

# **YOU AUTO KNOW®**

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## **SHUTTING DOWN YOUR BUSINESS**

In these difficult times, many stores have taken different courses of action regarding their hours and employees. In most instances, the vast majority of dealerships have kept stores open with a limited sales staff, but an almost fully staffed service and parts department. Obviously, these circumstances change daily depending on the spread of COVID-19. I know some dealerships decided to close entirely. This decision should not have been taken lightly. As you know, several, if not all the manufacturers, sent letters to their dealers indicating that, although they understand the current circumstances with the virus, their franchise agreements are still in place and they would expect their dealers to remain open depending on circumstances. Obviously, if you cannot open due to lack of personnel, whether through fear, concern or an act of a COVID-19 infected individual this provides a legitimate reason to close the dealership. Further, if a governmental entity issues an order dictating that all businesses close, this would be another valid reason for closing the dealership. However, closing just for the sake of closing can be cause for concern. Under Ohio law, specifically O.R.C. 4517.01(G) "operating as a new motor vehicle dealer" "means engaging in activity such as displaying, offering for sale, and selling new motor vehicles at retail, operating a service facility to perform repairs and maintenance on motor vehicles, offering for sale and selling motor vehicle parts at retail and conducting all other acts that are usual and customary to the operation of a new motor vehicle dealership . . . ." "Further, if for some reason the manufacturer decides that you should have been open it may have a basis to terminate the franchise pursuant to O.R.C. 4517.54 "Notice of Intent to Terminate or Discontinue" that specifically states notice has to be sent to the dealer if a termination is

based on any of the following, . . . (3) the franchisee has ceased business operations."

As you are aware, virtually every franchise agreement states that it is the dealership's obligation to stay open and maintain operations and any dealership that is closed for seven days could be considered not in operation by the manufacturer.

What could even be more problematic is if a dealership is closed and its competition, in the same area, is open and operating. This scenario could pose additional problems (termination) further indicating that your store should have remained open.

Again, the vast majority of dealerships are open and are operating in some form or fashion. However, if it was your decision to close or you are contemplating closing, make sure that it is for a very valid reason; the strongest argument you would have is due to government orders and/or closing due to lack of employees and/or the spread of COVID-19 within the dealership community.

Be safe, be healthy.

As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.



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