

# STATE REGULATION OF DEALER NETWORKS: JOINT OVERVIEW



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# General Franchise Overview

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- 60-Year History Of Increasing Regulation
- Automobile Dealer Day-In-Court Act (1956)
- State Focus Since The 1970's:
  - “Unequal Bargaining Power”/“Leveling The Playing Field”
  - Promoting the “Public Welfare”
- Statutes Override Contractual Agreements
- States Regulate Most Areas Of Relationship
- Only Other Federal Regulation Concerns Arbitration Clauses In Dealer Agreements

# Overview Of Termination Statutes

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- Core (And Oldest) Aspect Of Franchise Protection
- Require “Good Cause” To Terminate Or Not Renew
  - Multi-Factor Balancing Test (e.g., CA, TX)
  - Material Breach Of Dealer Agreement (e.g., NJ, NY)
- Durational “Terms” Are Overridden
- Franchises Become “Evergreen”
- Notice Required/Automatic Stays Are Typical
- Disputes Heard By Administrative Boards Or In Court, Depending On The State

# Overview Of Add-Points/Relocations

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- Almost Every State Restricts Manufacturers' Rights To Add Or Relocate Dealerships
- Formal Notice Must Be Issued To Existing Dealers
- Statutes Give Protest Rights To Dealers Within Statutorily-Defined Relevant Market Area ("RMA")
- Action Is Stayed Pending Outcome Of Protest
- Exemptions Cover Certain Otherwise-Protestable Add-Points And Relocations

# RMA Statutes: Who Can Protest?

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- Existing Dealers Within Statutorily-Defined Areas
  - Air-Mile Radius: CA (10 Miles), NJ (14)
  - Distance Based On Population:
    - NY (6 Miles In Counties Over 100,000, 10 Miles Elsewhere)
    - FL (12.5 Miles In Counties With 300,000 Or More, 20 Miles Elsewhere)
  - Percentage Of Sales:
    - FL (If Protestant Made 25% Of Sales Within 12.5 Mile Radius Around Proposed Point During Any 12-month Period Over The Prior 3 Years; 20 Miles In Counties Under 300,000)
  - Texas: Same County Or Within 15-Mile Radius
  - Some States Use Market Areas Defined In Franchise Agreement

# Add-Point/Relocation Hearings

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- Usually Decided By Administrative Agency
- Burden Of Proof Usually On Manufacturer To Establish “Good Cause”
- Multifactor Test In Most Jurisdictions:
  - Amount And Permanency Of Protesting Dealer’s Investment
  - Effect On Retail Motor Vehicle Business In RMA (Lost Sales)
  - Effect On Consuming Public In RMA
  - Public Welfare
  - Adequacy Of Competition
  - Convenient Customer Care
  - Adequacy Of Sales And Service Facilities, Equipment, Supply Of Parts, Qualified Service Personnel
  - Increase Competition/In Public Interest

# Other Types Of Regulations

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- Post-Termination Obligations
- Withdrawal Of Line-Make
- Proposals To Sell Franchise
- Allocation Of Vehicles
- Incentives
- Facilities/Exclusivity
- Warranty Reimbursement (Labor Then Parts)
- Audits/Chargebacks
- Modification Of Dealer Agreement
- Factory Stores/Direct Sales
- Participation In Advertising