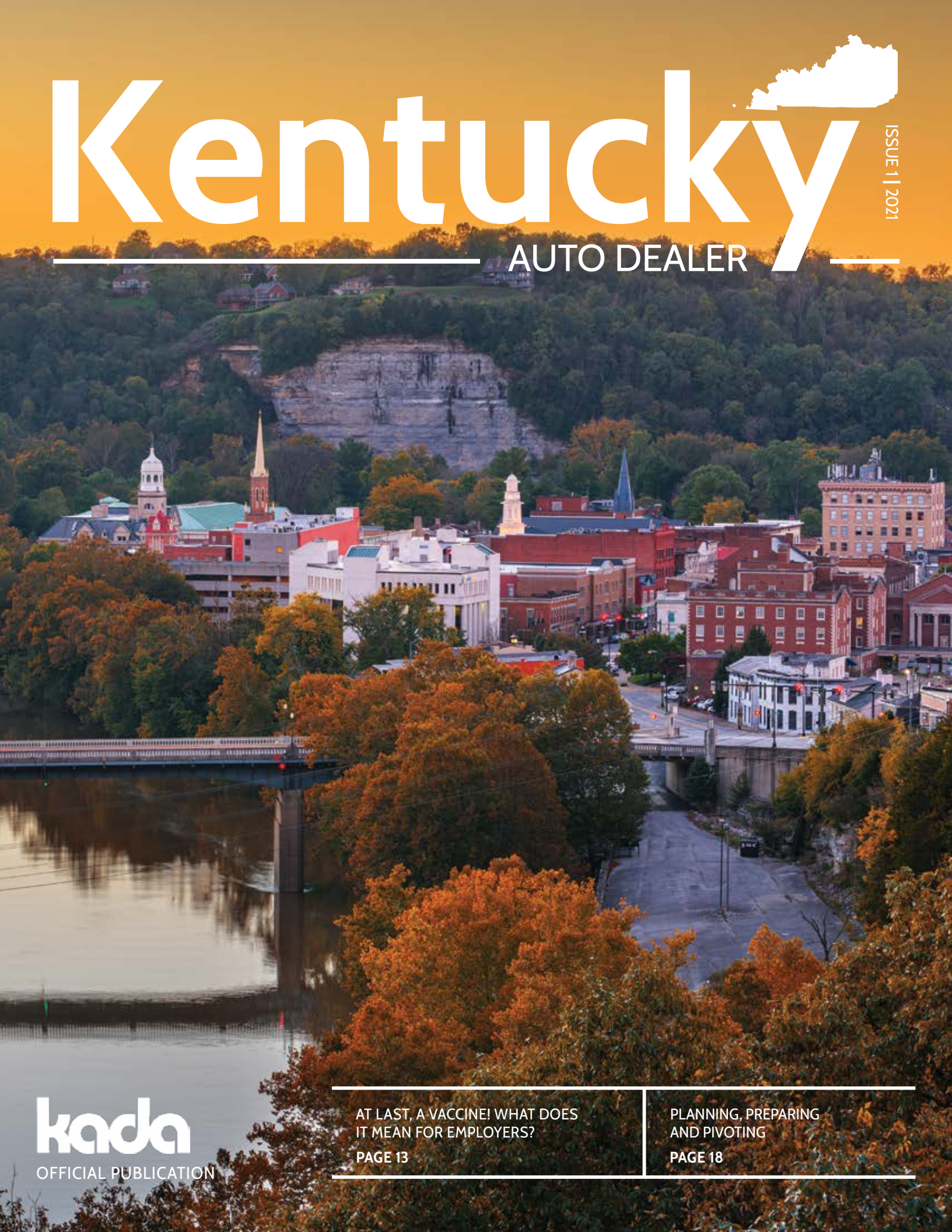


# Kentucky

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ISSUE 1 | 2021

AUTO DEALER



**kada**

OFFICIAL PUBLICATION

AT LAST, A VACCINE! WHAT DOES IT MEAN FOR EMPLOYERS?

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PLANNING, PREPARING AND PIVOTING

PAGE 18

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# PRESIDENT'S MESSAGE

JASON WILSON



It's been a busy time, and as we welcome the warmer days of spring and watch the COVID vaccine begin to make a much-needed change, I can't help but feel positive about the future.

First, we've seen the close of another successful General Assembly Session. It was an active 2021 session, meeting with legislators in person and via Zoom, as well as countless calls and emails. Thank you to everyone who reached out to their local representatives – we couldn't have done it without you. Numerous times this past session, we asked for phone calls and emails from you all, and every time, you all answered that request loudly and boldly. Your voices were heard; your voices helped make a difference!

It's hard to imagine that a little over a year ago COVID-19 drastically changed our lives, and began forcing us to redesign and rethink our priorities. We've learned a lot about ourselves, our families, the people we

work with, and the health and direction of our nation. But in the midst of these difficult times, I watched how dealers – in Virginia and here in Kentucky – rose to the occasion and continued to persevere and adapt to an ever-changing business landscape with shifting customer demands.

Although sales slowed initially, many of you saw your most profitable months in years. This essential need to innovate remains, and we must keep pushing forward to improve our processes and facilitate the customer buying experience, both online and in person. We will see more “disruptors” emerge with new ways of doing things. Saying that, I'm confident that car dealers have learned and grown much over the last year and will continue to be the cutting-edge ambassadors of technology.

As an organization, we worked on several issues regarding PPP loans, the trade-in tax credit and electronic registration and titling.

If you haven't already, I encourage you to tune into our brand-new Kentucky Horsepower podcast, where we give a full legislative recap and discuss what the future landscape may look like.

We also look forward to the KADA Annual Convention, June 14-17, at the Hammock Beach Resort in Palm Coast, Florida. I encourage you to take advantage of this incredible opportunity to network with fellow dealers – many of whom you may not have seen for a while – have fun in the sun with your family and hear from top industry speakers.

Engaging with KADA is something everyone will benefit from. This is an industry whose success is collective from the dealers, their voices, their vision and their wisdom.

And finally, I am always available for our dealers. I am here as a resource and look forward to working with and serving the needs of KADA for many years.

Thank you! 🐾

## KADA spent a few minutes with our new president, Jason Wilson, on his first 100 days:

### **This was a move for you and your family; what brought this on?**

It was a bit unexpected. Gay Williams announced her retirement, and Don Hall, with the Virginia Automobile Dealers Association, brought it to my attention and encouraged me to consider applying for the position.

I have worked closely with Don for many years, so I felt well-prepared, and I was excited at the prospect of making a contribution to this association. Don is a friend, a mentor, and definitely someone to emulate.

I spoke with my wife, Felicia, and we thought it was a good time in our lives for a new adventure. Virginia and Kentucky are neighbors, and while we still have family in Virginia, it's only an eight-hour drive away. So, we packed up the dogs, and here we are.

### **How are you adjusting to Kentucky?**

I love it. We're working on becoming Kentuckians.

### **What are your thoughts about and plans for KADA?**

The long-term is to be one of the leading associations in the country. I want to model Virginia. I'm very proud of the work I was able to help accomplish with them. KADA may not be the biggest association, but our voice will be heard. We will be out front on the issues that affect our industry.

### **After about 100 days on the job, what's the KADA path for 2021?**

Well, within one week of starting the job, I was jumping right into the legislative session. I was active with our lobbyists, Tom and Ryan Underwood, which were extremely helpful and as COVID restrictions lessened, I was meeting with our dealers. It was important for me to hit the ground running.

My goal is to be very engaged in the legislative process. I think that is where we, as an organization, can make the most impact on our industry, for our dealers, and the consumers the industry serves.

We're identifying and solidifying our partner relationships. We have three new relationships: MOC Mid-Atlantic, ACV Auctions, and Dealer Merchant Services, so far. When our dealers engage with our partners, it's so beneficial for everyone. It helps us do what we do and keep our dues low.

We've been focused on our upcoming convention, and I am very excited – it's almost sold out. The support we've had has been amazing.

I think it's a matter of focusing on the next right thing for the dealers, the association, and the consumers; and success will come. 🐾

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\*\* The max personal contribution is \$2,000.

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The dealer member could have contributed above the club level.



## 2021 IMPORTANT DATES TO REMEMBER

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### KADA ANNUAL CONVENTION

June 14th-17th – Hammock Beach Resort & Spa – Palm Coast, FL

### NEXT GEN EVENT

Tuesday, July 20th – National Corvette Museum – Bowling Green

### KADA ANNUAL GOLF TOURNAMENT

Monday, August 9th – University Club of Kentucky – Lexington

### KADA DISTRICT MEETINGS

Tuesday, October 12th – Lexington – Lexington Country Club

Wednesday, October 13th – Louisville – Hurstbourne Country Club

Tuesday, October 19th – Paducah – Paducah Country Club

Wednesday, October 21st – Bowling Green – Holiday Inn University Plaza

(All district meetings begin with a reception at 5:30 pm and dinner at 6:00 pm)

Visit [kyada.com](http://kyada.com) for more information on each above event.

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## GETTING TO KNOW KADA CHAIRWOMAN KIM HUFFMAN

**You come from a car family, and the automotive industry would have been the obvious career choice. Did you always aspire to be part of the automotive industry?**

My degree was in communications. I wanted to work in the advertising field, and actually, I really wanted to be a travel agent and travel around the world. I had moved to Dallas for an entry-level job, and they were getting ready to promote me. My father was adamant about me not doing that, so he intervened. He knew that if I went any further, I would never come home. He wanted me to advertise for our company instead, so I went from working for an agency to working for the company.

**Is your entire family in the auto industry?**

My daughter is not, but everybody else is.

- My nephew, Shane Huffman, is my partner.
- My brother Dow was a partner too, but he had a very rapid cancer and passed away unexpectedly a couple of months ago.
- My niece, Shannon, is our HR director.
- My son, Daniel Wolford, is our vendor manager. He manages facility sites.
- Another nephew, Kameron Huffman, is the general manager of our Nissan facility.

**Describe your educational background. What did you study?**

I went to the University of Kentucky and earned a degree in advertising. I started studying business, but I realized I was too creative. Advertising was a better choice for me.

When I moved back from Dallas, I started the advertising department of our business and did in-house marketing and advertising.

After 10 years, I retired to raise my family. I grew up in the era of women transferring their in-home work to out-of-home work. Working when you had small children was not quite acceptable. I went back for a business degree, but I had a 2-year-old and a 7-year-old. I am not a superwoman. I couldn't complete it. Then my father passed away about 14 years ago. I came out of retirement and began working at the dealership.

By then, my children were old enough to be sustainable on their own. That part worked well. But the job was very difficult. We had several locations, and each location had a different philosophy and was run differently. My father had been the glue. Having different approaches wasn't sustainable after he was gone.

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My background was marketing and writing, radio, TV — all that public part of it. I was suddenly taking care of the day-to-day corporate business portion. I had to go back to school with NADA in a yearlong program at the dealer academy. The dealer program brought everything together. It was a crash course in every aspect of running the dealership and every department, and listening to my peers gave me a lot of young, fruitful ideas. We brought in the right people, and I implemented the ideas I needed and wanted. That was the beginning.

I was a second-generation owner, but coming in with a new set of eyes, I approached everything the way a first-generation owner would do it. I didn't have to do it the way it had always been done, but I also didn't have the benefit of my dad's advice. My brother had that benefit because he grew up in the business.

Part of what made it hard initially was that I had always been a sister and motherly influence to my brother. He knew I could get things done, but he didn't want to give up the reins, especially because he had more experience. He was also old-fashioned. He wanted to take care of me even though I am older than he was. We would butt heads on things, and then we would compromise. We each had our position. My brother was the historian and knew why we did things; I was the innovator, always asking how we could change things. Then we brought my nephew into the mix. He is the enforcer and handles the day-to-day operations.

Since each dealership had unique facilities and a different philosophy, I suggested a management company to make them stronger by maintaining 60% of each dealership's philosophy. We implemented it a couple of years ago. The HR director tells all stores to do things the same way. Employees now have the same pay and the same environment.

We had the old-school method of sales when my father died and I took over. We are now a work family, and everyone has the right to make suggestions. When we have meetings, I listen to employees, and I often tell them, "I can do this for you." As a result, morale is unbelievably high.

I was relocating our Nissan facility to a new facility that had to be remodeled. As I was walking through, I asked where the service manager wanted things placed. He said, "You are letting me design this?" I told him I would have my input, but yes. You would have thought I gave him a million dollars. When he was done, it was the most efficiently laid out facility. He knew who needed to be where, the size of the product, and where everything was going to fit. He was constantly coming back and saying, "I have another idea." That works for me.

I took the same approach for remodeling the service department. Rebuilding was based on the needs in the parts department to make it efficient. For example, we took advantage of the height above 6 feet and put it to work.

#### Why do you think there are so few other women in this business?

Traditionally speaking, dealerships have been a man's world. There was a lot of work for men in high-pitched sales, as technicians, or in parts and the collision center. The woman's job was behind the scenes in reception or bookkeeping.

In the last five years, I have seen women coming from other industries in sales and walking in saying, "I can handle this." Some top producers are women who came from another industry. They are very capable and strong, they stand up for themselves, and they project an honest image. They don't have to fight the stereotype of a used-car salesman. Customers receive them kindly because they tell customers what they know and don't sell the old way. They handle themselves very well.

#### Do you think the industry needs to increase its efforts to employ more women?

Yes, and the industry is working on it. I see a noticeable change through NADA. Women are in the industry, and some women are high up in manufacturing. The majority of car buyers have been women for a while, and women are the decision-makers. If they can come into a dealership and say, "I've done my research," especially to another woman, the transition to a sale is easy.



We need to continue making progress. Although employing more women in this industry will take a while, someday it will be closer to equal than it is now. The big problem we have is that many women stop for family reasons. We've made work more flexible in the last couple of years, and I am beginning to see the results now.

You do need a very strong backbone to get into this industry. If you have confidence, I believe you will stand up for yourself, but you should also be protected. I do not allow anybody to be harassed or degraded.

#### **Why is the automobile industry an excellent place for women?**

The industry has had to make changes across the board because the younger workforce is not driven to work 12-hour days. People want to have a work-life balance, and we are willing to have some scheduling flexibility. For example, an employee could have an evening off and a morning off to spend time with their family. We can also give them the weekend off. Now that the work schedule has become more flexible, more women can have industry careers, including sales.

#### **Are there any specific individuals who had a major impact on your career?**

My father was a mechanical engineer, and he taught me honesty and integrity. He would look at problems and try to figure out how to solve them. Because of him, I learned to say, "You can have anything you can afford."

I use my memory of him to direct me in how I treat employees and solve problems. If the computers are not working, for example, I ask myself the same question my father would have asked: "How are we going to solve this problem?" I also ask, "How could this be more efficient?" He showed me how to reverse problems and look at them from where I want to be instead of where I stand. The question is, "Who do I need where to get something completed?"

Working the process backward is also how we get through a lot of the deals. If someone doesn't have enough money to buy a car, you can't say, "Oh, just make more money." You have to look at

the person and think, "How would I do it?" When you back it up that way, you come up with ideas. It helps you find the loopholes you are missing.

Another important influence is a man my father worked with named Loyd Rawls. He doesn't work for us. He owns his own company out of Orlando called the Rawls Group; his company does multilayered family succession finance, and he is still around. He can do just about everything you need to protect industry growth.

I called Loyd about 12 years ago and said, "I have all these ideas I want to implement." He said, "Yes, we can do it." He never told me "no." Instead, he said, "Let's think how we can get it done correctly." We found ways to make all the ideas I had work for us. As a result, he has benefited our company's growth, strength and succession plan. Almost every aspect of who we are now started with that conversation.

#### **What is the most rewarding part of your career?**

There are so many different things, but I love solving problems and helping other people solve problems. It's fun to see someone else be ecstatic when they are successful.

I would have loved to be an engineer. I have worked on so many buildings and houses and structural things. The first question is always, "How am I going to do this?" I bought a corporate office back in the summer, hired an architect and laid out what I wanted. I even measured and counted file cabinets to ensure the office would meet the accounting department's needs. When people moved in November 2020, I went to the comptroller and asked, "What do you need to make this more efficient?" She wanted a different style of cabinet. That was no problem; it made their life more efficient. That is what is beneficial in walking the department. You can say, "What do you need? Let me see if I can help you get it done."

I brought my nephew into the business because I saw his potential and knew that he had the drive to do what I wanted. The best part is it worked out.

CONTINUED ON PAGE 10



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I did the same with his sister, who used to be a homicide detective. She is extremely intelligent, analytical, detailed and very educated. That is what was needed. I said, "I have a position I would like you to do, but it is going to take a lot of cleaning it up." She took over the HR department and has just flown with it. When she does her typical background detective work on job applicants, sometimes she says, "Nah, this is not going to work for us." She is such a benefit to the company.

#### What do you think will be some of the auto industry's dominant trends in the next 5-10 years?

We will see a lot more business done the way it has been during the last year. More potential buyers will talk on the phone or use the computer. More EV cars will come in.

There's also going to be a huge change in the work environment. A larger group of young employees are going to be back into that work-home-life balance.

#### Why is it important to be a KADA member? What makes it beneficial?

The Kentucky Auto Dealers Association works really hard to protect the dealers. We work on the legislative side to protect with incoming laws. We also work with manufacturers to make sure they don't strongarm a dealer.

There are a lot of changes going on. To be a member means you are going to be protected with the behind-the-scenes activity. If we were not in place right now, dealers of different manufacturers would all be scrambling to figure out how to protect themselves. One side of the state would have a different way of doing business than the other side. We make sure everyone is represented well.

I am the very first woman to chair KADA. Each year, our chair has a purpose and a direction that they want to go. My behind-the-scenes purpose has been the same for many years: working with the legislature and manufacturers to protect dealer rights. Also, this year we are working to improve communication between 120 county clerks and dealers. The system has been the same for 50-60 years. We are working with the clerks to streamline

work as it goes back and forth. We are always asking, "How can we be more efficient?"

#### What inspired you to serve as a leader within the association?

When I was asked to start about 10 years ago, I realized that it was a benefit to me because I could bring the information I was learning back to my corporation, and then I realized that maybe having a voice in what I wanted was going to help it come true.

You keep changing powers politically every year, but you can make it work for everyone if you are true to what you believe. We have a whole lot to give to our members. I think it will be just as strong for another 20 years.

#### Are you involved in any civic or charitable organizations?

I do many charity projects, but I keep it low-key. I work with the American Heart Association and the Red Cross, and I do a lot with my church, especially projects for children.

The auto industry is a huge contributor to our community. We do a really good job of giving back to the community. I can't tell you how many times I've been someplace, like a school or medical building, and been told a specific manufacturer or dealer has donated money for it.

#### If you look back at your career and life, what would be three things that you have learned that you would pass on to a younger member within the auto industry?

The auto industry is also a very good industry for providing for your family, and it's a lot of fun. I will never speak poorly of a competitor, and I won't let my employees speak poorly of a competitor because my competitors are my friends. We work together on a lot of things. I have a lot of fun with them.

#### What are two things that you have learned from past experiences that are helping you navigate now?

To ask those who are in the business their opinion. Older employees have a history, and younger ones understand technology. Merging the two gives you the complete package.

This industry is evolving rapidly, and I cannot see it going anywhere but in a positive area. Dealers collaborate and work together to solve the problems.



We have a great industry. You will find people who were attorneys, doctors, farmers or in the airline industry. Their collective experience makes the industry more versatile. Also, many really good people work hard at giving back to the community because they have been blessed. They have no problem with helping out.

#### How did you weather the pandemic storm?

Because I was on the board, I worked with the other members and our government. We asked, "What do you need? What do you consider essential?" Everyone was willing to do what they needed to stay open.

The first two months were horrendous and scary. Once we figured out we could sell, service and repair cars, we just changed our mindset, and it became easier. We will continue doing business with the same mindset in the future.

#### What is the takeaway for you from the pandemic that will guide your future business decisions as a small-business owner and leader?

Insert whatever the problem is, and the industry knows how to correct itself. Twenty years ago, we had an issue and had to figure out how to be more efficient and be a better servant to our employees and customers. When the market was hit in 2008, it was horrendous for everyone, but we knew what to do, and we figured it out.

Don't disregard the historian. You need to know why things are the way they are before you can change them. We always have to check and correct our spending.

#### Describe your all-time favorite vehicle (it can be one you've owned or something on your wish list). What are you driving now?

My all-time best memory was my first car, a yellow Volkswagen Thing; it was the first one in Kentucky. That car was a metal box, and I loved it. Everybody knew where I was.

I love cars. In the summer, I drive a convertible; in the winter, an SUV. An Audi R8 is my favorite car of all time. I wanted to be a

race car driver, and that car made me feel like I could have been. I can tell you how fun all kinds of cars are going to be.

The vehicle I drive now solves issues. I have an elderly mother, and she has to be able to get in or out.

#### Tell us about your family.

I am the monarch of the family. I am very much the mother figure, the conscience of everyone, and the one they call when they need somebody to talk to.

My son is married with three children, a son (7) and twin girls (3). He is the perfect father and husband, loves his family and is in the business in Louisville. My daughter (30) was married in April. She lives in Chicago, and she works in an international PR company. She will never be in the business, but she gives me all kinds of useful information. She does a lot of research and gives it to me.

My older brother has three children: Shane; his sister, Shannon; and another brother named Kameron. Their father has retired. He's hilarious, eccentric, and knows a lot about a lot of weird things. He's just funny. He will entertain you like there is no tomorrow. My mother (91) is hilarious, too. She is beautiful, articulate, very charismatic, and everything I always wish I could be like. She looks 75, and she just bought a new house. They are renovating it. "I'm sure I'll be around another 10 years," she told me. I said, "You better be."

#### What is your favorite way to spend your free time? Any unusual hobbies?

Yes. I really do like remodeling houses. It's not the design work I enjoy, like picking wallpaper. Instead, I think about how I can knock a wall down and make the house more efficient. It drives my husband crazy.

My husband is in the oil business. He works for Chevron, was born in Cuba and raised outside Chicago, and is an industrial engineer. He is absolutely the funniest, most easygoing individual you could ask for, but he used to drive me crazy. I kept thinking, I know how to do this, but he knows how to do it better than me. I totally respect him and couldn't ask for a better soulmate. 🐾



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# AT LAST, A VACCINE!

## WHAT DOES IT MEAN FOR EMPLOYERS?

With the FDA's issuance of an Emergency Use Authorization (EUA) for multiple COVID-19 vaccines and vaccines becoming more widely available, many U.S. employers, eager to safely transition employees back to work or transition workplaces back to normal, are considering implementing vaccine recommendations or mandates in the workplace. The fluidity of the pandemic has yielded yet another decision point for employers — can employees be required to obtain a COVID-19 vaccine as a condition of employment?

At this point, the answer is generally yes — although there are a number of caveats, open questions, and policy decisions to keep in mind as vaccines become more widely available and federal, state, and local agencies and corresponding legal issues

continue to morph and take shape. Here is a look at some of the employment-related considerations with mandating a COVID-19 vaccine in the workplace.

**1. Equal Employment Opportunity Commission (EEOC)**  
On Dec. 16, 2020, the U.S. EEOC issued a revised version of its ongoing COVID-19 guidance publication, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws," addressing questions related to the administration of COVID-19 vaccinations in an employment context. The new information, outlined in Section K of the publication, clarifies that employers may require, as a condition of employment, that

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# THE FLUIDITY OF THE PANDEMIC HAS YIELDED YET ANOTHER DECISION POINT FOR EMPLOYERS — CAN EMPLOYEES BE REQUIRED TO OBTAIN A COVID-19 VACCINE AS A CONDITION OF EMPLOYMENT?

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employees receive the COVID-19 vaccine. However, there are many open questions and significant legal issues for employers to consider under the EEOC's guidance. Some key takeaways for employers from the updated EEOC guidance include:

### (a) The COVID-19 Vaccine is NOT a medical exam under the Americans with Disabilities Act (ADA)

First, the EEOC's guidance clarifies that the vaccine itself is NOT a medical exam. Under the ADA, "medical exams" which are a condition of employment must be job related and consistent with business necessity or be necessitated by a direct threat in the workplace. The EEOC stated that by simply administering a COVID-19 vaccine, employers would not be seeking medical information from the employee, and thus this would not rise to the level of a "medical exam" under the ADA.

### (b) Prescreening Vaccination Questions MAY Implicate the ADA

For employers who choose to implement a mandatory vaccine requirement, the EEOC guidance provides some additional cautions related to prescreening questions (which are recommended by the CDC prior to administering a COVID-19 vaccine).

In order to pass muster under the ADA, the prescreening questions must be "job-related and consistent with business necessity," and to meet this standard, employers will need to have a "reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others."

In assessing whether there is a "direct threat," the EEOC advises employers to conduct an individualized assessment in taking into considerations the following four factors: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.

The EEOC makes clear that the concerns about the prescreening questions will not implicate the ADA where (1) an employer has offered a vaccine on a voluntary basis (i.e., employees choose whether to be vaccinated), which would mean that an employee's refusal to answer the questions would only mean the employer could refuse to administer the vaccine; or (2) an employee receives an employer-required vaccine from a third party that does not have

a contract with the employer (i.e., a pharmacy, broker or other health care provider), the ADA would not apply to prescreening questions.

### (c) Confidentiality Issues

The EEOC also makes clear that the prescreening questions (whether voluntary or mandatory) and the responses to those questions should be maintained as confidential information, in a separate file (i.e., not the personnel file), in accordance with the provisions of the ADA. Those employers who administer vaccines themselves, or contract with a third-party provider to administer vaccines, should also be wary of their obligations under the Health Insurance Portability and Accountability Act (HIPAA) as to employee-provided information and vaccination records.

### (d) Employee Proof of a COVID-19 Vaccine

Employers may request and require employees to show proof of receipt of a COVID-19 vaccination. Such a question does not amount to a disability-related inquiry in and of itself. The EEOC cautions employers who ask "why" an employee has not or cannot receive a vaccine. These follow-up questions may elicit information about a disability and would need to be "job-related and consistent with business necessity" in accordance with the ADA. Employers who do wish to require that employees furnish proof of vaccination should instruct employees not to provide any medical information in connection with the vaccination record in order to avoid implicating the ADA.

### (e) Disability-Related Exemptions to a Mandatory Vaccine Requirement

The new EEOC guidance also provides some direction to employers for responding to employees who indicate they are unable to receive a vaccine due to a disability. The EEOC reiterates that employers can require that employees "not pose a direct threat to the health or safety of individuals in the workplace." However, if a mandatory vaccine requirement has the effect of screening out individuals with disabilities, the "employer must show that an unvaccinated employee would pose a direct threat due to a 'significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.'"

The EEOC instructs employers to conduct an individualized assessment of four different factors to determine whether a "direct threat" exists. These include considering: (1) the duration of the risk;



(2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.”

If an employer concludes there is a direct threat, the EEOC indicates that the employer may “exclude” the employee from the workplace, but cautions employers against terminating the worker without first considering whether there may be an accommodation available. The EEOC advises that employers should engage employees “in a flexible, interactive process to identify workplace accommodation options” and also notes that one factor that warrants consideration may be the prevalence of employees in the workplace who have already received the vaccine.

Practically speaking, it seems this analysis will still hinge on individual circumstances related to things like the nature of the employee’s disability, the work conditions, and the ability to mitigate potential hazards through job modifications such as increased social distancing, PPE, telework, etc.

Employees working in high-risk environments or with high-risk populations (i.e., food service and food processing, health care, nursing homes, and schools) may have fewer options for accommodating vaccine exemptions, especially given the risk surrounding the efficacy of PPE measures in industries requiring constant exposure and close face-to-face contact. But again, the EEOC guidance makes clear that the number of employees vaccinated will have a bearing on this analysis.

#### **(f) Religious Exemptions to a Mandatory Vaccine Requirement**

Similar to the disability-related exemptions, the EEOC guidance reiterates that employers who plan to require a vaccine also provide an exemption where the employee maintains a “sincerely held religious belief” or observance which prevents them from taking the vaccine. This standard is fairly broad and encompasses more than traditional organized religions, but the protection would not extend to employees who seek an exemption due to political beliefs, personal objections to vaccinations, or safety-related concerns with the vaccine. The EEOC notes that as in the case of the ADA, Title VII also allows employers to deny an employee’s request for an exemption to a mandatory vaccination if the employer can show an “undue hardship” by allowing the employee to forgo the vaccine. Again, the EEOC makes clear this would hinge on the individual circumstances applicable to each case but would largely depend on the employer’s ability to provide alternative protections for the employee, the rest of its workforce and, where necessary, members of the general public.

#### **(g) Genetic Information Nondiscrimination Act (GINA) Implications**

Lastly, the EEOC makes clear that simply administering the COVID-19 vaccine to employees or requiring employees to provide proof that they received the COVID-19 vaccine does not implicate Title II of GINA because it does not involve genetic information as defined by the law. Under Title II of GINA, employers may not use, acquire or disclose an employee’s genetic information in connection with their employment, subject to six narrow exceptions.

As with the ADA, prescreening questions, or where an employee provides more than just proof of vaccination, may still implicate GINA. Accordingly, the EEOC advises that employers should avoid prescreening questions which implicate genetic information (which should be fairly easy to do) or require employees to obtain the vaccine through their own means and simply provide proof of the same to their employer, without any extraneous medical information.

While the updated EEOC guidance provides certain clarification for employers contemplating workplace vaccination strategies, the exceptions and exemptions under the ADA and Title VII are fact-intensive and will vary widely. Employers who do intend to adopt mandatory vaccination programs are advised to review potential reasonable accommodations for disabilities and sincerely held religious beliefs and strategize how they will respond to such requests in order to minimize legal exposure under Title VII and the ADA.

### **2. Occupational Safety and Health Administration (OSHA)**

While OSHA has also not yet provided specific COVID-19 vaccination guidance, its longstanding position regarding the flu and other vaccines indicates support for employer mandates so long as employees are “properly informed of the benefits of vaccinations.” The agency has caveated this by clarifying that an employee who refuses a vaccine due to a medical condition that the employee reasonably believes would cause serious illness or death may still be protected by Section 11(c) of the OSH Act, which governs whistleblower claims based on workplace health and safety.

Furthermore, it is worth noting that in its interim guidance issued in May of 2020, OSHA had encouraged its own investigators to obtain the COVID-19 vaccination as soon as it becomes available. There is likewise widespread speculation that OSHA may look to apply the General Duty Clause, OSHA’s general citation standard, to issue citations to employers who fail to offer the COVID-19 vaccination to its workforce as an enhanced safety measure. As with the EEOC, additional guidance is expected to shed light on the direction of OSHA’s enforcement position on this topic.

### **3. Workers’ Compensation**

On a similar note, what happens if an employer recommends or requires a COVID-19 vaccine for its employees and the employee is injured due to the vaccine?

Most likely, state workers’ compensation coverage would come into play to cover any physical injury, whether due to a vaccine side effect or other physical injury to the employee caused by the vaccine. This would generally be true in the case where an employer recommends, requires, pays for, or administers the COVID-19 vaccine at its worksite. On the flipside, workers’ compensation coverage would likely not apply in a scenario where an employee obtains a COVID-19 vaccine without the recommendation, mandate or sponsorship from the employer.

Typically, subject to some state-specific exceptions, workers’ compensation serves as the exclusive remedy for employees who sustain physical injuries within the course and scope of employment. In other words, an employee would be limited to pursuing workers’ compensation benefits and cannot pursue tort

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claims against the employer absent a showing of willful or more serious conduct. While workers' compensation laws may apply to shield employers from tort claims (i.e., personal-injury type claims) brought by employees who sustain physical injuries as a result of an employer-sponsored COVID-19 vaccine, these same laws may not preclude tort claims against third party entities, such as the vaccine manufacturer.

**4. National Labor Relations Board (NLRB)**

Finally, there are labor considerations for both union and nonunion employers in mandating a COVID-19 vaccine. For union employers, requiring a COVID-19 vaccine may be considered a mandatory subject of bargaining, triggering an employer's duty to bargain prior to implementing such a requirement. Employers should review any existing labor agreements for language which precludes or permits such a mandatory vaccination scheme. Second, nonunion employers must also be mindful of how implementing a vaccine requirement could implicate Section 7 of the National Labor Relations Act (NLRA), which provides employees the right to engage in "concerted activities" for the purpose of "mutual aid and protection." Practically speaking, employees who join together to speak out for or against a mandatory vaccine requirement, who collectively create outside social media postings or other organized interoffice communications regarding the requirement, or simply discuss the employer-imposed requirement would be protected by federal labor law and, generally, cannot be subject to discipline or termination as a result of this conduct. Notwithstanding, even if employees band together in concerted activity under the NLRA

and cannot be disciplined for that concerted activity, they could still be disciplined for refusing to take the vaccine or even permanently replaced if they choose to go out on a work stoppage.

While the current legal landscape suggests employers, especially those in certain high-essential industries, may be able to require employees to obtain a COVID-19 vaccine, the legal landscape changes almost daily, and there are many open questions, potential public relations pitfalls, and employee morale issues with doing so. Until there is more guidance from the federal, state, and local level on this topic, and more widespread use and availability of the vaccine beyond the healthcare industry, employers may want to consider promoting rather than requiring a vaccine as a condition of employment just as they would a flu vaccine. 🇺🇸

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Abbey Moland is an attorney at McGrath North and counsels Fortune 500, midsize and startup businesses, colleges and universities, and nonprofits on a wide range of labor and employment matters. Her practice spans across the country in areas including wage and hour compliance, workforce reductions, employee leaves of absence, FMLA and disability accommodations, workplace investigations, hiring practices, disciplinary actions and employee terminations, immigration and workforce authorization, management and employee training on workplace issues, policy formation, union organization, noncompete issues, OSHA investigations and employee class-action litigation. She is also experienced in defending employment-related litigation and providing day-to-day counseling to avoid unlawful employment practices. Moland can be reached at (402) 633-9566 or amoland@mcgrathnorth.com.

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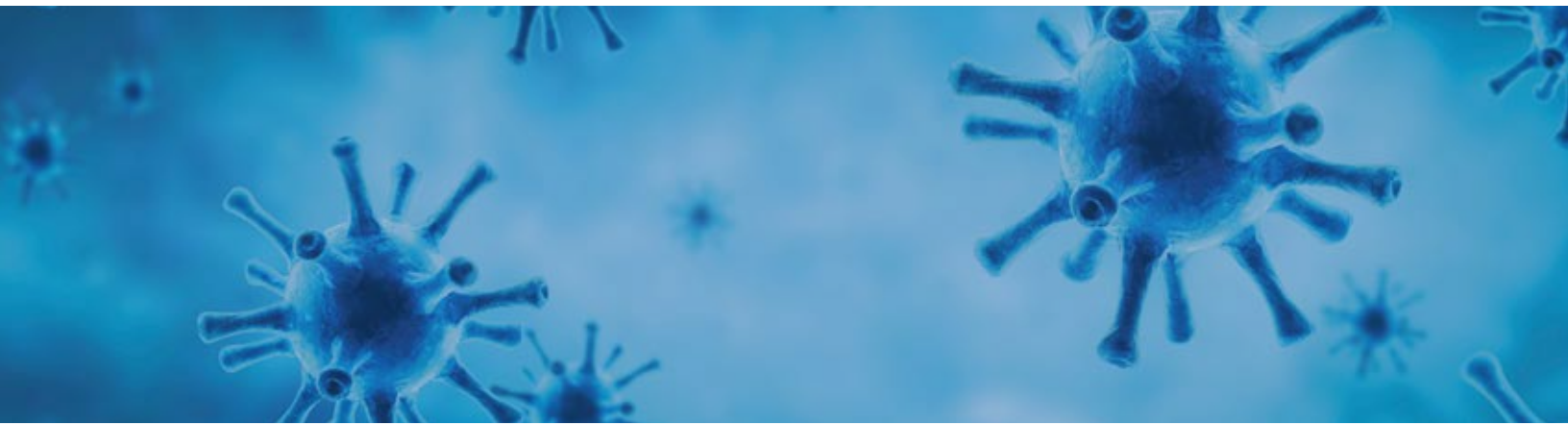
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# PLANNING, PREPARING AND PIVOTING



As the first quarter of 2021 ends, the end of the pandemic is beginning to look like it might be closer than anyone thought as recently as January. A new president is in the White House, three vaccines have been approved for use, and medical professionals throughout the nation are getting those vaccines into people at an accelerating rate. The country is moving closer to herd immunity every day. As a result, analysts and industry executives expect strong demand as the economy stabilizes. Early forecasts predict vehicle sales between 15.6 million and 16 million.

One of the most surprising aspects of the last year is that profits have been high, strong and consistent. When the country stopped in March, including the automotive industry, no one saw that coming.

**What is the best way to plan, prepare and pivot? The answer will depend on your specific circumstances, so the first step is assessing your current situation. To start, answer a few basic questions:**

- How has your year been for your dealership?
- Is it better, worse or the way you thought it would be?
- What does the data tell you?
- What should you do next?

According to attendees at a recent NADA webinar about planning, preparing and pivoting for 2021, 78% of the dealerships were having a better year, 13% were having the kind of year they expected, and 9% were struggling more than expected.

**As you look toward 2021, ask yourself the following questions:**

- Where are your best opportunities?
- What changes in customer buying behaviors have taken place?
- How can you adapt to meet customer's evolving expectations more effectively?

Members of the industry obviously want the numbers to continue to go up. For that to happen, though, now is the time to work smarter and put the necessary processes into place.

In the spring of 2020, before the pandemic, dealers had plenty of inventory on their lots and a great deal of sales activity. It was hard to find a place to park on some dealership lots because so many cars were already parked there, ready to purchase. That ended during the late spring and summer when factories had been shut down. According to IHS Markit, factory output decreased by 2.538 million units. The percent growth, year over year, dropped by 16.4% from the forecasts. Suddenly, there weren't as many new vehicles on the lot. Inventories were lowest in June, especially on the truck side of the market.

The vehicle forecast for 2021 is promising. Although the numbers are down, they aren't terrible either. IHS Markit has stated that percent growth year over year is expected to be up by 8.8%, although the number of vehicles being built will still have dropped by 1.043 million units from the pre-pandemic estimate. The year 2021 will be a critical time for continued

recovery. However, overall, the recovery seems to be going faster than anyone anticipated, and dealers have shown you can still make money by selling cars. Although it may take four years to bounce back to the same sales levels as those in 2019, optimism is reasonable if you focus on profit instead of volume.

**How big was the production drop for manufacturers? U.S. dealerships sell substantially more trucks than cars, so production numbers match that sales expectation. According to Motor Intelligence:**

- In January and February, truck production fell 6%, and car production fell 26%.
- By June, car sales were about the same (with a drop of approximately 26%), but truck sales had fallen 34%.
- In October, the production drop for cars was 22%; it was 26% for trucks.

The inventory gap will continue, going into 2021. No one knows yet whether the gap will continue or disappear. If matters continue to improve, the production gap may be gone by the end of the year. But you will want to come up with new processes to minimize the inventory gaps we know for sure we will have and maximize selling inventory as effectively as possible.

Dealers prosper when manufacturers prosper; it has always been a synergistic relationship. But going into 2021, you can't sell a commodity you can't get. Since dealers have an inventory gap for new vehicles, that reality means this is a great time to pivot toward preowned ones and focus on vehicle acquisition. This particular pivot is not surprising. According to Tanja Linken of IHS Markit and Pete Margaros of automotive Mastermind during a recent NADA webinar, the used market typically increases and the new market decreases during an industry crisis.

Increased demand for used vehicles has already driven up auction prices. How can you combat that? Many vehicles currently on the road were purchased during the record sales years that preceded the pandemic. The vehicles sold by your dealership form a portfolio you can now manage as buyers tilt toward used cars instead of new ones. Doing so will be cheaper than using auctions.

According to IHS Markit, dealers are currently selling approximately three used cars for every new one. To close the deal, though, you will need to finance the sale 90% of the time. Be competitive. OEMs responded to the pandemic by offering incredible financing offers in the new car market, and most financing companies did leasing extensions. For example, some OEM programs offered 0% for 84 months, effectively taking many potential customers out of the market for seven years. However, the leases that were extended are coming due now.

Approximately 72% of all deals made have longer terms, so each sale matters because it will be a while before you will have another opportunity. Afterward, your customers are off the market and on a relationship journey with your dealership. What you do during that time may determine whether they buy their next vehicle from you too, but they are also giving you the chance to make money before the next sale.

The ideal sales strategy focuses on solving a customer's problem, not persuading them to buy something they don't need or want. Having information about a customer gives you that chance to solve instead of sell.

**Portfolio management means paying attention to matters such as:**

- The date a customer's factory warranty expires
- When their loan or lease expires
- Whether you can save them money on gas
- Their equity position

Customer loyalty can be defined in three ways: loyalty to the manufacturer, the brand and the model. Loyalty drops when customers look for a new car, so much so that many sales can be classified as one and done. What are the supporting numbers? IHS offers the following numbers in July of 2018, 2019 and 2020:

Loyalty Rate and RTM Count	July 2018	July 2019	July 2020
Manufacturer	59.2%	60.7%	59.1%
Brand	52.3%	54.0%	52.5%
Model	25.9%	27.1%	26.0%
RTM Count	747,220	776,841	728,656

The loyalty drop works to your advantage with new customers, but do what you can to minimize losing existing customers. Having a data-driven strategy in place is an excellent way to keep customers loyal by knowing what matters to them and speaking up at the right time with the right offer. To reach customers at the right time, monitor channels such as social media, your website, and customers who walk in the door; that includes customers in the service department. Reach out to customers with a call to action.

As you focus on the service department, you may want to rethink compensation. Employees on the service side should be compensated as generously as employees on the sales side when contributing to the dealership's success. Reward their help if they are involved in a sale.

When reaching out to a customer, how do you know what you should offer them? People generally have two goals when they are making a big purchase. They want financial help to make the purchase possible, and they want to mitigate the risks inherent in spending a large sum of money. Customers are also interested in saving money. Look for ways customers can find money to spend at your dealership, and set up deals that make sense for them to agree to.

**Of course, it isn't enough to sell to existing customers. You also have to look for new customers. Customers have changed their buying habits, and the pandemic has accelerated the change. Some customers still only buy**

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in person because they understand that process. But customers also like buying online, and some customers use a combination of the two (such as researching online and communicating by email). According to IHS Markit, U.S. customers buying at the first major pandemic peak could be classified as follows:

- Dealership purchases: 38%
- Combined purchases (dealership and online): 27%
- Online purchases: 34%

How you handle online leads will make a difference in whether you make sales. More people are shopping online and seeing posts than are walking through the door of the dealership. Assuming they don't make the entire purchase on your website, they may eventually step into the building ready to buy. That readiness is useful information for you to have. Your goal should be to make the process seamless and frictionless. You also have an opportunity to streamline.

One way to analyze your existing processes is by looking at how many employees a customer interacts with during a purchase. IHS Markit researched this question at dealerships in the U.S. and other countries:

Sale Type	U.S.	World
At the dealership	4.7	3.8
Partially online, partially at the dealership	5.7	3.0
Online	3.8	2.1

The table shows a couple of missed opportunities.

- In the U.S., 5.7 employees interact with a customer when the sale is conducted online and in the dealership. That's more than at the dealership or online.
- Outside the U.S., customers deal with fewer employees, period.

Let's explore the missed opportunities:

- The handoff between being online and going to the dealership is not seamless. When online customers walk into dealerships, they start the process at the beginning again instead of resuming where they left off. That shouldn't happen.
- U.S. dealerships are less efficient than dealerships outside the U.S. Online customers at U.S. dealerships are generally directed to a receptionist. Outside the U.S., dealerships send online customers directly to a product expert. The expert focuses on solving problems for the customer.

What is going to change after the pandemic ends? Less than you think. It's a no-brainer to improve your website service, of course, but time-tested sales strategies will also continue to work. Manage inventory intelligently, strategize every sales channel and let data help you focus on customer service:

- Good relationships continue to be the real foundation of any business. People like to buy from friends they trust. That hasn't changed, and it isn't going to change.
- People are social. They will still want to come to the dealership. They will appreciate having the option of picking up their vehicle from the dealership or having it delivered to their home.
- Look at your sales processes, and adjust them to make them work better. The first contact with a customer should be with a member of the sales staff, or someone who specializes in, or is a product expert about, whatever the customer is likely to buy. Have this employee gently guide the customer through the process by focusing on whatever problem the customer has. Be solution-centric, not sales-centric, and emphasize professional expertise, not selling. You can upsell later.
- You will do your best on the internet if you put high-quality people online to interact with potential customers.
- Study Amazon's example when it comes to your website. Amazon provides a tailored, quality experience. When Amazon makes suggestions, the suggestions increase its revenue by 40%.
- Online and hybrid options are convenient. Customers like them, so they are here to stay. Anything that makes buying effortless and uncomplicated is good. 🚗



# KADA PREFERRED PARTNER PROGRAMS

Kentucky Automobile Dealers Association (KADA) is pleased to recommend a broad range of products and services aimed at controlling expenses in every facet of the dealership. The following products and/or services are recommended by the association's Board of Directors and endorsed through the association. These vendors are reviewed periodically to ensure the quality of products and services meet the needs of our dealers and can provide special pricing through group buying.



**Dealer Online Auction Platform**  
 Jeff Judice, 404-313-7783  
 jjudice@acvauctions.com



**Complete Set of Solutions for the Auto Dealer**  
 Ernest Lattimer, 516-547-2242  
 ernest.lattimer@coxautoinc.com



**KADA Automotive Group Health Insurance**  
 Leslie French, 502-657-2384  
 lesriefrench@llhins.com



**Workers Compensation**  
 John Foresman, 502-489-6255  
 jforesman@uscky.com



**Dealer Management System**  
 Ernest Lattimer, 516-547-2242  
 ernest.lattimer@coxautoinc.com



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 Jeremy Kimsey, 804-641-1221  
 jkimsey@mocmidatlantic.com



**Group Disability Income Insurance**  
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**Extended Warranty Program**  
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Todd Howard, 859-699-7222  
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Kevin Voges, 812-204-2251  
 kvoges@dpg-inc.com

Larry Dorfman, 404-732-5910  
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**NADA Retirement from Empower**  
 Jeff Liwacz, 609-529-3546  
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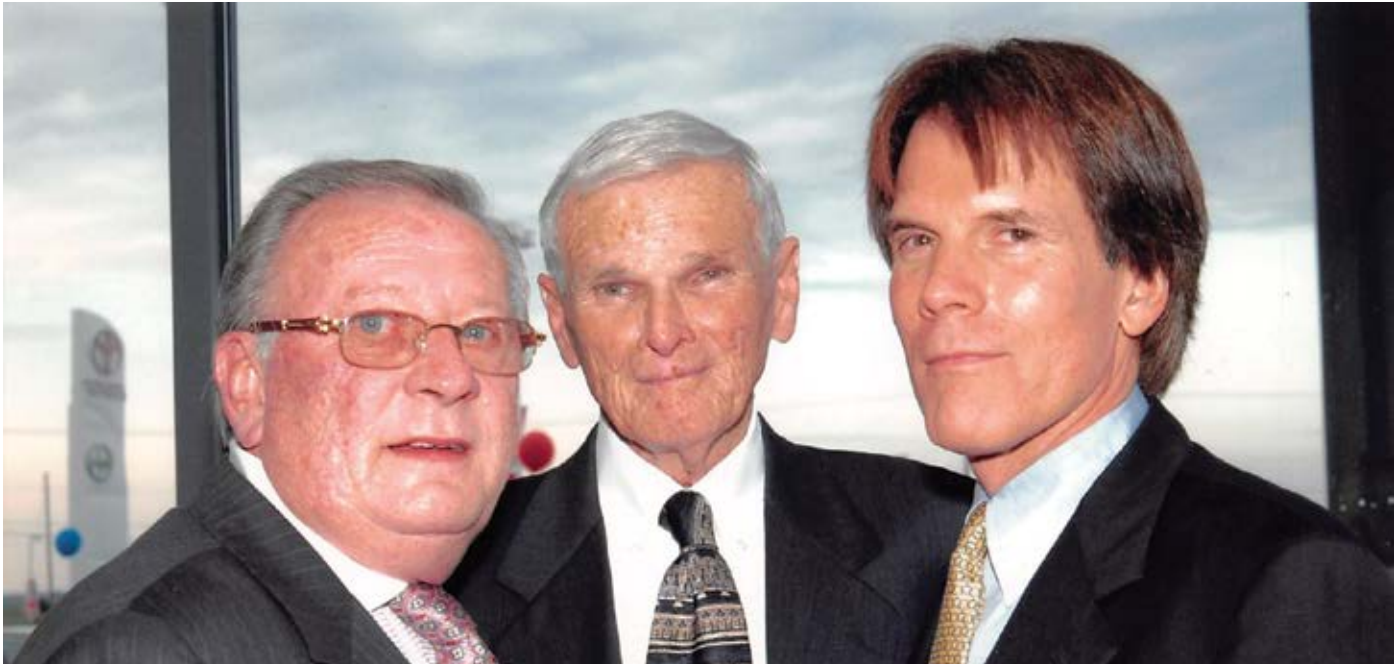


**Warranty Parts & Labor Reimbursement**  
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# DEALER HIGHLIGHT: STEVE GATES

KADA is proud to recognize Steve Gates, a KADA member and the 2021 AIADA chair. During a recent interview for the KADA magazine, Steve talked about a wide range of subjects.

## Career Background

Steve never wanted to do anything else than be in the car business. Like many dealers, becoming a dealer was a natural choice because his father and grandfather were in the car business, too. On the other hand, Steve's mother wanted him to be a doctor, but both his parents embraced his career path.

When Steve was asked to compare running a dealership to practicing medicine, he said, "Car dealers are held to a different and higher standard. If you have to go back to a doctor after a bad diagnosis, you will not demand that you get a refund for your last visit. People know bodies are complex, and they understand doctors don't necessarily get the diagnosis right the first or second time. But the people who come to us are our guests. That's a big difference. We want to develop a relationship with them. Guests expect you to get things right the first time, say thank you and be kind. They also expect clean waiting rooms, refreshments and (before the pandemic) current magazines to read. You don't get that from a doctor's office."

Steve's degree is in radio and television; the field is currently called communications. He thought for a while about producing documentaries, and he also got politically involved. Early in Steve's career, he had an unglamorous job at a radio station doing public

service spots during the middle of the night. Making documentaries was a long way in the future, and Steve just loved cars. He didn't know whether he would be successful, but he wanted to be close to the auto industry. "Being a manager would have been enough for me," said Steve. "We don't all get the opportunity to do what we love, but I did."

## Mentors

Steve's two favorite mentors are his father, Bud Gates, and Bob McKamey, a dear friend of Steve and Bud. "They were both great guys who loved this business," he said.

Bob, who died in 2018, was the first chair on the Toyota National Dealer Council in the 1970s and served many other times, too. He also started Toyota Dealer Advertising Association (TDA), was the AIADA chair and was chair for the Americans for Free International Trade (AFIT-PAC). "I worked for and with Bob. I didn't set out to do all the same things Bob did," said Steve, "but it just happened that I emulated his career. Bob bought the store in Richmond, Kentucky, where I am today. It was losing money and was a terrible place. He was scared, talked to my dad, and my dad told him to call me. We stood together and supported each other. Even though I didn't inherit my dad's dealership, he did give me a dealership in a way by putting me together with Bob."

Like Bob, Bud served on the Toyota National Dealer Council. He was a brilliant man who trained as a lawyer and had "unbelievable breadth of knowledge," said Steve. "He read everything about



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## KADA HAS BENEFITED STEVE IN OTHER WAYS, TOO. “KADA OFFERS A LOT FOR ITS MEMBER DEALERS,” SAID STEVE. “ITS HELP IS NOT LIMITED TO GOVERNMENT OUTREACH. THEY BECOME A GREAT PARTNER. THEY OFFER CLASSES, THEY HAVE A FABULOUS LEGAL STAFF, AND THEY JUST REALLY UNDERSTAND OUR BUSINESS.”

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everything. He gave me a thirst for knowledge and a love of reading. You can't have a better gift than that.” Although Bud's dealership went out of business, he stayed in the industry and ultimately went to work for Bob. Bud died in 2015. Both men encouraged Steve to follow his passion and gave him the freedom to make his own decisions. “They supported me and gave me credit when the decision was good and counsel when I didn't exactly do the right thing,” Steve said. “I think I just learned from example.”

### Association Benefits

Steve credits KADA with teaching him the importance of working with the government. As Steve puts it, successfully operating a dealership takes more than great people and great cars. A dealership's destiny is often in lawmakers' hands, so dealers must be knowledgeable, conversant, and willing to talk to legislators and teach them something about the business.

That reality is what first drove Steve to get involved with KADA and, later, AIADA. In 2009, Toyota was falsely accused of building cars with sticky pedals that caused people to accelerate unintentionally. As reported by Malcolm Gladwell, the problem wasn't the cars or their pedals. People thought they were pressing the brakes because they were unfamiliar with the cars they were driving or were confused. Instead, they were flooring the accelerator. “Toyota dealers didn't have the relationship they needed with legislators to get support, locally or on the federal level,” said Steve. “That was sobering. Whether or not legislators would have agreed with our position, at least we could have talked. But I couldn't reach out to anyone who would listen to me.”

KADA has benefited Steve in other ways, too. “KADA offers a lot for its member dealers,” said Steve. “Its help is not limited to government outreach. They become a great partner. They offer classes, they have a fabulous legal staff, and they just really understand our business.” He sees associations like KADA as indispensable to the industry's success. It is a full-time job to keep up with the legislature and regulations being implemented by commissions and different government branches. “KADA doesn't just monitor; they also interpret what is happening, so we know how to react,” said Steve.

### The Pandemic

The pandemic affected Steve personally. Starting Dec. 26, 2020, and through the end of January, Steve was sick and was hospitalized for 12 days. “I am an evangelist for social distancing, masks and the

vaccine,” he said. “But I can't get vaccinated yet. It would put me back in the hospital, and right now, I don't even drive by the hospital because I don't want to be in one.”

On a professional level, Steve said he and other car dealers learned a lot. The first hurdle was doing business online and virtually. Dealerships went the extra mile on keeping facilities clean, had a heightened awareness of personal hygiene, and employees learned how important they were to each other as an organization. “Nobody knew early on what the chances of survival were for our industry,” said Steve. “We had to rely on one another more than ever before. As the pandemic subsides, we can't forget the lessons we learned about taking care of one another.”

As the pandemic ends, Steve is concerned about interruptions to the supply chain. For example, semiconductor shortages affect manufacturers who are building car computers, and petrochemical shortages mean there isn't enough foam for new car seats. Inventory shortages inevitably result.

In contrast, dealers are in a fabulous position to have a great year because of pent-up demand. “People have been saving money, interest rates are low and there is a lot of new technology in vehicles. The new technology makes them safer,” said Steve. “People are anxious to be able to buy new cars and to get out for personal interaction. We sold cars virtually during the height of the pandemic, and that will be a component of our business forever, but we've missed the social component in our lives. People say they want to ‘get tires,’ but they actually want to visit.”

Before the pandemic, people were talking a lot about car sharing. That's gone away, but the underlying reasons for it have not, such as reducing pollution and freeing up land in high-density cities. Steve thinks it will be a long time before car sharing becomes important again. “In smaller communities, people want personal transportation. It seems to have been more important in big cities with very dense populations,” said Steve. “I have three millennial daughters with young children, and I am pretty sure that after the pandemic, they will never consider car sharing. It doesn't make sense to them.”

### The Auto Industry's Future

As Steve looks at the auto industry's major upcoming changes during the next 5-10 years, he is concerned that some manufacturers

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will question whether reliance on the franchise system still makes sense. Tesla and new startups like Rivian, Lordstown Motors and Lucid Motors have sales models that are all direct to the consumer. “Direct sales sound like a good idea, but again, people need and want face-to-face communication,” he said. “They want access to recall information and advice they can trust. Our traditional manufacturers spent decades perfecting manufacturing. Dealers spent generations getting sales just right. We work best together when we complement each other.” He is critical of companies that don’t invest in their communities. “The big companies won’t sponsor the Little League team, and they won’t employ as many people. Dealers employ thousands. Companies like Carvana and Vroom don’t.”

Steve knows new powertrains are on everybody’s mind, and he thinks we all have a responsibility to protect and improve the environment. “EVs get the most press,” he said, “but EVs are not right for everybody. Hydrogen is probably the more valid solution to greenhouse gas pollution. Tax incentives should be extended to all forms of electrification on a state and federal level. That means hybrids, plug-in hybrids, pure EV and hydrogen. We need to try and work with Congress to make sure that all of the powertrains are recognized as vital and help Congress understand they all deserve tax incentives.”

Hydrogen cars haven’t gotten the same press as EVs, but they are selling in the ZEV states, especially California. For example, the Toyota Mirai has a 600-mile range and can be filled up in

5-6 minutes. The exhaust is water. Steve sees EV as an interim step toward hydrogen-powered cars. “Hydrogen will be viable,” Steve said. “Honda, Hyundai, Kia, General Motors and Ford have all been working on it. But lack of infrastructure is holding back development for all these alternative vehicles.”

An aging power grid poses a particular problem for EVs. “We saw it in Texas in February 2021. People with electric cars were stranded. Also, charging is slow. It takes a long time to charge with a 110-V outlet, although Tesla does have a rapid charger,” he said. Steve doesn’t think it will be possible to solve the problem individually, either. “Getting solar panels and battery backup isn’t possible for everybody; I live in a house that was built in the 1900s with a pitched slate roof. I could not even remotely put solar panels on my roof.”

He hopes the Biden administration will dramatically expand the charging infrastructure for EVs; if it does, the expansion will make things easier for drivers. Still, charging stations don’t solve the aging power-grid problems, and Steve thinks the U.S. needs to think more about hydrogen. “If we really do get to the point where we are adding all these power stations, we have to think about hydrogen. Big trucks need it: they are huge polluters. Fortunately, there are already commercial semis in testing that have hydrogen power trains.”

Absent that infrastructure, Steve has doubts about EVs. “You can’t count on pure electric. The battery is affected by hot and cold weather, and if you get in an accident or get stuck, even 500 miles



worth of charge can disappear pretty quickly, especially if you have heat and want a radio. My brother rented a Tesla Model S in Denver for us to drive to Aspen. Interstate 70 was closed. I thought for sure we would run out of charge, and I had no idea what to do. It worked out, but I was worried about it.”

He sees plug-in hybrids as the more reasonable choice at this point. “I drive a RAV4 Prime. The pure electric part of a plug-in hybrid works for short commutes, and if you get out on the open road, you have internal combustion, so you have no range anxiety. And cars with internal combustion engines are very efficient now. They are not big polluters; everything gets pretty good gas mileage these days.” Another new choice, Ford F-150 hybrid trucks, are a further indication of the changes to come.

Ultimately, Steve says, “manufacturers will build and sell what people want, whether it is EV or hydrogen or anything else.” The current market share is only 2%. Some of that has to do with availability, and the other part has to do with cost. “EV and hybrid technology are just more expensive,” he said. “The difference in powertrain between a gas engine and a hybrid may only be \$800-\$1,000. A rough estimate for a plug-in hybrid adds another \$4,000 on top of that \$800-\$1000. Full electric could add another \$3,000-4000 on top of \$4,800-\$5,000, which means the price might total as much as \$9,000 more than for a similarly equipped internal combustion vehicle. Even if all the extra cost only makes a \$20 difference in the monthly loan, \$20 matters. The supply has to be affordable.”

Since the government will always be involved in the auto retail industry, Steve thinks dealers need to work with them toward standardizing manufacturer regulations. “It does not work to have one set of regulations for California and another for Kentucky. Manufacturers can’t survive if they can’t sell in California, and having multiple standards is unreasonable. Even if California standards are adopted, which may be, we should all have to live by the same rules,” he said.

One way electric cars will affect dealerships is to make service departments less profitable, and Steve has the same healthy concerns about that as other dealers. He pointed out that service departments are filled beyond capacity right now, and many need more space. “I don’t know if it makes sense to build or add on,” he said. “If the EV business is 10%-15% by 2030, then it would be a mistake not to add on. If it is 50%, then it would be a mistake. But nobody knows. News media and the government are overstating how many EVs will be on the road by 2030; EVs have a long way to go. Europe will get there first. In Europe, and perhaps in China, the law seems pretty clear that manufacturers won’t build combustion engines after 2035, so dealers in Europe have a better understanding of their future.”

Despite the uncertainty, Steve is confident that dealerships will adapt. “This is another lesson from the pandemic. We can meet the challenges because we’ve already learned how to pivot,” he said.

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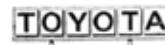
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At the same time, the business model won't stay the same. "If BEVs represent the majority of our sales, we will be more reliant on gross profit on sale as opposed to negotiation because income from parts and service may decline. We may have to go to one nonnegotiable price where the only variable will be the trade-in value," he said. "Direct-sale manufacturers like Tesla will have a hard time with that because they don't do well on trade-ins, leasing or finance options."

### Diversity

Steve's family is doing its part to increase industry diversity. Two of his daughters are in the business. "It's a start," he said. "They are so much smarter than I am, and they have found a work-life balance that I was never quite able to work out. They accomplish a lot more in a shorter day than I did and do."

Steve thinks dealership employees should look like the people they serve. That has been a difficult goal because it is tough to recruit women and people of color, especially in small communities. "That's a real big challenge for me and our industry," he said. "I will just keep working on it."

### Technician Shortages

Steve recognizes how hard it is to find and retain technicians. "Being a technician is a tough job," said Steve. "The work is hard on the

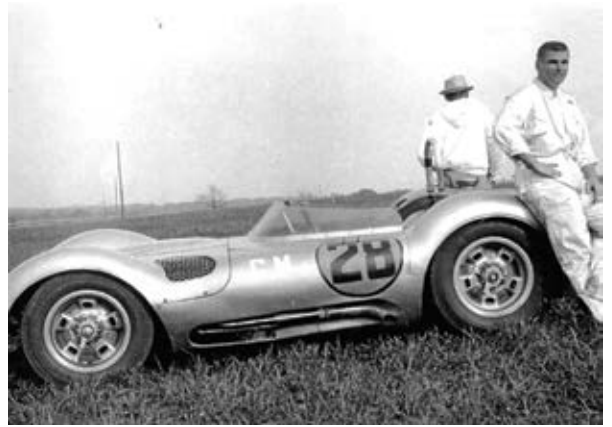
technician's body. You have to stand on concrete and lift heavy tires quickly. I can barely do that slowly. Also, you have to master the electronic side. At the beginning of my career, everything was mechanical. Now the electronics almost require a Ph.D. It's a very complicated profession, and the shortage is absolutely a concern."

The shortages aren't limited to technicians. "We've pushed too hard for the white-collar jobs," said Steve. "All the trades have the same issues: HVAC, plumbing and electrical. I understand it in theory, but in reality, what a mistake."

Manufacturers are working with dealers to find technicians, but the only successful way to solve technician shortages is through mentoring programs that recruit men and women. "Some dealers make the mistake of always looking for guys," said Steve. "We hire people at a little higher pay scale than the Jiffy Lube around the corner and have them start by changing oil. If they do their job well, we take the responsibility to train them over time until they become a full-fledged master technician." One key part of the mentoring program is buying the tools for dealership technicians. That helps; it's no secret the tools are extraordinarily expensive, and not everyone can afford them.

### The Biden Administration

Steve is still unsure about the direction the Biden administration will take, but he thinks it will reenergize the Consumer Finance



Protection Bureau (CFPB). He sees a possible move from compliance to enforcement, and he thinks that would be a mistake. “When governments don’t understand issues, they overreach,” said Steve.

Steve is very hopeful that the Biden administration will embrace free trade, but he is concerned about emphasizing union jobs instead of American jobs. “Most of our international nameplate dealers sell cars that the manufacturers build in the U.S. The manufacturers employ thousands and thousands of Americans in nonunion jobs. Those jobs should just be characterized as American,” he said.

Tax changes are also coming. “We want to try to protect things like LIPO accounting, which is a big deal to our industry and others, and we are concerned about laws that would affect estate planning,” he said.

Estate planning is an issue because of taxes. “Although estate taxes are pretty low right now, there was a time where estate tax was as high as 90%,” said Steve. “Suppose my daughters want to stay in the business when I retire. If taxes usurp my estate, the businesses would have to be sold. This problem isn’t unique to our business. Family farms have the same problem. To me, this isn’t an AIADA stance. There shouldn’t be a tax on estates. Everything I own has been paid with after-tax dollars. I think it is

double taxation. I should be able to give everything I want to my daughters without any tax.”

#### On the Personal Side

Steve races cars every chance he gets. “I am not very good,” he said, “but I am always the one who is having the most fun. My dad was a really great racing car driver. He drove with many of the legends of auto racing. I get to be around some of the current legends, but we are definitely not on the same level.”

He is also a devoted grandfather. “Most grandparents say the same thing,” he said, “but I love spending time with my grandchildren. I am young enough and healthy enough to be on the floor with them, to run and keep up with them. My athletic skills haven’t declined so much I can’t play baseball or football. I also enjoy watching my children be great parents. For all my mistakes, and I made a lot of them, they turned out great. I am very proud of them. The pandemic reminded me that nothing is more important than your family — your biological family and also your work family.”

Steve enjoys reading and loves learning about U.S. presidents. “I will occasionally dive in and read a quick mystery, but I like nonfiction the most,” he said. He recommends Robert Caro’s four books about President Lyndon Johnson. 📖



# AN ERUPTION AHEAD? PENT UP DEALERSHIP BUY-SELL ACTIVITY IN A POST COVID-19 FUTURE

Making the 2021 annual list of the National Association of Dealer Counsel's (NADC) top legal trends for automobile dealers is again buy-sell activity. As reported by dealers and brokers, after the chaotic business climate of 2020 – a steady upswing of dealership buy-sell activity in the latter half of 2021 is expected. Pent-up buy-sell transactional activity appears to be a further fallout of the COVID-19 pandemic with experts speculating that valuations will reach record highs for nearly all brands. If your business is considering a buy-sell transaction, either as a buyer or as a seller, will you be adequately prepared?

There are numerous considerations for a proposed buyer or seller to think about before entering a buy-sell transaction. The best time to enlist the assistance of competent automotive counsel and any other advisors is at this consideration stage, well before the implementation stage and prior to any negotiations. Important legal, tax and planning considerations exist which can impact the unique structure of each transaction differently.

Parties aspiring to put together a buy-sell will often eagerly engage in discussions, reach preliminary understanding of material terms and only after key terms are set, consider engaging lawyers to prepare required contracts and memorialize the parties' intentions. Too often, early stage negotiations impact material and financially

consequential terms of the deal and can compromise the parties' rights. If the parties do not involve counsel until the point when binding agreements are drawn up, they should be wary of potential problems they may create for themselves, and at a minimum, be mindful of a few points during this initial phase.

First, discussions should be documented. Prospective parties to a transaction commonly get together, in-person or over the telephone to talk about their desired deal, which might include price terms and other aspects of the proposed transaction. It is prudent to take thorough, contemporaneous notes of these conversations. These notes should include the dates of the conversations, participants, and as much detail as possible. These notes should be placed in a separate easily accessible file. Be organized. This may be helpful should the need arise down the road for clarification or in the event of a disagreement. These notes will often become the framework for a letter of intent (LOI), and while a LOI is not a substitute for the formal buy-sell agreement nor can a LOI satisfy manufacturer approval requirements, a LOI can serve as a most useful roadmap to completion of the buy-sell agreement. Naturally, it is advisable to consult with an attorney before executing a LOI.

Second, the importance of collecting necessary information and documents cannot be overstated. This might include franchise

agreements and all addenda, lists of inventories, customer records, existing environmental reports, appraisals, records of pending litigation and the like. A seller should compile this information before any negotiations occur. Relegating this important aspect to the end often causes undue delay, misunderstandings between the parties and can even jeopardize a closing.

Third, most dealerships have executory contracts, existing agreements, leases, and even non-cancelable contracts with vendors and third parties (e.g., computer equipment/software maintenance contracts, agreements for uniforms, advertising, etc.). It is important that these agreements be identified and reviewed early on in the buy-sell process to allow the parties to determine if they are being assumed by the buyer and to determine any assignment requirements. Failure to identify and address these obligations can prove costly and adversely impact the buy-sell closing.

Fourth, the parties should evaluate how to address any due diligence inspections of the business, records, assets and any real estate and improvements, including who will bear inspection costs and the consequence of inspection findings that are not satisfactory. Early determination of these issues could facilitate avoidance of delay, keep the deal together, or allow a party to determine whether to proceed to closing.

Fifth, the structure of the selling dealership is often a corporation or other legal entity. Though the buyer may have been dealing with the seller's majority owner all along, minority shareholders may have rights under the law and the corporation's governing documents which can impact the buy-sell process. Determine

early in the process the rights, if any, of minority shareholders to avoid unnecessary delay and secure required approvals.

Given the prospect of an uptick of buy-sell activity, dealers considering either buying or selling should retain competent legal counsel as early as possible prior to commencing this process. Before principals participate in discussions about a prospective deal with interested parties or take other affirmative steps, consideration of the above five points, consultation with counsel and other advisors to address specific circumstances will serve to avoid pitfalls that could adversely result in the undoing of the coveted deal, prove costly to the parties, or impact the parties' legal rights and protections. 🏞️

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Julie A. Cardosi is an attorney and president of the private firm, Law Office of Julie A. Cardosi, P.C., of Springfield, Illinois. She has practiced law for 35 years and represents the business interests of franchised new vehicle dealers. Formerly in-house legal counsel for IADA, she concentrates her practice in the areas of mergers and acquisitions and other transfers of dealer ownership, franchise law, commercial law, state and federal regulatory compliance matters, including employment, and other areas impacting day-to-day dealership business operations. She has also served as former Illinois Assistant Attorney General and Deputy Chief of the Consumer Fraud Bureau of the Attorney General's Office. The material discussed in this article is for general information only and is not intended as legal advice and should not be acted upon as such. Dealers should consult their own private legal counsel for application to their specific circumstances. For more information, Julie can be reached at [jcardosi@autocounsel.com](mailto:jcardosi@autocounsel.com), or at 217-787-9782, ext. 1.



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