

Property & Casualty Newsletter

August 2018: Auto Dealerships



Protecting Your Dealership with Demonstrator & Borrowed Vehicle Agreements

Whether you're a franchised or non-franchised Auto Dealer, it's important to know who is driving your vehicles and what you can do to protect yourself when they are involved in an accident.

Dealerships can help protect themselves by using a Demonstrator Agreement and a Borrowed Vehicle Agreement. They serve different purposes but are both important agreements to have in place.

Demonstrator Agreement

A Demonstrator Agreement (DA) helps advertise the dealership's product by allowing designated employees to use vehicles – such as taking the car home to be used for personal use – and show them off to the community. Occasionally, a non-employee is also given a vehicle to use under a DA.

Best practices in these situations include:

- If a non-employee is given a demo to drive, the dealership should require the non-employee to provide the insurance for the vehicle. For example, occasionally a demo will be given to a college coach to drive, with the school assuming liability for damages and injuries and providing evidence of insurance to the dealership.
- Anyone given a vehicle under the DA should have an acceptable motor vehicle record. The dealership can run the Motor Vehicle Record or they might require the employee or non-employee to bring in a current MVR.
- When loaning a vehicle to an employee, the dealership's insurance is most likely primary; however, you can make the employee responsible for any collision/comprehensive deductible if the vehicle is damaged. The DA should specify if the employee will be responsible for thefts, vandalism, hit and run accidents, etc. Remember, insurance follows the vehicle.

- Nobody but the person signing the DA should be allowed to drive the vehicle, including family members, spouses, friends, etc.
- Make sure the DA details what the user should do in case of an accident.
- The dealership should have restrictions on the demo vehicle, including:
 - What it cannot be used for, such as towing, moving furniture, ride sharing for a fee, using the vehicle on vacation, racing, etc.
 - Requiring that the driver must contact the employer/vehicle owner if driven out of state.

Claim Example

A dealership's salesman let his son drive the demo vehicle to the movies. On the way home, the salesman's son hit a boy in a crosswalk, paralyzing him from the neck down. The dealership's insurance was considered primary, and in this case, the claim ended up being \$10,000,000.

Borrowed Vehicle Agreement

The best policy for loaner vehicles is actually not to loan vehicles at all.

Borrowed Vehicle Agreements (BVA) can be used for test drives or when a dealership loans a customer a vehicle. Many dealerships have loaner programs for when a customer leaves their vehicle at the dealership, typically overnight for service, or when an extended test drive is approved.

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The BVA should include the following information:

- **The required age of the driver:** Over age 25 is preferred, and younger than age 21 should never be allowed.
- **The customer's driver's license and insurance information:** This should be obtained and used only for the purpose of the BVA.
- **Confirmation that the borrower's insurance will extend to the dealership vehicle while the customer is test driving or borrowing the loaner:** This is important because not all states allow a customer's auto policy to insure the physical damage on the dealership vehicle if the customer is involved in an accident and is found to be at fault.

However, the liability to a third party caused by an accident in which the customer is at fault should be covered under the customer's own personal auto policy (unfortunately, of course, there are always exceptions to the rule).

- **Primary liability assignment:** In this agreement, the customer agrees that their own personal insurance or self-insurance is the primary coverage for any loss or damage caused by the customer.

Other requirements are common sense, such as specifying that the borrower will not drive the vehicle while it's impaired, will always use their safety belts, will obey all traffic laws, etc.

Claim Example: A customer borrows a dealership vehicle while their vehicle is in for service. Driving home from a party with friends, the customer caused a collision with a motorcycle. The customer had no personal auto insurance and a BVA was not completed. In this case, the dealership's insurance was primary and the cost of the claim was over \$800,000.

The best way to limit your exposures as an auto dealer is to follow policies and procedures and have the right agreements in place, and Demonstrator and Borrowed Vehicle Agreements are a good place to start.

Please contact your Moreton & Company consultant with any questions.

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