer.gov](mailto:Legal@scconsumer.gov). Please be as specific as possible and provide any supporting documentation that would assist the Department in fully understanding your inquiry. This will also help expedite our review. Otherwise, please call (803)734-4200 or (800)922-1594 (toll-free in S.C.). We also encourage motor vehicle dealers who have engaged in any of the above to contact the Department. Dealers may also utilize the automobile advertising reporting form to submit an anonymous complaint regarding advertisements of a fellow motor vehicle dealer. The form is available on our website [www.consumer.sc.gov](http://www.consumer.sc.gov) under Business Resources/Laws > Business Education and Tools > Auto Industry.