

Inventory Transfers: Buy-Back Laws Don't Always Provide the Answer

Over the course of the last several years, Seigfreid Bingham has had the privilege of representing many equipment dealerships in their sale, purchase or merger. During that process, I've discovered that most dealers view the transfer of new inventory (including parts) as almost an afterthought. This view is based on the confidence dealers place in the buy-back laws championed by dealer associations over the last few decades. But that confidence is sometimes misplaced and dealers on both sides of a deal need to be aware of situations where the buy-back laws will not come to their aid. **Benefits of Buy-Back Laws In Dealership Transfers** Before we talk about the exceptions, we need to remember that the buy-back laws generally bring certainty in dealership transfers:

- The price for the inventory returnable under the buy-back law is often set to match the price required by the buy-back law.
- The buy-back law can help resolve disagreements about inventory levels. If a buyer thinks inventory levels are too high (particularly with parts inventory), the seller has the option of using the buy-back law to return inventory to the manufacturer after closing for the same price.
- Most major manufacturers have well-defined processes relating to the transfer of inventory in transactions. These processes have typically been refined to comply with the buy-back laws.

Don't Assume That a Buy-Back Law Will Take Care of Everything Even though buy-back laws provide the framework for successful inventory transfers in transactions, the buy-back laws will not apply in certain situations, leading to surprises that can cost you a lot of money. The most common issues occur when the buyer doesn't want to continue with a specific product line. In this situation, either the buyer or the seller will have responsibility for terminating the dealer agreement and getting paid for the inventory through the buy-back law. The party with responsibility can be left with the option of liquidating the unwanted inventory for pennies on the dollar if the buy-back law does not apply. Below is a list of some of the most common situations where I've seen this scenario occur:

- Does the law apply if you terminate the dealer agreement? In a transfer situation, it is the dealer that terminates the dealer agreement. However, there are a handful of buy-back laws that only apply if the manufacturer terminates the dealer agreement. Other buy-back laws will not apply to dealer-initiated terminations of a dealer agreement unless a certain volume threshold of purchases from that manufacturer is reached (typically meaning short lines).
- How old is the inventory? Many buy-back laws only apply to new wholegoods purchased within a certain time period before the dealer agreement is terminated. This type of limitation is often tied to a 24-36 month period in the case of agricultural, construction and outdoor power equipment and references to recent model years in the case of golf carts, ATVs, UTVs and similar vehicles.
- Were you expected to maintain a stock of inventory? A number of buy-back laws only require a manufacturer to repurchase inventory if the dealer agreed to maintain a stock of inventory as part of the relationship. This is a pretty easy requirement to satisfy with most dealer/manufacturer relationships, but some parts distributors have taken the position that they will not comply with these laws because of this requirement.
- Is the category of inventory covered by the buy-back law? Buy-back laws don't always cover every type of equipment you sell. The most common examples of issues relate to ATVs and

UTVs. Certain manufacturers of these products look very carefully at the buy-back laws and search for reasons to avoid complying with them, especially if the law does not specifically mention ATVs or UTVs.

Buy-back laws are of great value to dealers and help facilitate transactions by removing most of the uncertainty out of the transfer of new inventory. However, buy-back laws almost always have exceptions and it is important for you to take these into account when buying or selling a dealership to avoid unexpected costs.