

# Chapter 6

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# Broker Requirements

## Section 6-1

### Definition

**6-1.1 Definition.** “Broker” is defined 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

### 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 application must include:

- a) The 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;
- c) Regular business hours, with a minimum of four consecutive business hours per week;
- d) Payment of the \$75 annual license fee.

**NOTE:** A Class D Broker license is only compatible with a Class G Vehicle Salvage Pool license.

**6-2.2 License Expiration.** All dealer licenses, including broker licenses, expire at midnight on 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.** Brokers must maintain an established place of business, approved by the Secretary of State, 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.
- d) Dealers cannot combine resources to meet established place of business requirements.

### **Section 6-3**

#### **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**

#### **Title Assignments**

**6-4.1 Name on Title.** A broker cannot be named as an owner on a title assignment or reassignment, unless the broker applies for title in the broker's name and pays sales or use tax (in which case, the vehicle cannot be brokered or sold under the broker's license).

## **Section 6-5**

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

**6-5.1 Application Service.** Brokers frequently complete the title and registration application as a service to the seller. Depending on the type of agreement held with the broker, the selling dealer's RD-108 can be used, or the broker can use their RD-108 to apply for the purchaser's title and registration and to submit sales tax.

**6-5.2 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 assigns the title to the purchasing dealer.

**6-5.3 New Vehicles.** In the sale or lease of new vehicles, Brokers must 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.

**6-5.4 Used Vehicles.** Broker Rule 6 permits brokers in the sale or lease of a used vehicle Brokers 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.

**6-5.5 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.

## **Section 6-6**

### **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. Please refer to Chapter 7 for requirements in completing the RD-108.

## **Section 6-7**

### **BFS-4 Temporary Registrations**

**6-7.1 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 through the broker's eServices account. 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.

**6-7.2 Issued by Other Licensed Dealer.** When the RD-108 application is the responsibility of another licensed dealer (the seller), BFS-4 15-day temporary registrations are issued through the selling dealer's eServices account – not the broker.

## **Section 6-8**

### **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 that the seller and broker come into an agreement to consign the vehicle. A washout system cannot be used by a broker. Please refer to Chapter 2 for additional record keeping requirements.

**6-8.2 Other Records.** In addition to the Police Book, a broker is required to maintain additional records. Please refer to Chapter 2 for additional record keeping requirements.

**6-8.3 Length of Retention.** Brokers are required to retain copies of records no less than five years.

## **Section 6-9**

### **Broker Fee Agreement**

**6-9.1 Requirements.** Before a broker charges or receives a fee, the broker and the seller are required to sign an agreement. A copy of the agreement must be provided at the time of signing to the seller, and a copy must be retained by the broker.

A broker must ensure that the agreement 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**

### **Purchase Agreement**

**6-10.1 Requirements.** Before a sale or lease, the broker is required to complete 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 agreement shall be on a form prescribed by the administrator.

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.

The agreement shall be dated not later than the actual delivery date of the vehicle to the buyer or lessee.

**6-10.2 Forms.** The purchase agreement does not replace other required forms and documents (RD-108, broker's fee agreement, Police Book, etc.). Broker purchase agreement forms must 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**

### **Advertising**

**6-11.1 Disclosure of Identity.** A broker advertisement must include a disclosure of the advertiser's identity as a broker and his or her dealer license number.

## **Section 6-12**

### **BFS-4 15-Day Temporary Registration Log**

**6-12.1 Records Required.** This applies only to Class "A" New Vehicle, Class "B" Used Vehicle Dealers, and Class "D" Brokers.

**6-12.2 Requirements.** When a dealer issues a BFS-4 15-day temporary registration in their eServices account, the temporary registration log is kept automatically in their eServices account.