

SECTION 3
RECORD KEEPING

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Every dealer licensed in South Dakota is required to keep records of their business transactions. The form of record keeping shall be as prescribed or approved by the department. The dealer must maintain all records subject to inspection for five years.

A licensee shall keep the following records:

1. A record (ledger) of the purchase, sale or exchange of any vehicle (includes trailer, motorcycle, snowmobile, mobile or manufactured home and boat).
2. A description of each vehicle purchased, sold or exchanged, together with the name and address of the owner or other person from whom the vehicle was purchased or received, and to whom it was sold or delivered. The description shall include the vehicle identification number, manufacturer's make and model and vehicle's odometer mileage.
3. A certificate of title from the previous owner of any vehicle not purchased from the manufacturer, from the time the vehicle is delivered to the dealer until it has been disposed of by the dealer.

A dealer may offer for sale, sell, or exchange a vehicle without a certificate of title if the dealer complies with the following applicable provisions:

1. The dealer has a record of the purchase, sale or exchange of a vehicle [purchase agreement or bill of sale] to include the satisfaction of any outstanding liens or encumbrances [proof of satisfaction of a lien shall be a copy of the check and the certified return receipt mail card or the confirmation number, if payment is made electronically] and a secured power of attorney;
2. If the vehicle is encumbered by a lien noted on the title, the dealer shows that payment has been tendered to the lienholder for the amount of the lien, except a lien that is the result of dealer inventory financing [proof that payment has been made shall be a copy of the check and the certified return receipt mail card or the confirmation number, if payment is made electronically]; or
3. If the dealer is required by law to obtain title prior to offering the vehicle for sale and the dealer has applied for title through the electronic on-line title system and has submitted the documents to the department.

NOTE: SALE WITHOUT POSSESSION OF A CERTIFICATE OF TITLE DOES NOT RELIEVE A DEALER FROM THE REQUIREMENTS OF DELIVERY OF TITLE WITHIN 30 DAYS OF SALE OF A VEHICLE.

If a vehicle is financed through a financial institution and the financial institution holds the title as collateral, a copy of the front and back of the title shall be retained by the dealer. The dealer must notify the department in writing if a financial institution is holding titles.

Title on a vehicle with a manufacturer's weight of 26,000 pounds or greater that has been assigned to the dealer may be kept at another South Dakota dealership owned by the same dealer. A copy of the front and back of the title must be kept at the location where the vehicle is being offered for sale and the dealer must notify the department in writing as to where the title is to be kept.

If there is an agreement that the dealer will satisfy a lien amount by paying the lienholder who is noted on a title, the dealer must satisfy the lien within 10 business days after receipt of funds. The dealer may not offer the vehicle for sale until payment has been tendered to the lienholder (except on a consigned vehicle, whereby the dealer must comply with the terms of the consignment agreement).

Proof of payment of a lien will be a copy of the check. The lien payment check must be mailed by certified return receipt mail, unless satisfaction of the lien is done electronically, in which case proof shall be the confirmation number.

Failure of the dealer to satisfy a lien within 10 business days after receipt of funds constitutes theft pursuant to chapter 22-30A.

A dealer is required under law to place a notice on **any** vehicle/large boat sold or offered for sale that has a salvage title, damage disclosure, or similar notation that indicates damage to the vehicle/large boat on it. The notice must be printed on white NCR paper, measuring 4" x 6". The original is to be retained by the dealer and the copy is to be given to the purchaser. The information on the notice is to be printed in 12-point (minimum) Universe – bold – capital letters. The notice must be posted on the inside of a side window with the front of the form facing the outside, or in the case of a boat, on the front window so that it is clearly visible at all times on each vehicle/large boat that contains a salvage title, damage disclosure, or similar notation offered for sale to consumers. At the time of sale of the vehicle/large boat, the dealer must remove the notice and have the purchaser sign and date it. The dealer must retain the signed notice, along with copies of the title document, for 5 years from the date of sale.

If a dealer fails to display a damage disclosure notice (disclosure must be signed by the purchaser upon sale of a vehicle/large boat), the purchaser may return the motor vehicle/large boat to the dealer within 10 days after receiving the title (or, if title held by lienholder, the lienholder's notice of filing form) and shall receive a full refund.

Other documents that must be available at the dealership include: public liability insurance policy when applicable, franchise agreements when applicable, if the property the dealership is located on is leased, a copy of the lease. All of these documents shall be open to inspection by any law enforcement officer or departmental inspector.

A dealer inspector may visit a dealership to inspect records, review any changes in laws, verify dealership information and answer any questions that have arisen. Records must be available upon request for examination anytime during regular business hours. Each inspection is documented by a dealer inspection report. The report is also used whenever complaints are investigated or for informational matters. The reports are part of the permanent dealership file.