

*Over 30 Years of Handling Buy/Sells for New Car Dealers*



## Minority Ownership Opportunities and Exposure

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From a practical standpoint, when you are given an opportunity to buy an ownership interest in an auto dealership, or are essentially handed an interest by a dealer who is willing to let you pay for your interest with a promissory note and use the profit from the purchase to pay down the note, you would be crazy to turn it down. Once you're in, you may discover that the old ways of doing things leave the business exposed to many perils that your partner has never thought about, and doesn't want to think about. Some of these perils can be devastating to a business when they catch up to you, so addressing them before they do is imperative. Knowing which ones are important to focus on and which can wait can be daunting. Here are a few immediate steps you can take to protect the business that are fairly painless, and may turn out to be very valuable later:

1. Make sure you have EPLI insurance coverage. Most dealers do, but those who don't leave themselves exposed unnecessarily.
2. Because EPLI insurance does not cover wage and hour lawsuits, it is valuable to also have wage and hour insurance. It can be hard to come by, but it can be found. Capitol Specialty is a carrier that covers wage and hour legal fees up to \$100,000 with a \$50,000 self-insured retention.
3. Make sure managers are well trained about and understand that treating all employees and customers with respect is a company value and anything less will not be tolerated. If this is not the culture of the dealership, changing it immediately is crucial. Failure to do so could be very costly. The Equal Employment Opportunity Commission has seen a 50% increase in sexual harassment lawsuits in 2018. Average damage awards are more than \$1.7 million dollars. Sexual harassment is not only about sex. It can be anything attributable to a person's gender or gender identity. Some liability may be covered by EPLI insurance, but personal liability and certain forms of conduct may not be covered. Having a clear policy and procedure in place to handle sexual harassment and following it, while teaching all employees to be

respectful of each other, can go a long way to reducing or eliminating exposure.

4. Make sure you know what will happen if your partner dies. Who will get their interest? Will you become partners with their spouse or children? If so, knowing this can help you plan for it. You'll need to determine who will have control over decisions to be made about dealership operations. If majority shareholders disagree with the way you are doing things, what will your options be? Thinking about these things now can bring you peace of mind later when the unexpected happens, rather than leaving you with even more turmoil. Ideally, a shareholders' agreement or other owners' agreement that addresses all of these issues will be negotiated and put in place before you buy in so that all these decisions are worked out in advance and while everyone is getting along. A little advance planning can go a long way.

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