

## **SECTION 8**

# **CONSIGNMENT SALES BY DEALERS OR PUBLIC AUCTIONS**

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Any dealer or public auction may sell or offer to sell South Dakota titled vehicles (includes motorcycles, trailers, snowmobiles, mobile/manufactured homes, boats) on consignment; the dealer must be licensed for the type of vehicle being sold on consignment. No person may sell or offer to sell on consignment a vehicle that the manufacturer's statement of origin has not been transferred. A titled vehicle that is at least 20 years old and a motorcycle that is at least 30 years old that is not titled in South Dakota may be sold at a public auction if a title is issued in the name of the seller.

An out-of-state dealer may sell a vehicle that is at least 20 years old or a motorcycle that is at least 30 years old that is titled in the dealer's name (out-of-state title) at public auction if the dealer purchases a permit from the Division of Motor Vehicles. The dealer must prove they are a dealer in good standing in the dealer's home state and has not outstanding dealer violations. The permit is \$250 if purchased before the auction and \$500 if purchased at or after the auction. A dealer in violation shall be denied a temporary permit for a period of 1 year from the date of violation.

A consignment sale, other than a public auction, between dealers is prohibited.

Consignment is defined as: The delivery of a vehicle by the owner into the possession of another without transfer of title for the purpose of sale or where there is any condition that the purchaser does not have an absolute obligation to pay for the vehicle/boat or has a right to return the vehicle to the seller.

Public auction is defined as: a business that is open to the public where South Dakota titled motor vehicles/boats are consigned, displayed, and auctioned to the highest bidder by an auctioneer.

Auctioneer is defined as: a person who presides over a public auction where following an initial starting price, bids are taken from 2 or more people until a final bid or price is established for a motor vehicle.

Any dealer or public auction that sells or offers to sell South Dakota titled vehicles on consignment shall enter into a contract with the consignor. The contract shall contain, at a minimum, the following information:

1. Name and address of consignor (owner);
2. Name and address of consignee (dealer or auctioneer);

3. Vehicle description: title number, year, make, and serial number;
4. When applicable, completed odometer disclosure;
5. Agreed upon price or range;
6. Agreed upon amount that the owner will pay the dealer or auctioneer;
7. Length of time vehicle will be with the dealer or auctioneer;
8. Disclosure by dealer or auctioneer that the sale is a consignment sale;
9. When applicable, completed damage disclosure;
10. Signature of owner and dealer or auctioneer.

The following documents must be available at the dealership or auction prior to sale of a vehicle:

1. South Dakota title in the name of the consignor;
2. Completed and signed consignment sales contract containing information set out above.
3. When applicable, an odometer reading certified by the owner (may be included on contract).
4. When applicable, a damage disclosure statement signed by the owner (may be included on the contract).
5. Federal FTC Buyer Guide must be displayed in a vehicle being offered for sale on dealer lot.

The following documents must be available at the dealership or auction upon sale of a vehicle:

1. South Dakota title properly assigned by the consignor (owner);
2. Bill of sale.
3. Prior disbursement of proceeds if lien is indicated (lien must be satisfied and released).

4. Seller's permit which is provided by the seller to the purchaser upon sale of the vehicle.

A violation of these provisions is a Class 2 misdemeanor.

A dealer and auctioneer are required to keep the following records:

1. Dealer or auctioneer must maintain record of consignment sales for 5 years;
2. Dealer or auctioneer must retain a copy of consignment sales contract for 5 years.

A dealer or an auctioneer may not sell a vehicle that has a title with a lien on it for less than the full amount of the lien, without the advance written consent of the lienholder. A dealer or an auctioneer may not release the proceeds from the sale of a vehicle with a lien until the lienholder signs a release of the lien. A violation of these provisions is a Class 2 misdemeanor.

Every dealer and public auction shall keep books, records and files. A record shall be kept on every vehicle offered for sale, including the serial number or vehicle/hull identification number and a description of the vehicle and the name and address of the owner. If the vehicle is sold, the name and address of the person purchasing the vehicle and the price for which it is sold.

If a dealer takes a vehicle in on consignment and the vehicle does not sell and consequently is returned to the seller, the dealer, in charging the customer a fee for displaying the vehicle on the dealership lot, must charge the customer sales tax. Since commissions are not sales taxed, in the event the dealer sells a consigned vehicle, sales tax is not assessed.

If a vehicle is sold at auction, the auctioneer's commission is subject to sales tax (an auctioneer's commission is specifically taxed under statute).

All records must be open and available to inspection by a dealer inspector.