

## CHAPTER 6

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# Broker Requirements

### Section 6-1

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#### Definition

**6-1.1 Definition.** Broker Rule 1 defines “Broker” as a person who does not acquire ownership of a vehicle and who, for a consideration, does or offers to do at least 1 of the following with respect to the sale, lease, purchase, or exchange of a vehicle and has no title or other legal interest:

- a) Brings together a buyer and seller or a lessee and lessor of a vehicle.
- b) Negotiates the terms of a transaction.
- c) Shows or displays a vehicle.

"Broker" does not include a person employed by a licensed dealer, while acting within the scope of their employment.

### Section 6-2

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#### Broker Licensing

**6-2.1 Application.** Section 248 of the Michigan Vehicle Code, requires a person acting as a broker to file an application for a dealer license with the Michigan Department of State. The following requirements must be satisfied as part of that application:

- a) Established place of business where books and records will be maintained and a large share of the business transacted;
- b) Proof of filing a \$10,000 surety bond filed;
- c) Regular business hours maintained;
- d) Payment of the \$75 annual license fee.

**6-2.2 License Expiration.** All dealer licenses, including broker licenses, expire at midnight of December 31 each year.

**6-2.3 Additional Locations in Same County.** A supplemental license, at no fee, is required for any additional locations in the same county.

**6-2.4 Additional Locations in another County.** A new, separate license is required for any additional business locations in another county.

**6-2.5 Established Place of Business.** Broker rule 11 requires a broker to maintain an established place of business, approved by the administrator, at which place the broker must keep all required books and records, maintain posted business hours, and conduct a large share of his or her business. A broker's established place of business cannot be occupied as the established place of business of another licensed vehicle dealer.

**6-2.6 Businesses in close Proximity.** There may be situations where licensed brokers and dealers are located in close proximity. In these cases, each business must specifically comply with all the requirements in the Broker Rules and the Michigan Vehicle Code:

- a) A broker and a dealer cannot be licensed under the same legal entity.
- b) The businesses must separately meet established place of business requirements.
- c) A dealership cannot occupy the broker's established place of business.

License applications for dealers and brokers are evaluated on a case-by-case basis.

## **Section 6-3**

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### **Dealer Plates**

**6-3.1 Prohibition.** Brokers do not qualify to purchase dealer plates. Dealer plates may only be purchased by Class A, B and W dealers for use on their vehicles.

**6-3.2 Auctions.** Michigan law authorizes auctions to purchase special registration plates to pick up and deliver customer vehicles. Contact a Secretary of State office for the special auction plate application form.

## **Section 6-4**

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### **Title Assignments**

**6-4.1 Name on Title.** A broker cannot be named as an owner in a title assignment or reassignment, unless the broker applies for title in the broker's own name and pays sales or use tax (in which case, the vehicle cannot be brokered or sold under the broker's license). Titles may not be reassigned by brokers. Resale titles may not be issued to brokers. A broker deals in vehicles which the broker does not own or for which the broker does not have title. Consequently, a broker's name cannot appear as an owner on a vehicle title reassignment on a vehicle, which is being held for sale.

## **Section 6-5**

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### **Title and Application Registration - Responsibility**

**6-5.1 Selling Dealer Requirements.** In many brokered retail transactions, the seller will be a licensed Class A or B dealer. In these instances, the selling Class A or B dealer is responsible for applying for title and registration for the retail buyer

**6-5.2 Application Service.** Auctions and brokers frequently complete the title and registration application as a service to the selling dealer. In these instances, the selling dealer's RD-108 form is used.

**6-5.3 Dealer to Dealer (Wholesale) Transactions.** In brokered wholesale transactions, the purchaser will be a Class A, B, C, or W dealer. In these instances, it is not necessary to apply for a new title, since the selling dealer simply assigns the title to the purchasing dealer.

**6-5.4 Other Brokered Transactions.** When neither the buyer nor the seller is a new or used vehicle dealer, the broker is responsible for applying for the purchaser's title and registration and for collecting sales tax. The broker uses their RD-108 to apply for the purchaser's title and registration and to submit sales tax.

**6-5.5 New Vehicles.** Broker Rule 5 requires a broker in the sale or lease of new vehicles, to deal through a licensed class A new vehicle dealer in this state. When brokering a new vehicle for a new vehicle dealer, the broker does not complete their own RD-108 or apply for the purchaser's title and registration. It is the selling Class A new vehicle dealer's responsibility to apply for the purchaser's title and registration, using the Class A dealer's RD-108.

**6-5.6 Used Vehicles.** Broker Rule 6 permits brokers in the sale or lease of a used vehicle to forego dealing through a licensed vehicle dealer. In a used vehicle transaction where the buyer, seller, lessee, nor lessor is not a licensed vehicle dealer, the broker

applies for title and registration for the vehicle as provided in section 217 of the Michigan Vehicle Code and must submit tax due with the transaction.

## **Section 6-6**

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### **Submitting Title and Registration Applications**

**6-6.1 Secretary of State Offices.** Brokers may use any Secretary of State branch office for processing retail vehicle sales transactions. The following instructions are provided:

- a) The RD-108 is completed as described in Chapter 7, showing the broker's name, address, dealer license number, sales tax number, and telephone number in the upper left portion;
- b) The broker types in the name of the vehicle seller and the title number shown on the title in the Remarks section of the RD-108;
- c) The broker submits the completed RD-108, properly-assigned title, title and registration fees, sales tax, proof of insurance, and discharge of lien (if applicable) to a Secretary of State branch office.

## **Section 6-7**

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### **Temporary Registrations**

**6-7.1 Temporary Registrations.** The owners of brokered vehicles may obtain temporary registrations issued by any Secretary of State branch office in order to drive vehicles. Temporary registrations are available from any branch office and can be purchased by the owner of the vehicle – not the broker. The temporary registrations are valid for 30 or 60 days. The purchaser must provide proof of Michigan no-fault insurance at time of purchase.

**6-7.2 Issued by Broker.** When a broker is responsible for applying for title and registration, the broker may issue a 15-day temporary registration to the purchaser. The broker is responsible for ensuring that insurance coverage is in effect and for showing the 15-day temporary registration number on the RD-108.

**6-7.3 Issued by Other Licensed Dealer.** When the RD-108 application is the responsibility of another licensed dealer (the seller), 15-day temporary registrations are issued by the selling dealer – not the broker.

## **Section 6-8**

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### **Record Keeping Requirements**

**6-8.1 Police Book.** As with other licensed dealers, brokers must keep records in a Police Book. The Police Book entry is made at the time of vehicle consignment. A washout system cannot be used by a broker. See Chapter 2, Section 2-2 for more information.

**6-8.2 Required Information.** The Broker Rules require certain information when a vehicle owned by a licensed dealer is sold or leased through a licensed broker to someone who is not a licensed dealer. In addition to information required in Chapter 2, Section 2-2, the broker's Police Book must include the following information:

- a) The selling dealer's business name and Michigan dealer license number; and,
- b) The amount of all fees, commissions, compensation, and other valuable consideration received by the broker either from the selling dealer, lessor, purchaser or lessee.

The selling Class A or B dealer's Police Book must include:

- a) The broker's business name and Michigan broker license number; and,
- b) The amount of all fees, commissions, compensation, or other valuable consideration paid by the dealer to the broker.

The selling Class A or B dealer must enter the broker's business name and license number in the Remarks section of the RD-108.

**6-8.3 Other Records.** In addition to the Police Book, a broker is required to maintain the following records:

- a) RD-108s when the broker applies for title and registration;
- b) 15-day temporary registrations, when issued;
- c) Purchase agreements; and
- d) Broker fee agreements, when the broker charges a fee or accepts a deposit and is required to prepare such a document before accepting the fee. See Section 6-10 for additional information regarding broker fee agreements.

**6-8.4 Length of Retention.** Broker Rule 10 requires brokers to retain copies of all purchase or lease agreements, bills of sale and other documents related to negotiated

transactions for five years. Copies of RD-108s, front and back of reassigned titles, purchase agreements and fee agreements are examples of other documents required to be retained for five years.

Upon request, a broker must submit to the administrator copies of all records required by the act or rules. The administrator must specify the format in which the records must be submitted, which may be electronic. This sub-rule only applies to records of vehicles sold at retail by a licensed dealer when a broker is involved in the transaction.

## **Section 6-9**

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### **Broker Fee Agreement**

**6-9.1 Requirements.** Before a broker charges or receives a fee, Broker Rule 9 requires the broker and the person paying the fee to draw up and sign a written document. A copy of the document must be provided at the time of signing to the person paying the fee, and a copy must be retained by the broker.

A broker must ensure that the document clearly sets forth all of the following information:

- a) The amount of the fee;
- b) When, in what manner, and under what circumstances the fee is payable;
- c) The amount of any deposit required in advance and under what circumstances the deposit or any portion of it must be refunded;
- d) The length of time for which the broker's services are contracted; and
- e) Any other terms agreed upon by the signers.

## **Section 6-10**

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### **Purchase Agreement**

**6-10.1 Requirements.** Before consummation of a sale or lease, Broker Rule 8 requires a broker who negotiates the sale or lease of a vehicle to draw up a separate agreement. The agreement must not differ in its terms from any other papers, forms, or documents required by the act or otherwise executed between the buyer and the seller or the lessee and lessor of the vehicle.

The broker must retain a copy of the agreement and must provide copies to each party to the agreement at the time the agreement is signed.

**6-10.2 Dates on Purchase Agreement.** The agreement must be on a form prescribed by the administrator and dated no later than the actual delivery date of the vehicle to the buyer or lessee.

**6-10.3 Forms.** The purchase agreement does not replace other required forms and documents (RD-108, broker's fee agreement, Police Book, etc.). Broker Rule 8 requires broker Purchase agreement forms to contain all of the following information:

- a) The name and address of the buyer or lessee.
- b) A description of the vehicle including all of the following information:
  - (i) Make;
  - (ii) Model year;
  - (iii) Vehicle identification number;
  - (iv) Body style; and
  - (v) Dealer and factory-installed accessories (new vehicles only).
- c) The name, address, and Michigan dealer license number of the dealer who is purchasing, selling, or leasing the vehicle.
- d) The name, address, and Michigan dealer license number of the broker.
- e) Date of vehicle delivery.
- f) Odometer reading and 1 of the following:
  - (i) A statement by the transferor certifying that, to the best of his or her knowledge, the odometer reading reflects the actual mileage of the vehicle.
  - (ii) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, a statement to that effect.

- (iii) If the transferor knows that the odometer reading differs from the actual mileage and the difference is greater than that caused by odometer calibration error, a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. The notice must include a warning notice to alert the transferee that a discrepancy exists between the odometer and the actual mileage.
- g) Total price or, in the case of a lease, the gross capitalized cost.
- h) Down payment or, in the case of a lease, the capitalized cost reduction, if any.
- i) A statement signed by the broker certifying that the terms of all warranties applicable to the vehicle have been fully disclosed to the buyer or lessee in writing.
- j) A statement signed by the broker disclosing the names of all parties to the transaction whom the broker represents.
- k) If a fee, compensation, commission, or other valuable consideration will be paid by any party to the transaction, the amount of the fee, compensation, or other valuable consideration and a detailed description of what each individual charge includes.
- l) Signatures of the buyer, seller, broker, or lessee, or their respective representatives;
- m) For the purpose of Broker Rule 8, it is presumed that the broker is the agent of the unlicensed party to the transaction.

## **Section 6-11**

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### **Advertising**

**6-11.1 Disclosure of Identity.** Broker Rule 7 requires a broker advertisement to include a disclosure of the advertiser's identity as a broker and his or her dealer license number.

## **Section 6-12**

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### **Electronic Record Requirements**

**6-12.1 Requirements.** The Secretary of State may require licensed Michigan brokers to submit their records in an electronic format under the authority of Broker Rule 10. This applies only to records of vehicles sold at retail by a licensed dealer when a broker is involved in the transaction.