

# texas Dealer

MAY 2014

The official publication of the Texas Independent Automobile Dealers Association  
[www.txiada.com](http://www.txiada.com)

## Pharr - reaching Implications

Association-led  
coalition stops city  
ordinance aimed at  
Valley auto dealers

### In This Issue:

- Michael W. Dunagan on the Use of Electronic Tracking and Disabling Devices
- Building the Culture Builds Success
- Chuck Bonanno's "Top 10 Mistakes of Buy Here, Pay Here Dealers"

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# texasDealer

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**Editor's Note:** The Texas Department of Motor Vehicles recently informed the association that they no longer compile the enforcement action summary that the agency previously used for internal purposes and which was provided as a courtesy to TIADA for use in our "Fines & Violations" section. TxDMV has indicated that the underlying enforcement action information can still be obtained through the public information (open records) process. According to the agency, requests for enforcement division records may be made via email to [lori.smith@txdmv.gov](mailto:lori.smith@txdmv.gov). It is our understanding that such a request will not result in a summary report, but rather in delivery of the actual, individual final order documents, each of which may be several pages each in length. We apologize for any inconvenience this situation may cause for our members.

The Editor of the *Texas Dealer* magazine is Jenny Kroening, Special Projects Director of TIADA. To change your address for subscription and/or for other TIADA products, call the TIADA state office at 800.442.5944, 512.244.6060 or fax 512.244.6218. E-mail: [info@txiada.com](mailto:info@txiada.com). New Membership/Subscriptions: If you are a member of TIADA, you may receive this magazine free of charge. Membership year runs from Jan 1 to Dec 31. Back issues are available for \$20 each subject to availability. Send a check or money order, along with your name and mailing address to TEXAS DEALER, Attn: Back Issues, 9951 Anderson Mill Rd., Suite 101, Austin, TX 78750. Sorry, no billing. Notice to all members concerning services and products: TIADA was established in 1944 to develop professional standards of service and conduct for the independent auto industry. Opinions expressed herein are not necessarily those of the TIADA management, the Board of Directors or the membership. Likewise, the appearance of advertisers or their indemnifications of TIADA does not constitute endorsement of the products or services featured.



## officers' message



by HL Hensley

Automax of Lubbock  
**TIADA SECRETARY**

# Exhibiting the Value in Attending the TIADA Conference

**C**an I ask you a few questions? What if I told you I could give you the tools to increase your application count and show you how to close more sales? What if I shared with you some skip-tracing ideas to locate those hard-to-find accounts that have your collection team stumped? Do I have your attention yet? What if I gave you some pointers on how to operate the financial side of your dealership? If I could do even one of these items, I imagine you would want to know how. Well, I can, and I want to show you how.

At the Hyatt Lost Pines Resort and Spa (just outside of Austin) from July 27–30, 2014, TIADA will host its annual conference. The TIADA Annual Conference and Expo ([www.TiadaAnnualConference.com](http://www.TiadaAnnualConference.com)) is the seminal event each year for used car dealers. Dealerships that specialize only in special finance, only in buy here, pay here, or a combination of the two, will find ways to streamline their operation, improve collections, and maximize sales. Without doubt, you will leave the conference armed with more information than you came in with!

While the conference is the highlight, I'll let you in on a little known secret: It's the Expo that sets this event apart from the various other industry-specific events during the year. Each year TIADA works hard to partner with vendors to deliver the cutting edge of product availability to our market segment. These cultivated partnerships work in tandem with dealers and the results are dynamic.

The TIADA Expo supplies a unique opportunity for dealers to build relationships, learn about new products, and compare providers in all lines of businesses. While not diminishing from the conference education tracks, speakers, 'hallway-conversations' with other dealers (these are all exceptional also), the Expo is really energizing for most dealers.


During the year, many dealers spend the majority of their time and energy at their dealership, thus limiting the amount of exposure they have to other dealers and vendors. While we have access to the internet and read various industry-related

periodicals, dealers are provided an opportunity to network one-on-one with other dealers and great vendors at the TIADA Annual Conference and Expo. In addition, during the Expo dealers can talk face-to-face with industry product leaders. These 'collaboration sessions' always educate me in terms of how I can strategically improve my operations as well as take advantage of a product that will allow me more time to work on my dealership, not just in my dealership.

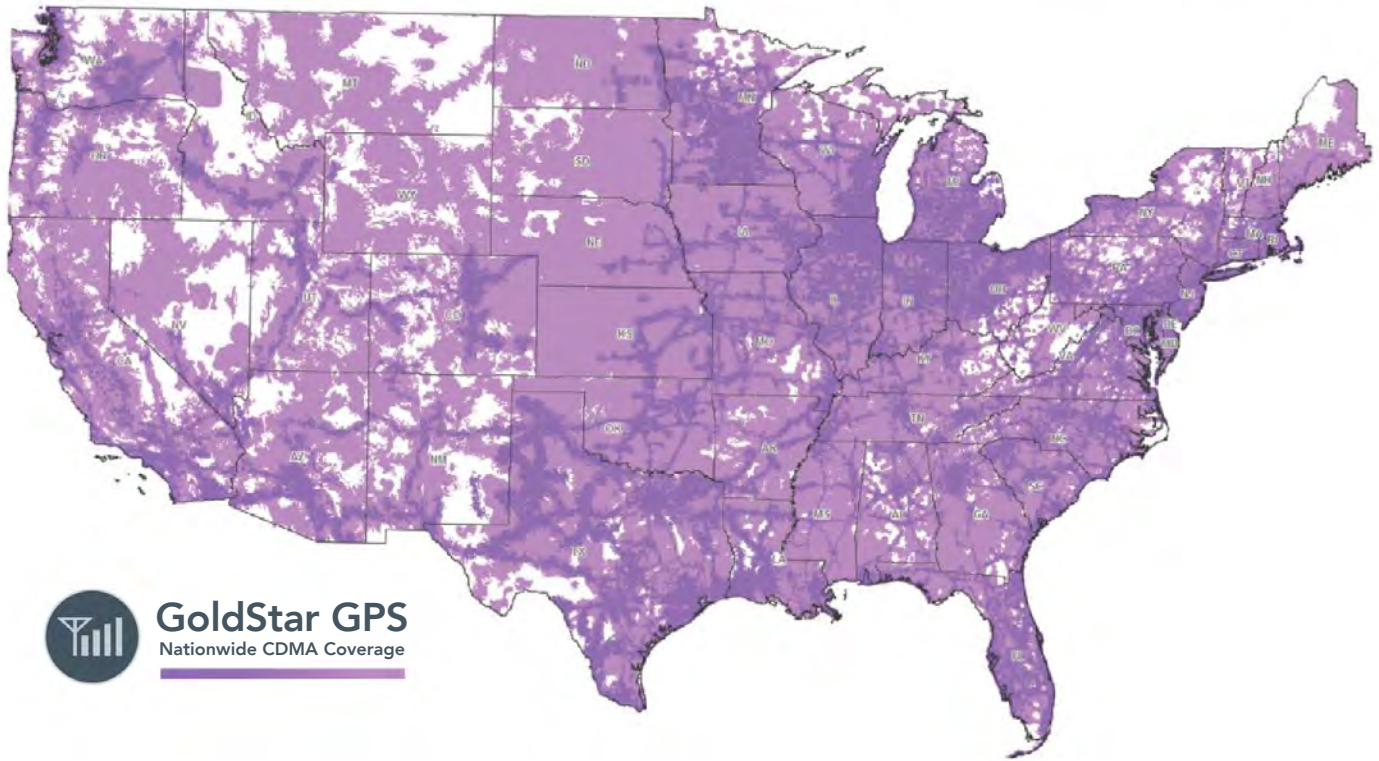
At the Expo I see familiar faces and meet new ones, always believing each of these vendors have my best interest in mind. An example from a couple of years ago: I met a vendor selling product X. During our conversation it became apparent their product was not in line with my company's needs. Instead of dismissing me and passing me along, this vendor listened to how my dealership operates and offered me some very helpful suggestions on how I could maximize certain metric-driven quantifiables.

This example is not an exception; rather, in my experience, it's the rule. At the Expo each year, I'm reminded how involved the vendors are in our market segment. While I'm not the need-buyer of this product I can't tell you how many people I've referred to this vendor over the years because I realize their unique desire to want me to succeed, even though I'm not using their product. Wow, that's partnership!

When the conference wraps up, vendors pack up their booths, and dealers head back to their dealerships, it is the partnerships developed that will endure. From new dealer acquaintances to new vendor knowledge points, these alliances are what help guide us to success.

Make the decision today and navigate your browser to [www.TiadaAnnualConference.com](http://www.TiadaAnnualConference.com). Here, you can review the conference schedule of events as well as get registered for both the hotel and conference. A word to the wise: register earlier than later! Every year I take my family to this conference and every year we all have a great time. Join us this year and meet some great dealers, vendors, and families. See you in July! 

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# feature

## Building the Culture Builds Success



by Scott Muscutt  
Coach and Founder,  
Learn Lead WIN

*{Editor's Note: Scott will be a speaker at the 2014 TIADA Annual Conference and Expo.}*

I have had the pleasure of working with teams for 15 years now, and whether they are in the car business or the professional sports business, if they are at the pinnacle of their profession they have one thing in common: They are in the people business. They are absorbing the “10 Principle.” If you “10nd” to your people they will “10nd” to your business!



But even the teams that find the 10's in and for each other ask, “How do we take our people and create teams of great culture... and in the shortest amount of time?”

The answer is a two-part game plan:

- 👉 Recruit great teammates.
- 👉 Build a cultural lens.

Saturday night is hockey night in Canada. Every fan countrywide is glued to their television all winter long. On Saturday nights during the summer, every hockey coach is glued to his phone, interviewing player after player, searching for the guy who will bring fans to their feet as he raises that championship cup over his head.

*I had one of those June Saturday night phone calls.*

“Well coach, can you tell me a little bit about your team?”

“We will get to that in a quick second, but first can you tell me a little bit about your team at Northeastern?”

“Unfortunately there's nothing good to tell. We never had much of a team... we didn't experience success on or off the ice... no one really liked or trusted our coach... no one invested in our vision... and our relationships with each other were limited at best. The whole thing is just an experience I can't wait to get away from...”

*Two hours later I spoke with another potential recruit.*

“Coach, can you tell me a little bit about your team?”

“We will get to that in a quick second, but first can you tell me a little bit about your team at Cornell?”

“Oh, WOW! Where do I begin?! It was an amazing four years. We didn't win the national championship but we were “right there” competing for it every year... we were united and shared a vision on and off the ice... our coach was an amazing teacher, leader, and role model that we all had tremendous respect for. You know, if the NCAA would let me, I'd go back and play four years all over again!”

I told both players exactly the same thing. “I think you will find the same thing here.” Because they *will*.

The first player would have found that we didn't have much of a team and we didn't experience success on or off the ice; that no one really liked or trusted me as a coach; no one really invested in a team vision and the teammates didn't like each other.

The second player had an amazing two years with our team and he DID experience tremendous success on and off the ice. Every one of his teammates appreciated him as a man and respected his vested commitment to our vision. I don't know if he thought I was an amazing teacher, leader and role model but here's what I do know: HE was. Travis Bell, the kid from Cornell "10nded" to the culture and the culture "10nded" to him!

1. Character is the sum of our choices (teammates).

Recruit wisely. Know what you are looking for and only take *the best* — not the best available. In the end, we have a choice in everything, so we must be careful how we choose because the choices we make... make us!

2. Culture is the sum of our character (teams).

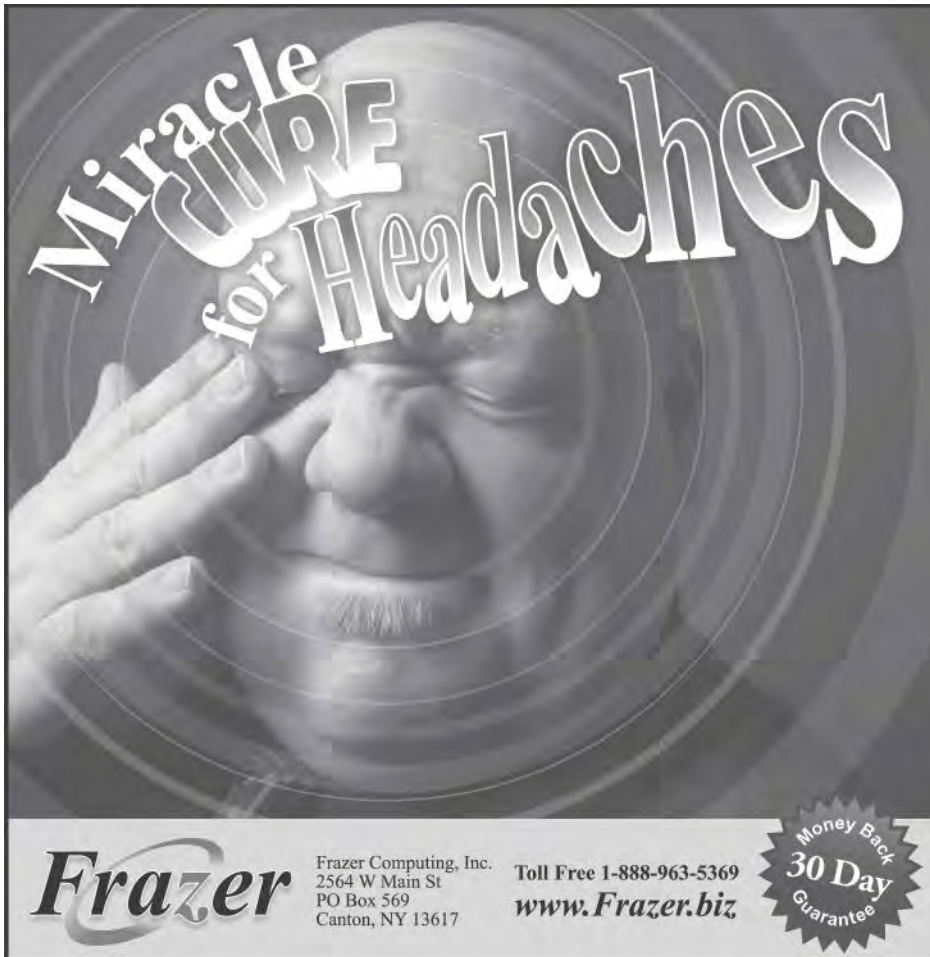
Build that lens. It is not enough that people

see your vision. They have to see your vision through the cultural lens that makes teams successful. People don't quit companies or organizations; quitting people quit people!

The first player made the choice not to accept responsibility and was ready to quit. He is a person that will attract and create other quitters.

Travis Bell developed a cultural lens that took responsibility for his character and made choices based on that responsibility. He was ready to win. He was a player that attracted and created champions.

Culture is the internal structure that supports every organization. It doesn't matter if you're a hockey coach looking for the right players or an automobile dealer looking for the right salesperson. Your team becomes exponentially more successful when you seek the people who have chosen responsibility for their character. Recruit the best, build their cultural lens and empower them to "10nd" to your championship business! 🏆



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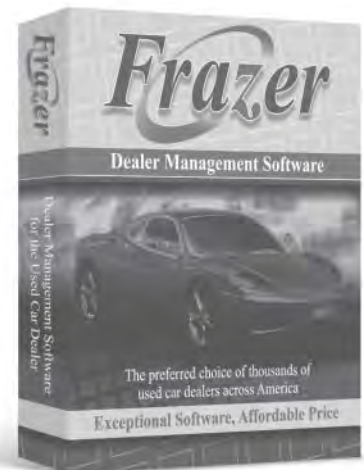
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- Title & Registration Fees
- Acquiring Inventory
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- The Buyer's Guide - As Is
- SOLD! The Deal Jacket
- Record Keeping
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**Dorothy Starr**, Motor Vehicle Manager, Tarrant County Tax Assessor-Collector

**Danny Langfield**, Deputy Director, TIADA

**Michael W. Dunagan**, attorney, Jameson & Dunagan, TIADA General Counsel



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rockmotorsllc@tisd.net  
Meeting - 1st Monday (Monthly)

## FORT WORTH

Jerry Smith  
HJ Smith Automobiles  
817.282.0102  
hjsmithauto@yahoo.com  
Meeting - 4th Thursday (Monthly)

## DALLAS COUNTY

Kathrine Tolsch • CICO Auto Sales  
214.352.9282  
cicoauto@verizon.net  
Meetings every other month

## HOUSTON

Michael Zak • Dixon Motors  
281.931.1300  
houstoniada@gmail.com  
Meeting - 2nd Monday (Monthly)

## WACO-HEART OF TEXAS

Bill Miller • Bill Miller Used Cars  
Meeting - 2nd Monday (Monthly)  
For more information contact  
Eddie Massey, Massey Motors  
254.753.6661

## SAN ANTONIO

Sonny Paredez • Discount Auto Center  
210.680.5600  
sonnyparedez@yahoo.com  
Meetings quarterly  
(dates announced at [www.tiada.com](http://www.tiada.com))

## EL PASO

Ricardo Gardea • Cars Plus  
915.778.8285  
cars\_plus@att.net  
Meeting - 3rd Friday (Monthly)

## AUSTIN

Brent Rhodes • Fiesta Motors  
512.312.2201  
brent@fiestamotors.net  
Meetings quarterly



# 2014 TIADA auto auction

## ABILENE

### Alliance Auto Auction of Abilene

6657 US Hwy 80 West / 79605  
325.698.4391 / 866.310.3555  
www.allianceautoauction.com  
Ben Stock, Auction Manager  
Danielle Staples, Office Manager  
Friday: 10 AM

### CM Company Auctions

2258 S. Treadaway / 79602  
325.677.3555 / 866.310.3555  
www.cmauctions.com  
Gregory Chittum, Owner  
Thursday: 10 AM

## AUSTIN

### America's Auto Auction

**Austin / San Antonio**  
16611 S. IH-35 / Buda / 78610  
512.268.6600  
www.americasautoauction.com  
John Swofford, General Manager  
Tuesday: 1:30 PM

## BEAUMONT

### Gulf Coast Auto Auction

4450 South 11th Street / 77701  
409.840.6000  
www.gulfcoastautoauction.com  
Roger Rashall, General Manager  
Rocky Rashall  
Blake Rashall  
Thursday: 7 PM

## CARROLLTON

### Texas Lone Star Auto Auction

2205 Country Club Drive / 75006  
214.483.3597  
www.TLSAA.com  
Jeff Dunning, Jr., General Manager  
Tim Clement, Assistant GM  
Michelle Elrod, Office Manager  
Tuesday: 1 PM / Thursday: 2 PM

## CORPUS CHRISTI

### Big Valley Auto Auction

5661 Agnes St / 78405  
361.356.2020  
www.bigvalleyaa.com  
Bernard Watson, Owner  
Billy Kratz, GM  
Tuesday: 10 AM

## DALLAS / FT. WORTH METROPLEX

### ADESA Dallas

3501 N. Lancaster-Hutchins Rd / Hutchins / 75141  
972.225.6000  
Ken Osborn, GM  
Wednesday: 3 PM – New Car Trade  
Thursday: 9:30 AM – Consignment/Fleet/Lease

### Alliance Auto Auction of Dallas

9426 Lakefield Blvd. / Dallas / 75220  
www.allianceautoauction.com  
Christopher Dean, General Manager  
Wednesday: 1 PM

### America's Auto Auction – Dallas

219 N. Loop 12 / Irving / 75061 / 972.445.1044  
www.americasautoauction.com  
Robert Hammonds, GM  
Ruben Figueroa, Assistant GM.  
Tuesday: 2 PM / Thursday: 2 PM

## EL PASO

### El Paso Independent Auto Auction

7930 Artcraft Road / 79932 / 915.587.6700  
www.epiaa.com  
Lori Pidgeon, GM  
Luke Pidgeon, AGM  
Wednesday: 10 AM –  
Fleet/Lease & Dealer Consignment  
Wednesday: 1 PM as scheduled –  
GSA Public Auction

## HARLINGEN / MCALLEN

### Big Valley Auto Auction

4315 N. Hutto Rd. / Donna / 78537  
956.461.9000  
www.bigvalleyaa.com  
Bernard Watson, GM  
Lisa Harms, alternate contact  
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## HOUSTON

### America's Auto Auction – N. Houston

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Buddy Cheney, GM  
Ben Nash, Sales Manager  
Mondays: 6:30 PM

## LONGVIEW

### Alliance Auto Auction, LLC

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903.212.2955  
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Jeff Loftin, Auction Manager  
Brenda Hunt, Office Manager  
Friday: 10 AM

## LUBBOCK

### Lone Star Auto Auction

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806.745.6606 (local) /

888.299.6606 (toll-free)

www.lsaalubbock.com

Jim McNulty, Owner

Dale Martin, General Manager

Wednesday: 10 AM

## LUFKIN

### Lufkin Dealers Auto Auction

2109 N. John Redditt Drive / 75904

936.632.4299

Wayne Cook

Thursday: 6 PM

## ROCKWALL

### Lakeside Auto Auction

1810 East I-30 / 75087

972.771.9919

www.lakesideaa.com

Pete Conley, Owner

Tuesday: 7 PM

## TYLER

### Greater Tyler Auto Auction

11654 State Highway 64 W / 75704

903.597.2800

Tuesday: 5 PM – Repo Lane

Tuesday: 6 PM – Consignment

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[www.txiada.com](http://www.txiada.com)

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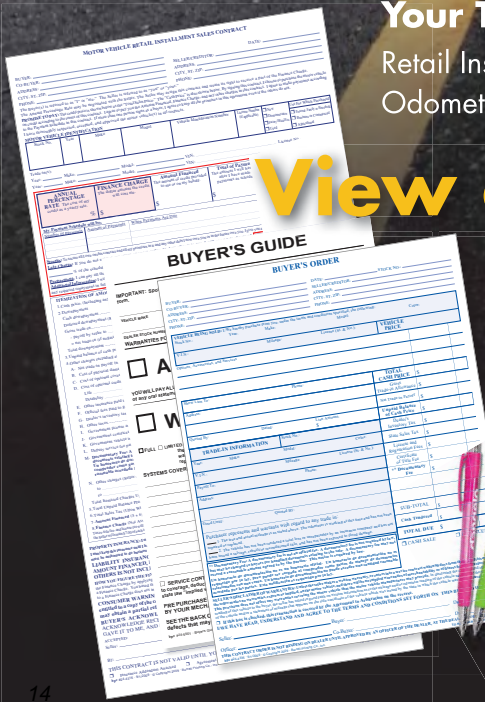
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Hector Rodriguez  
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Pharr, TX 78577

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31000 I-10 W  
Boerne, TX 78006

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McAllen, TX 78504

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Edgar Prishker  
407 W US Hwy 83  
Pharr, TX 78577

J C Used Cars  
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Houston, TX 77095

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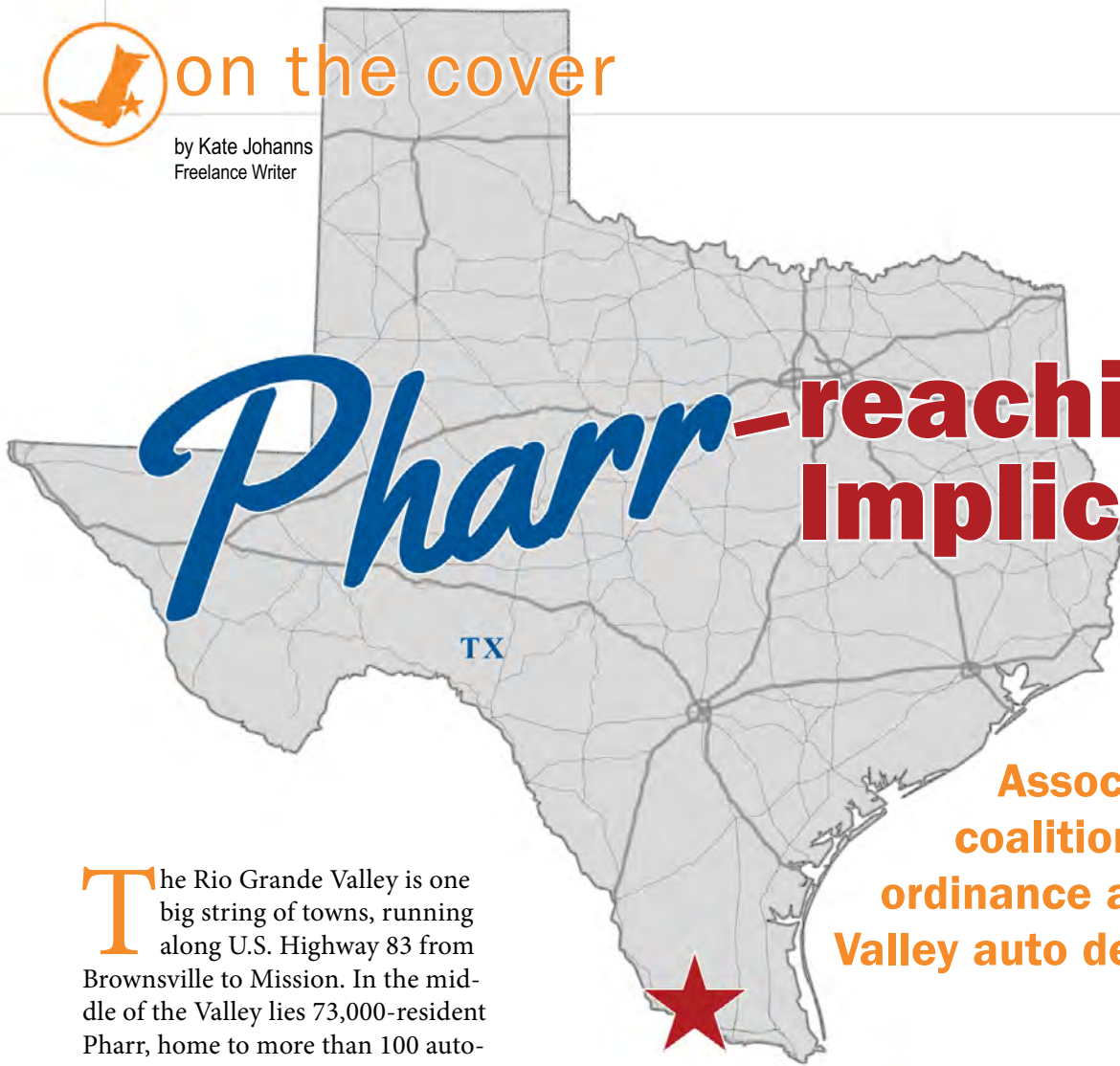
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by Kate Johanns  
Freelance Writer



# Pharr-reaching Implications

**Association-led coalition stops city ordinance aimed at Valley auto dealers**

The Rio Grande Valley is one big string of towns, running along U.S. Highway 83 from Brownsville to Mission. In the middle of the Valley lies 73,000-resident Pharr, home to more than 100 automobile dealerships of all types, from big franchises to second- and third-generation independent lots.

“If you’re looking for a used car, you think Pharr,” says Raul Gonzalez, a TIADA member and general manager of A&B Auto Sales. “People come here from all over the Valley to buy good quality used cars.”

That reputation, however, was recently endangered when the Pharr City Commission attempted to pass an ordinance that would have hit all dealers in their pocketbooks. The ordinance was stopped by an association-led coalition that pointed out the proposal’s potential harm to the industry—not to mention its questionable legality.

## Rallying the troops

TIADA was tipped off to the Pharr proposal in February, when a reporter from Valley newspaper *The*

“If it happened in Pharr, it opened the door for it to happen somewhere else.”

Lisa Franz,  
Big Valley Auto Auction

*Monitor* called the association for a comment on the ordinance, which, in its initial form, would have imposed an inaugural \$1,000 licensing fee on each Pharr dealer and a \$500 annual renewal fee, as well as a \$25 fee per vehicle sold. Plus, used car dealers would have been required to give an unspecified percentage of their gross sales back to the city.

Generally, TIADA advocates for its members at the state level. But when this issue came to the association’s attention, alarm bells went off. This ordinance, if passed, could have easily set a precedent and been replicated in towns across the Valley and the entire state.

“This could have been a really big deal, so it really hit home with us,” says Jenny Kroening, TIADA’s director of special projects.

TIADA got to work, calling Valley members and representatives for franchise dealers, including the Valley Automobile Dealers Association (VADA) and the Texas Automobile Dealers Association (TADA). The groups collaborated on a letter to the Pharr City Commission—and they also placed a call to the law firm of



Roerig, Oliveira and Fisher LLP. The “Oliveira” of that firm is State Rep. René Oliveira, who drafted a letter for the associations explaining the proposed ordinance’s many issues.

“It took a little bit of give and take, but once the city commissioners realized the potential impact to their dealer constituents, they did the right thing.”

Danny Langfield,  
TIADA deputy executive director

Although Oliveira worked on the issue in his capacity as a private attorney, his experience in the Texas Legislature makes him an expert on state taxation. Oliveira’s legislative service includes almost 20 years

on the House Ways and Means Committee, including six years as chairman. This committee has jurisdiction on all bills and resolutions related to raising state revenue.

“The original versions of the Pharr ordinance attempted to impose taxes and fees that cities are not authorized to impose,” Oliveira says. “Additionally, the ordinance was so poorly written that anyone remotely involved in the sale of a car—mechanics, secretaries, car detailers, even advertisers—were going to have to pay to register with the city. The car dealers needed to have those issues resolved before Pharr or any other city began to implement the proposed tax and registration requirements. Fortunately, the commission realized there were issues with the approach and made appropriate changes.”

### Problems, problems, problems

The story of how the proposal was stopped takes a few twists and turns.

First reading of an initial passage of the proposal took place Feb. 17. It was after this reading that TIADA, VADA and TADA got involved.

The coalition’s initial letter to the commission focused on the potential impact on the city of Pharr.

“First and foremost is our fear that the automotive sales industry of Pharr, both new and used, could suffer direct economic damage as a result of this ordinance,

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## A Job Well Done

By Trey Crouch  
Wheels on Credit (McAllen)

Do you own a dealership in Pharr, Texas? Neither do I. But I was at the dealer meeting TIADA hosted at Big Valley Auto Auction on March 18 to hear about the proposed city ordinance in Pharr. I am the VP of Region VI for TIADA and I knew if an ordinance like this passed in Pharr, it wouldn't be long before other municipalities all across the state started getting the idea that car dealers were easy pickings.

The legal expertise of Rep. Rene Oliveira and his law firm was instrumental in helping establish how many of the provisions of the proposed ordinance were in conflict with state law. By working closely with Rep. Oliveira, TADA, and several involved used and new car dealers in the area, our association was able to play a key role in helping the commissioners understand where they were falling afoul of state law and how the proposal would negatively affect the community and the industry.

From the perspective of the TIADA board of directors, I want to thank TADA for working together with us on this issue—their support was key. And special kudos to the local dealer members of both associations who took the time to get involved and fight for their industry.

There is a lesson to be learned here for all TIADA members from all parts of Texas: Keep an eye on the activities of your local government. TIADA is a state association. We direct significant resources toward protecting your interests at the state capitol and with the state regulatory agencies. However, no state association can keep their thumb on the pulse of all the regulatory activity occurring at the municipal level. So stay vigilant and make sure something like this doesn't happen in your back yard.

which would in turn create a negative fiscal impact to the city," the letter read.

The letter also began to detail the questionable legality of the ordinance's fee structure—which constituted an additional tax on dealers, something a municipality lacks the authority to do under Texas law.

The proposed ordinance had many issues, according to TADA General Counsel and Executive Vice President Karen Phillips.

"The [proposed ordinance's] definitions were troubling in that they were not specific and they were very broad," Phillips said.

By the time of the second reading March 6, the gross sales component had been eliminated, and the per-vehicle transaction fee had been switched from seller to buyer and dropped to \$10. Issues remained, however—six pages worth, in fact. That's how many pages it took Oliveira and his firm to detail the myriad legal problems with the ordinance. Among them:

- 🔴 Pharr's purpose for raising revenue in the first place. City leaders claimed that revenue was needed for a Texas Department of Transportation plan to turn maintenance of certain highways over to municipalities. However, as *The Monitor* pointed out, the TXDOT plan wasn't a sure thing.
- 🔴 Texas courts have made it clear that city ordinance fees—in order to be fees and not taxes—may only go toward regulation enforcement. The commission's plan to allocate ordinance dollars toward road maintenance would have turned the fee into a tax. The city has no authority to impose such a tax.
- 🔴 The Transportation Code forbids municipalities from imposing registration requirements on vehicle owners.

The Oliveira letter also pointed out some pressing logistical issues: Businesses would be prohibited from selling cars until they obtained the required license, so existing dealerships would have to shut down until the city dealt with the necessary paperwork—a huge load for a town with approximately 100 dealerships.

Plus, to avoid the hassle of Pharr's requirements, Valley car shoppers would hit the road.

"Most will simply drive to a neighboring city to buy a car, greatly profiting dealerships in McAllen, Edinburg, San Juan, Alamo and other Valley cities, at the expense of taxpaying Pharr dealerships and dealership employees," the letter read.

The letter closed by saying that although the dealer coalition had made every attempt to help the city address health and safety issues related to car lots, those efforts had been rebuffed, and should the ordinance be passed, the coalition would be obligated to pursue legal action.

### "They noticed that we were there"

While TIADA, VADA and TADA worked the legal side, the Pharr auto community worked the people side.

“We needed to get the word out on the street,” Gonzalez says. “I ran up and down the street to get a hold of everyone and get as many dealers as we could to the next meeting. It blew me away how many people didn’t have any idea what was going on. They thought, ‘It’s just a commissioners’ meeting.’”

“It blew me away  
how many people  
didn’t have any idea  
what was going on.  
They thought, ‘It’s  
just a commissioners’  
meeting.’”

Raul Gonzalez,  
A&B Auto Sales

Before the commission’s third reading of the ordinance, dealers gathered at Big Valley Auto Auction. Langfield spoke on the proposal and its detrimental potential.

“Danny was able to get across what actually was going on,” Big Valley owner Lisa Franz says. “If it happened in Pharr, it opened the door for it to happen somewhere else.”

Dealers packed the commission chambers for the third reading. Although the Pharr City Commission is unusual in that it doesn’t hear public comments, the auto dealer community’s presence was felt.

“They noticed that we were there,” Gonzalez says.

On third reading, commissioners verbally agreed to strip the fee structure from the ordinance, leaving only regulations on dealer location, lot size and groundskeeping, saying that logistics and public outcry had persuaded them to do so. But the coalition couldn’t start celebrating yet. When the amended ordinance language was released several days after the third reading, it contained a clause stating that the fee structure could later be imposed with merely a city resolution. This led the coalition, *The Monitor* and even some city commissioners to cry foul.

“It’s bad enough that Pharr City Commissioners do not allow the public to voice its opinion and speak during public meetings—as all other public area entities do—but to publicly act as if they are doing one thing and then to do the opposite is absolutely wrong,” *The Monitor* editorial board wrote.

City officials later told *The Monitor* that the resolution clause had been added “inadvertently” due to “miscommunication.” The commission held a special meeting March 27 where all language referencing fees was finally removed.

## Takeaway lessons

### WHAT ANY DEALER CAN LEARN FROM THE PHARR SITUATION

- 📌 **PAY CLOSE ATTENTION TO LOCAL GOVERNMENT.** Something buried in the fine print of an ordinance could have a major impact on your business.
- 📌 **RECOGNIZE THE IMPORTANCE OF LOCAL MEDIA.** *The Monitor* articles helped define the situation, and the newspaper’s editorials urged the commission to do the right thing by local businesspeople.
- 📌 **RELATIONSHIPS MATTER.** In situations involving city and state government, you and your fellow dealers aren’t competitors—you’re colleagues. “The car business is very competitive, and I was very impressed at how dealers put aside that competition and worked so hard to correct a common threat,” says State Rep. Rene Oliveira, who worked on the issue in his capacity as a private attorney. “Getting involved in issues like this is time-consuming and expensive, but Pharr dealers took up the fight without hesitation. The issues involved and legal minutiae were complex, but the dealers worked their way through them, understood the implications and took action. With help from the Texas Independent Automobile Dealers Association and the Texas Automobile Dealers Association, the Valley dealers did a great job of convincing the public and the commission that the original ordinance needed to be changed.”
- 📌 **ASSOCIATION MEMBERSHIP IS POWERFUL.** When TIADA, VADA and TADA speak, people listen. The associations have a strong reputation for expertise on legal and regulatory issues affecting the automobile sales industry.



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“The car business is very competitive, and I was very impressed at how dealers put aside that competition and worked so hard to correct a common threat.”

State Rep. René Oliveira,  
who worked on the issue in his  
capacity as a private attorney

“It took a little bit of give and take, but once the city commissioners realized the potential impact to their dealer constituents, they did they right thing,” Langfield says. “The association certainly appreciates the city’s willingness to work with the stakeholders on this issue.” Oliveira concurs.

“There seemed to be a lot of miscommunication between the city commissioners and the city staff, and what kept appearing on paper was different than what the commissioners were saying or wanted,” Oliveira says. “Once the commissioners realized the disconnects, they worked quickly to try to eliminate the flaws in the ordinance, and they deserve credit for working to correct the situation.”

### Power in numbers

“TIADA, TADA and VADA made this come down,” Gonzalez says.

VADA Executive Director Jon Buquet says that the teamwork between independent and franchise dealers was critical to a successful outcome.

“It worked out very nicely because we have a common cause,” Buquet says. “We had Danny’s expertise with the independent association, along with the expertise of our state association [TADA].”

Phillips agrees. “Dealers—or any type of business people, like doctors, lawyers and builders—working together is an effective means of getting your message to those who need to know what you’re up against.”

And that’s why Gonzalez is a believer in TIADA membership.

“I thought to call TIADA right away,” he says. “Support and strength is something you can’t put a price tag on. There’s absolutely strength in numbers—the difference between little A&B Auto Sales going up against the city of Pharr versus the entire state association.”



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# Schedule OF Events

## SUNDAY, JULY 27

- 2:00 pm – 8:00 pm . . . . .Registration / Help Desk
- 3:30 pm – 5:30 pm . . . . .Platinum Sponsor & Officers Activity (by special invitation)
- 7:30 pm – 8:00 pm . . . . .First-Timers Reception
- 8:00 pm – 10:00 pm . . . . .Welcome Reception

## MONDAY, JULY 28

- 7:00 am – 12:00 pm . . . . .Registration / Help Desk
- 7:00 am – 8:00 am . . . . .Continental Breakfast
- 8:00 am – 9:30 am . . . . .Opening General Session: “The Power to Lead,”  
Jonathan Sprinkles, keynote speaker
- 9:00 am – 10:00 am . . . . .Meet & Greet for Spouses/Guests/Children
- 9:45 am – 10:45 am . . . . .Concurrent Breakout Sessions
- 10:45 am – 11:00 am . . . . .BREAK
- 11:00 am – 12:00 pm . . . . .Concurrent Breakout Sessions
- 12:00 pm – 3:00 pm . . . . .Exhibit Hall Grand Opening (Lunch with Exhibitors)
- 3:00 pm – 4:00 pm . . . . .Concurrent Breakout Sessions
- 4:00 pm–4:15 pm . . . . .BREAK
- 4:15 pm – 5:15 pm . . . . .Concurrent Breakout Sessions
- 5:15 pm – 7:00 pm . . . . .Exhibit Hall (Happy Hour with Exhibitors)

## TUESDAY, JULY 29

- 7:00 am – 10:00 am . . . . .Registration / Help Desk
- 7:30 am – 8:30 am . . . . .Continental Breakfast
- 8:30 am – 9:30 am . . . . .General Session: “30 Years in 60 Minutes:  
Lessons from the Front Lines,” David Walsh, keynote speaker
- 9:30 am– 9:45 am . . . . .BREAK
- 9:45 am – 12:35 pm . . . . .Dealer Roundtable Discussions
- 12:35 pm – 2:15 pm . . . . .Exhibit Hall (Lunch with Exhibitors)
- 2:15 pm – 3:15 pm . . . . .Legislative Summary
- 3:20 pm – 4:20 pm . . . . .Legislative Caucuses
- 4:30 pm – 5:30 pm . . . . .House of Delegates Meeting
- 6:30 pm – 7:30 pm . . . . .Awards Ceremony Reception
- 7:30 pm – 9:30 pm . . . . .Awards Ceremony/Dinner

## WEDNESDAY, JULY 30

- 9:00 am – 10:30am . . . . .Farewell Breakfast

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# 2014 TIADA ANNUAL CONFERENCE & EXPO

July 27- 30, 2014 ★ Hyatt Regency Lost Pines Resort & Spa

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#### EARLY BIRD MEMBER REGISTRATION (on or before 6/27)

1st Registrant	\$495	= \$	_____
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3rd & additional Registrants	_____ x \$295	= \$	_____

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1st Registrant	\$595	= \$	_____
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#### \*Does NOT include Education

(include children 10 and older)

Children Under 10	_____ x \$0	= \$	_____
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Presidential Awards Dinner	_____ x \$0	= \$	_____
Presidential Awards Dinner (under 10)	_____ x \$0	= \$	_____
Farewell Breakfast (Wed. 7/30)	_____ x \$0	= \$	_____

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Due to contractual obligations, no refunds will be given for any reason after July 21, 2014.

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The Hyatt Regency Lost Pines has discounted rooms available at \$169/night/tax for TIADA Conference attendees. Please contact the hotel directly for room reservations:

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# board of directors meeting minutes

## April 21, 2014 | TIADA State Office, Austin, TX

compiled by *Texas Dealer* staff

At its board meeting on Monday, April 21, 2014, TIADA heard reports and took the following actions:

President Michael Thomasson called the meeting to order at 1:05 p.m.

### **Minutes Of Last Meeting**

HL Hensley presented the minutes of the last Board of Directors Meeting.

A motion was made to accept the minutes.

Moved by Greg Zak, seconded by James Hobson

### **Treasurer's Report**



Katherine Tolsch presented the Treasurer's report.

A motion was made to accept the Treasurer's report.

Moved by Brent Rhodes, seconded by Ryan Winkelmann



### **President's Report**

Michael Thomasson presented the President's report where he:

-  Provided a facility update on the TIADA office
-  Shared information on an upcoming fundraiser for Speaker Straus

### **Executive Director's Report**

Jeff Martin presented the Executive Director report where he:

-  Provided a summary of the TACA board of directors meeting
-  Discussed changes to employee insurance

TIADA staff member Jenny Kroening provided an update on the TIADA professional development program.

TIADA staff member Cristina Rosales-Fowler provided an update on the 2014 annual conference as well as the dates for the 2015 annual conference.

### **Executive Session**

The board recessed to executive session from 2:55-3:55 p.m.

No actions were taken from executive session.

Deputy Director Danny Langfield updated the board on the final results of the 2014 membership renewal campaign.

Michael Thomasson urged the board to continue making welcome calls to new members.

Danny Langfield provided an update on TIADA's interactions with TxDMV and Texas Department of Insurance as well as TIADA's involvement in a recent proposed ordinance in Pharr, TX.

Jenny Kroening gave a summary of the progress for the upcoming member survey.

Katherine Tolsch presented the current budget for FY14.

Jeff Martin shared the 2015 draft budget.

Danny Langfield provided a proposal for a business partner program.

Greg Zak presented the Awards Committee Report and suggested a community leadership award be given by TIADA.

### **Old Business**

None

### **New Business**

A motion was made for TIADA to establish a member-only benefits program that increases the value of membership and facilitates non-dues revenue sources for the association to help advance our mission of strong industry representation.

Moved by Ryan Winkelmann, seconded by Trey Crouch. The motion passed.

A motion was made for TIADA to offer a Community Leadership Award starting in 2015.

Moved by Greg Zak, seconded by Sonny Paredez. The motion passed.

A motion was made to adjourn the meeting. Moved by Brent Rhodes, seconded by James Hobson.

Meeting adjourned at 5:52 p.m.

Respectfully submitted,  
HL Hensley, Secretary



A complete copy of any reports referenced in this document and more detailed notes from the meeting are on file at the TIADA office and available upon request.

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# regulation matters

## TxDMV Board Tweaks Customer ID Rules



by **Danny Langfield**

**TIADA DEPUTY DIRECTOR**

**A**s most readers are well aware, TxDMV started requiring a dealer to obtain his or her customers' ID in September of 2012. At that time, pretty much any government-issued identification was considered acceptable. Then, in September of 2013, the types of ID that could be accepted were narrowed down to the list you see in the box below. Shortly thereafter, the agency updated the 130-U Application for Texas Title and began requiring that the customer's ID type and number be included on the form.

Recently the agency passed some updates to the rules intended to clarify requirements with regard to, among other things, vehicles titled in the name of a business

“... the agency updated the 130-U Application for Texas Title and began requiring that the customer's ID type and number be included on the form.”

**ACCEPTABLE PHOTO ID TYPES**  
*Texas Administrative Code, Title 43, Chapter 217, Subchapter A, Rule §217.3*

**(6) Identification required.**  
 (A) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date.  
**The identification document must be a:**

- (i) driver's license or state identification certificate issued by a state or territory of the United States;
- (ii) United States or foreign passport;
- (iii) United States military identification card;
- (iv) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or
- (v) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document.

and title transactions involving a power-of-attorney. The rules also address what documents must be provided to the tax office as well as what must be retained in the deal jacket.

### **Vehicles Titled in the Name of a Business, Government Entity or Organization**

For the present, in order to apply for title in the name of an entity, you will need two things from your customer to meet the ID requirements:

1. **Photo ID** – this is the personal ID (such as driver's license) of the person who is making the purchase on behalf of the entity.
2. **Authorization to Sign** – this is an item that ties the person in the photo ID to the entity. This item may be a printed business card; an authorization letter on letterhead; or an employee ID.

TxDMV Enforcement has taken the position that a copy of both items above should be retained in the deal jacket. However, the new rules make it clear that neither of these items is required to be submitted to the tax office.

### **Changes Coming This Summer**

In the RTS release scheduled for this summer, the agency is planning to update their forms and systems so



that a federal employer identification number / employee identification number (FEIN/EIN) can be provided on the title application form (instead of the individual's ID) when a vehicle is being titled in the name of an entity. But for now, dealers should continue to provide the individual's ID information on the 130-U. More information on the FEIN option will be provided in the July issue of this magazine.

### Power of Attorney — Secure

When a dealership is assigned a secure power of attorney (brown POA), the rules have been amended to clarify that the dealer does NOT have to submit the photo ID for the agent of the dealer or Authorization to Sign on behalf of the dealership to the county tax office. Furthermore, TxDMV Enforcement has taken the position that the dealership does not need to obtain (or retain in the deal jacket) the ID of an employee of the dealership when the dealership has been assigned a secure POA.


### Power of Attorney — Non Secure

A non-secure POA may only be assigned to the dealership if the vehicle is exempt from the odometer disclosure law\* (i.e., the year model is 10 or more years old). As with the secure POA above, retention of an ID

is not required when the POA has been assigned to the dealership.

A non-secure POA may also be used in a dealer sale if the POA is assigned to a disinterested third party, defined as a person or entity with no relationship to the dealer or dealership. If such an assignment is made, then the dealer must obtain (and retain in the deal jacket) the photo ID of the person to whom POA has been assigned. Additionally, if the POA names an entity, the dealer must also obtain (and retain in the deal jacket) Authorization to Sign.

To reiterate: according to TxDMV, a dealer should not need to bring any of the ID documentation described above to the tax office. This will be effective upon VTR distribution of a Registration and Title Bulletin to the counties, which is scheduled for late April. If you have any issues at your county, you may be able to refer them to the RTB once it is provided to the counties. This RTB includes language which clarifies that dealers are not required to bring proof of photo ID or Authorization to Sign to the tax office.

As always, if you have any issues please feel free to give us a call at 800.442.5944. 

\* If a vehicle is exempt from the odometer disclosure law, then the back of the title does not need to be signed by the buyer.



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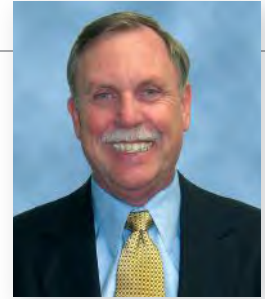




# feature

## Does More Really Equal Less in the Deep Subprime Auto Finance Industry?

by Kenneth Shilson  
President, NABD



{Editor's Note: Ken will be a speaker at the 2014 Annual Conference and Expo.}

**A**t the end of 2013, after reviewing Experian Automotive Data, I wrote that losses for special finance companies in the subprime auto finance industry were trending upward sharply. I attributed these higher losses to overly aggressive underwriting (“silly loans”) caused by putting “too much vehicle in the hands of too little customer.” This practice continued during the entire fourth quarter of 2013.

It has now become apparent that this aggressive special finance underwriting was designed to increase market share in search of higher yields. A recent report by Standard & Poor’s entitled, “*Subprime Loan Performance: The Best is Behind Us*”, indicates that “growing losses may push lenders to tighten credit standards”. This may not cause a financial collapse or crisis but will certainly have a near-term impact on the automotive finance industry.

Car sales (particularly used car sales to deep subprime customers) are highly sensitive to credit availability. Over 20% of the borrowing to buy NEW vehicles since 2011 has been driven by an increase in credit to subprime and deep subprime customers. The proportion of auto loans to customers with lower credit scores increased by 27% in 2013, up from 18% in 2009, according to the S&P report.

The aforementioned increase in subprime credit can be directly attributed to the Federal Reserve’s low interest rates, which encouraged investors to “buy anything that pays more than inflation, including securities backed by subprime auto loans”. When default rates were low and finance charges were high, it appeared that lenders could earn double-digit returns. Those attractive “paper profits” attracted more competitors who made the auto finance environment even more aggressive. However, “not all is gold that glitters and shines!”

Standard and Poor’s now reports that subprime auto loan delinquencies are increasing sharply, despite the fact that alleged unemployment is falling and wages are growing. The Experian Automotive Data recently released for the fourth quarter of 2013 shows that repossessions for special finance companies were up 76.3% over the same quarter of 2012. Repossession rates for finance companies were the highest since 2006 and their average charge-off was \$8,772. Entering 2014, the

subprime auto finance industry appears to have reached an important turning point!

### What does all this mean to the deep subprime (BHPH) industry in 2014 and beyond?

Unfortunately, I do not have a crystal ball and must use the benefit of hindsight and analytics to predict the future.

The tax season for the deep subprime (BHPH) industry started strongly in 2014 and is better than 2013. Competition from special finance in many parts of the United States (Texas, particularly) has declined. In 2013, the BHPH industry lost subprime customers to overly aggressive special finance lenders and experienced increases in voluntary repossessions, as their customers were “seduced” into buying late model vehicles with repayment terms they could not afford. The most prudent BHPH operators resisted the temptation to match these “silly loans” and opted to pass on that business. The aforementioned finance company loss metrics validates those decisions!

In 2014, the BHPH industry will benefit as special finance customers default on their overly aggressive loans and return to the BHPH marketplace. In addition, the availability of vehicles will increase, as more repos are re-marketed. This should keep the price of good, quality inventory at “reasonable” levels. More cars and more customers without finance company competition will be good for the BHPH industry in 2014 and beyond!

BHPH operators positioned to capitalize on these improved profit opportunities should prosper during the later part of 2014 and next year. My definition of “positioned” implies that they have the facilities, capital, technology, and the systems to handle the growth efficiently and profitably. One more thing: they must survive growing compliance challenges, which are imminent in the near future, as regulatory agencies like the CFPB, FTC, state Attorneys General and other state agencies “look under their hood”.

In conclusion, it now appears that these overly aggressive special finance companies did not really prosper from buying our best BHPH customers; they just rented them for a few months!





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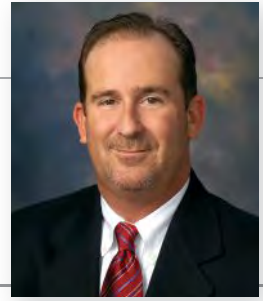
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# feature

## Top Ten Mistakes of Buy Here, Pay Here Dealers

by Chuck Bonanno  
Partner, Leedom and  
Associates, LLC.



*{Editor's Note: Chuck will be a speaker at the 2014 TIADA Annual Conference and Expo.}*

I am writing this article based on a question recently posed to me at a workshop. I was asked, "What are the biggest mistakes made by buy here, pay here dealers?" I thought about the question for a moment and before I knew it I had come up with ten mistakes dealers make regularly. I've shared these top-ten mistakes in the following paragraphs with the hope that you will not make them in the future or are not making them now. However, if you have made these mistakes in the past, learn from them. If you are making them now, change. If you learn from what you read here, you shouldn't make any mistakes in the future.

### Mistake #1: Not Having Enough Capital

I can help dealers with all sorts of operational issues, legal issues and accounting issues but if there is not enough cash flow in the business or access to capital, I cannot help. I conduct a BHPH training school each month and based on my most recent class, it now takes over \$2.0 million to get into a BHPH when using benchmark data to create a 20 to 25 car model. The same model required less than \$500K just ten years ago.

### Mistake #2: Growing Too Fast

The first challenge is to grow within your capital means. You must then grow at a rate that does not swamp your policies, procedures or your people. Your people and systems might be adequate for your current level of business, but you have to ask yourself, are we ready to grow by 50% or more? How will that growth tax your organization? Will your policies and procedures be sufficient when you are twice as big? Can your

people handle the added work, responsibility and challenges that loom ahead? I have seen some fine companies crumble under these pressures and the costs are enormous. I know the opportunities are great and the temptation is to act now, but please, act when you are ready.

### Mistake #3: Opening a New Store

This is a direct tie-in to the second mistake because most growth opportunities include adding additional store locations. The challenge is that most additional locations do not realize the same success of the original location. Too often, dealers open a second or third location because a "can't miss" location becomes available. This is a trap. If you do not have capital, systems, policies, procedures and, most importantly, quality staff, this "can't miss" location will miss. I wish I had a dollar for every dealer who closed satellite locations only to sell more cars. The reason is actually pretty simple. It is easier to manage your resources with fewer locations. Also keep in mind that a store 10-15 miles away is much easier to manage than one that is 50-100 miles away.

"...if you have made these mistakes in the past, learn from them. If you are making them now, change. If you learn from what you read here, you shouldn't make any mistakes in the future."

### Mistake #4: Becoming an Absentee Owner

Many of you are absentee owners meaning you have always entrusted your BHPH operation to a key manager or management group. I am not talking to you as much as I am talking to those dealers who are vital to the day-to-day operation of the store. I am speaking to those dealers who take up hobbies, need more vacation time or decide that they have built such a great machine that

they can take their foot off the gas. I wish this strategy worked. The problem for most dealers is that the key people in your organization still NEED you on a regular basis. The truth is that most key managers still have trouble making those tough decisions in your absence. You are the captain of the ship and the ship needs you.

### **Mistake #5:** **Inability to Change or Adapt**

The world is changing all the time and changes come quicker now than ever before. Your ability to adapt will directly impact your future. You cannot form a plan or a strategy based on your traditions. When I ask dealers why they do things a certain way, the most common response I hear is, "That's what we've always done," or "It's worked for us all these years." Please be careful not to fall in this trap. Continually ask yourself, "Is there a better way?"

### **Mistake #6:** **Changing the Car Model**

Whether by design or by default, do not underestimate what a change to car model does to your business. Wholesale prices have risen dramatically over the past few years and many dealers have thrown in the towel saying, "That's just what cars cost today." Please keep

in mind that a \$1,000 price increase in a car requires an additional \$250-300K in capital in just one year for a small dealer. What may be worse is that as you keep paying more for vehicles, they become harder to sell as fewer and fewer people qualify for the associated payments. It can be just as bad to stay at the exact same cost



of car over the same period. Those dealers who have stuck to their guns when it comes to wholesale prices are surely buying a worse and worse vehicle. That can be very shortsighted when you consider that you are in the

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finance business and you know that “the car must run the note” if you are to maximize profitability.

## Mistake #7: Hiring and Firing Too Slowly

In an effort to “save” money, dealers often wait to hire until the wheels have come off the wagon. This shortsighted approach is the most expensive approach for two reasons. The first is that you wait until bad things are happening in your business before you consider a new hire. That costs big money. The second reason is that these new hires are reactionary and therefore, marginal performers which inevitably result in additional turnover. It is much easier to hire when you are not in immediate need. You will make better decisions. On the other hand, firing too slowly is also a mistake. You keep people on the team who do not excel and you rationalize why you keep them. I have dealers say things like, “he comes to work every day” or “he doesn’t steal.” Those are pretty low bars with which to measure the quality of an employee. Dealers should review the staff



and ask where you can improve your team. You must then take the difficult step to fire poor to marginal people and replace them with all-stars.

## Mistake #8: Not Training Your People

Nobody you have ever hired comes trained. They may have experience but they are not trained. You must embrace the process of training people. Not training them will require you to fire them and replace them and repeat. The best companies I consult with have great internal training and they also take the time and spend the money for outside training. Training never ends, so do not expect anyone to get one dose of training and assume you are done.

## Mistake #9: Disliking Your Customer

This is not an issue for most of you, but when I review a failing or marginal BHPH operation, many times the underlying problem is the contempt the owners and workers feel toward the customer. I know it is hard to believe you wouldn’t like and appreciate someone who provides you a great living, but I see it all the time. It is easy to correct but that correction must come from within. I can’t make you like the business, the car or the customer. You either do or you don’t.

## Mistake #10: Not Having Fun

This is buy here, pay here. It’s not rocket science. You are not brain surgeons and you are not conducting war. You are selling and financing used cars to people with bad credit. Let’s make it fun. Let’s make it fun for the customers and fun for the employees as well. I put this burden on the dealer. It is your responsibility to create a fun, energetic and positive work environment. If you do not have that in your company, it’s you. Make the effort. It pays huge dividends. It creates long-term, happy employees and long-term, happy customers. That is the cheapest form of insurance you can buy for your business.

Well, there you have it. That is my Top-Ten List. There was no mention of gross profit margins, delinquency levels, repossession rates, or expenses. Those are tweaks to the business. The items above are the ones that will determine your future success. Good luck.

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## Use of Electronic Tracking and Disabling Devices Raises Legal Issues



by Michael W. Dunagan

TIADA GENERAL COUNSEL

*{Editor's Note: This article is drawn from Texas Automobile Repossession: A Lien Holder's Legal Guide, copyright 2014, by Michael W. Dunagan, which is available from TIADA.}*

Modern technology has made it possible to not only track and pin-point the whereabouts of a vehicle at any given time, but also to disable the ignition system from a remote location. The price of such technology has also come down to the point that many car creditors can afford to use it in collections and repossessions.

There are, however, a number of legal issues that are raised by the use of these devices. As is the case in most new technology, regulatory and statutory attention soon are attracted to the use of such devices. There has been little legislation or regulation enacted in Texas, but some other states have already gotten involved in the process, and it would not be unreasonable to assume that Texas one day may follow suit. Additionally, as use of GPS-based devices becomes better known to the public, resistance to their use, and in some cases, unauthorized removal, have occurred. We've heard multiple reports that some repair shops and vehicle-related electronics businesses have begun offering to disconnect or remove tracking and payment-monitoring devices.

The two major categories of satellite-technology devices used by car creditors are: (1) tracking devices that advise the creditor of the location of a vehicle; and (2) electronic shut-off devices that require the driver to periodically punch in a

“...the use of electronic collection and repossession devices is not prohibited in Texas, but care should be exercised in their installation and use, and proper disclosure and authorization forms should be used.”

code to be able to continue operating the vehicle. Each category of device has particular attributes that need to be examined in assessing the legality and risk of their use.

### Shut-off Devices

The electronic shut-off device is described as a device that can be installed in a motor vehicle in the ignition system that contains a

key pad and light warning system. When the debtor makes a payment, the car creditor can give a code to the debtor that, when downloaded into the system, causes a green light to come on and allows the vehicle to be operated. If a pre-designated period of time passes without payment being made, and a proper code entered into the system, the light turns red, a buzzer sounds and the ignition system is disabled. A series of blinking lights typically advises the driver as to the number of days left before the vehicle will not start. The system is designed to disable the ignition only when the vehicle is not being operated, thus preventing the vehicle from being started, but not to cause it to quit operating while the engine is running. The lien holder also has emergency codes which can be used to start the vehicle.

There are also GPS-based devices that allow whoever is in control of the programming to shut down a vehicle instantaneously, independent of any type of payment-prompt or key-punch pad.

The use of the shut-off system is a form of constructive repossession that allows the creditor to prevent a defaulting debtor from restarting,

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## OTHER TIADA EVENTS

**July 2014**

**27-30 TIADA Annual  
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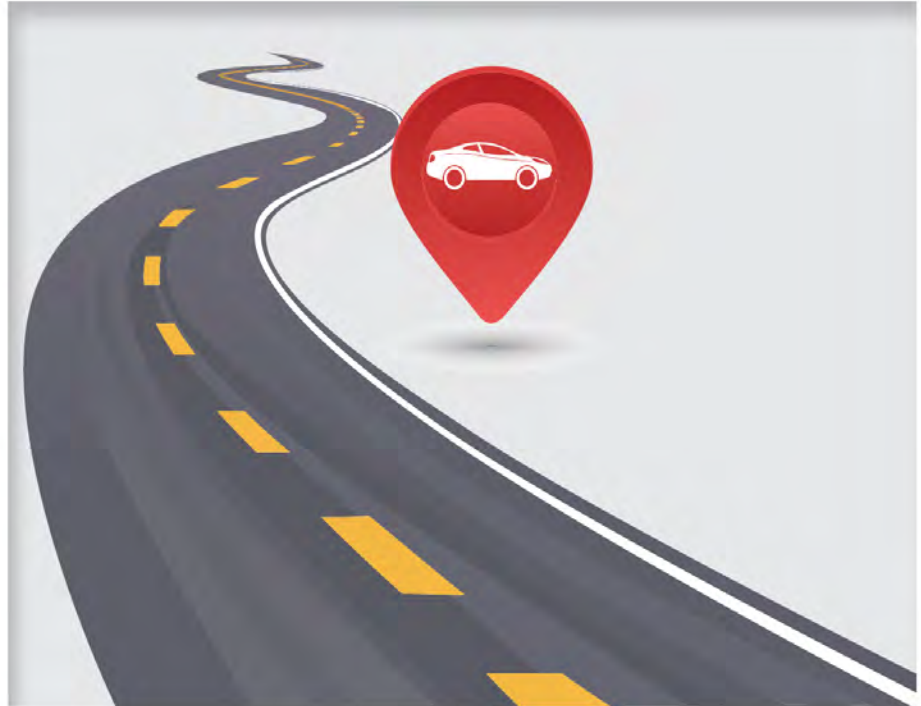
**29 TIADA House of Delegates  
Meeting**

(in conjunction with the Annual  
Conference and Expo)  
Lost Pines, Texas

and thus using, the vehicle. As such, it is probably authorized under the general repossession rights granted to secured creditors in the U.C.C. The interjection of advanced electronic equipment into the repossession process was probably not contemplated by the drafters of the law, so we don't have any specific provisions to look to for guidance. There are no court cases that indicate that use of such a device, in the absence

is the potential for it being blamed should the engine fail while driving. Creditor liability could be based on an actual failure of the device or improper installation that causes it to malfunction. Also, the device might be an easy target for a general failure of the engine which has nothing to do with the ignition system.

One risk of potential liability was recently highlighted by the allega-



of statutory prohibition, and when the debtor gives specific permission, would be prohibited.

It appears that the greatest potential threat of liability for a car creditor using a shut-off device is the possibility that an accident or injury will be blamed on the device. This was the basis of claims made in several suits filed against a dealer a number of years ago in a highly publicized case in Detroit (other claims were based on over-charging and misrepresentation of the quality of the vehicle sold, claims unrelated to the device). The fear is that a vehicle with a device installed in it will break down, resulting in an accident. Any time a device is placed in the ignition system, there

tions against General Motors that defective ignition switches purportedly caused fatal accidents by shutting down the engines of vehicles without warning.

In an actual case involving a Texas dealer, a fire erupted in the engine compartment of a vehicle upon which a shut-off device had just been installed. In addition to destroying the debtor's vehicle, the fire resulted in damage to vehicles parked on either side. Of course, claims were immediately made against the dealer based on alleged negligent installation of the device. And the fire marshal who investigated the fire ruled that an improperly installed shut-off device caused the fire. It doesn't take an

over-active imagination to extend this fact situation to a scenario in which the vehicle stalls on a freeway and is rear-ended by an 18-wheeler, or the vehicle stops on the tracks at a railroad crossing just as a freight train passes. The issue of whether the vehicle failure was caused by the device, or its installation, would likely result in costly and extended litigation, involving testing laboratories and expert witnesses.

To minimize potential liability of this type, a formal installation protocol should be established, with the work done only by authorized personnel. We would also recommend that an audit be performed of the car creditor's garage liability and/or general liability insurance to establish that any claims resulting from an alleged malfunction of the device be covered.

Given the amount of potential damages in injury suits, and the extra potential liability created by the use of these devices, car creditors

might desire to obtain umbrella coverage (for liability that exceeds the limits of the policies), which can usually be obtained from the car creditor's own agent at reasonable cost.

If the shut-off devices used by a car creditor also provide locating capabilities, issues involving the privacy rights of debtors (discussed with regard to tracking devices below) would apply. In a recent situation that occurred in Austin, which received national media attention, a disgruntled former salesman used his knowledge of the dealer's password to enter into the dealer's GPS system from a remote computer and cause alarms to go off and vehicles to shut down. Because of the possibility of malicious use of the systems' capabilities, and the potential for abuse, we would recommend that access to the systems and passwords be limited to key personnel, and that passwords be changed when employees leave.

## Shut-off Devices and the Bankruptcy Stay

The Bankruptcy Code prohibits creditors from taking any action, without court permission, to collect a debt, including repossessing collateral, when the debtor files bankruptcy. Given the high percentage of bankruptcies filed by debtors who fall within the sub-prime credit risk category, it's inevitable that many vehicles carrying shut-off devices will be involved in consumer bankruptcies.

If the use of a shut-off device to disable a vehicle amounts to repossession as discussed above, then it follows that the disabling of a vehicle while the debtor is subject to the bankruptcy stay would be a violation of the stay, subjecting the creditor to sanctions. In a case from the U.S. Bankruptcy Court in the Eastern District of Arkansas, this issue was raised by a debtor whose vehicle kept shutting down despite the creditor's claim that

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proper codes were given to her. The dealer was fined heavily despite his protestations in court that he didn't intentionally cause the device to disable the vehicle.

### Tracking Devices

The ability to locate the vehicle of a defaulting debtor using a satellite tracking device is a very valuable tool for car creditors, especially in the sub-prime context. It also raises the specter of "Big Brother" with all the attendant implications of possible invasion of individuals' rights to privacy.

As the result of a highly publicized case in Dallas involving the tracking of a school district employee by a private detective, a law was passed by the Texas Legislature that prohibits the placement of "homing" devices on vehicles without the owner's permission (Sec. 16.06, Texas Penal Code).

Obtaining the owner's permission is thus absolutely necessary when a device is used that allows tracking a vehicle's location. The Office of Consumer Credit Commissioner has taken the position that holders of seller-finance licenses must obtain signed disclosure/authorization forms when GPS-based devices are used.


A written authorization for the use of a shut-off device and/or tracking device, in order to be enforceable, would need to be clear and unambiguous, and presented to the debtor in a format that doesn't hide or obscure the contents. For example, a simple statement that a theft-prevention device is on the vehicle is probably not adequate to put the debtor on notice of the presence of a tracking device. Also, burying the disclosure and authorization language in the fine print on the contract or a related document would give rise to the issue of adequacy of the information.

On the positive side of the proliferation of GPS-based devices use by car creditors are stories like a recent incident in Dallas where a child, who was left in a vehicle that was stolen, was found and reunited to a distraught parent when the dealer was able to direct police to the abandoned vehicle.

### Ownership and Cost

Some car creditors have been tempted to add the cost of electronic collection and repossession devices in the retail installment contract as an "other charge." The OCCC has warned that this is not a proper charge, and has ordered car creditors who added such a charge to contracts to refund the charges with interest.

Assuming that the creditor would want the equipment back upon full payment for the vehicle, the contract should provide that the device is the property of the creditor and will be removed at the expense of the creditor upon completion of the contract obligations by the debtor.

In conclusion, the use of electronic collection and repossession devices is not prohibited in Texas, but care should be exercised in their installation and use, and proper disclosure and authorization forms should be used. Also, given the potential for breakdowns and accidents, car creditors should make the judicious use of insurance and arbitration agreements to lessen the potential liability. 

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Michael W. Dunagan is an attorney in Dallas, Texas who has represented the Texas Independent Automobile Dealers Association for over 35 years. He has written a number of books and hundreds of articles for trade journals and law reviews. His clientele includes dealers, banks, finance companies, auto auctions and credit unions.



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by Jeff Martin

TIADA EXECUTIVE DIRECTOR

# And the winner is...

This month the TIADA Awards Committee will meet to review the nominees and, in some instances, select the winners for three very special awards. What makes these awards special is the way the nominees are submitted. In two cases the nominees are recommended and ultimately selected by their peers in the industry. The other award calls on members to nominate an individual outside of our industry who is worthy of being recognized. Below you will find the criteria for each award as well as a timeline for nominations. I encourage you to read over each. If that guy down the street, whom you've always respected, or that mentor in the industry pops into your head, simply send me an email before May 10 and I will make sure the Awards Committee receives your nominee.

## HALL OF FAME CRITERIA

The Hall of Fame Award is given to an individual who has been in the automobile industry for several years and has made significant contributions to the industry and the association during that time. He must have an outstanding reputation for honesty and excellence among his peers within the association. They must exemplify outstanding performance and leadership and have contributed to the professionalism and growth of the automobile industry.

## INDEPENDENT AWARD CRITERIA

The Independent Award is given each year to an individual outside of the industry (ie. politicians; media members; non-industry supporters) who have gone above and beyond in their support of the industry showing a true independent spirit.

## TIADA QUALITY DEALER OF THE YEAR

There are five areas of criterion that are used in making this choice:

1. *The nominee's longevity in the automobile business.*

This would include membership in TIADA. We see this as a lead indicator of success.

2. *The professionalism of the presentation to the committee.*

This shows a commitment to excellence and the ability to organize and display the information.

3. *Is the candidate a "good dealer?"*

Here we look at sales volume and customer loyalty. We also look at retention of employees.

4. *Is the dealer a "good citizen?"*

We look at community activities and the candidate's involvement.

5. *Do his/her peers view the dealer as a leader?*

We judge letters from vendors, other suppliers, and customers, as well as other reference letters.

## TIMELINE

### May

Awards Committee meets to review nominations and select finalists.

Quality Dealer of the Year Award nomination packets are sent to nominees.

### June

Quality Dealer of the Year applications are submitted to Northwood University for selection process.

Awards Committee meets to select Hall of Fame and Independent award recipients.

### July

Winner will be announced July 29th at the Annual Conference.



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