

Picky, picky, picky

by Gil Van Over

I occasionally spend some of my time helping defend car dealers in lawsuits. About half of the lawsuits are filed because the customer has an unrelated problem (such as a service issue) and the dealer is not able to resolve the problem. The other half are because a consumer didn't pay on the car loan arranged by the dealer, had the car repossessed and is now facing several thousands of dollars in deficiency. The consumer is trying to get someone else to foot the bill for his or her lack of accountability. Most of these lawsuits have absolutely nothing to do with the facts or that the consumer was actually damaged by the transaction. Rather, the lawsuits are filed over technical, nit-picky issues driven to force the dealer to settle rather than fight.

Nit-Picky Issues

Here are a few of the issues your defense team will have to fight through to get the case dismissed (keeping in mind fighting through incurs attorney and expert witness costs).

The figures don't line up right on the contract

The dark side, the juries and the judges just don't understand why a dealer, who delivers numerous cars on a daily basis, can have a pre-printed contract and a computer system and still can't seemingly get the right numbers in the right boxes or on the right lines.

Solution – find out if the contracts and other forms are programmed correctly in the DMS. If they are, provide training for the F&I Manager to load the forms correctly when he or she prints them. Audit the results periodically for compliance.

The Used Car Buyers Guide does not accurately reflect the remaining warranty

The Used Car Rule is one of the easiest federal requirements to get right, yet some dealers just can't seem to get it right. Your primary obligation is to give the consumer a federally mandated and designed form that discloses the remaining warranty on the vehicle. Some of the non-compliance issues are:

- Missing the entire 17 digit VIN
- Using short-cut terms such as "Powertrain" or "Balance of Factory Warranty" which are specifically prohibited in the Rule
- Not prominently displaying a Spanish translation version on the vehicle if you transact the deal in Spanish
- Giving the consumer an "As-Is" disclosure during the close when the vehicle was sold with a limited warranty

Solution – review the FTC Used Car Rule and its publication [A Dealer's Guide to the Used Car Rule](#). It is one of the better written government publications to help dealers to comply with the Rule. You can find it at www.ftc.gov/bcp/online/pubs/buspubs/usedcarc.shtm.

The date of the contract is before the date the customer signed the contract

Dealers have been forced over the years to backdate contracts when they recontract deals. Either the manufacturer will penalize a dealer for a rebate or other incentive, or the third party lender refuses to accept a contract dated after the date the credit application was submitted. The easy solution had always been to backdate the contract to the date of delivery and everything is clean. Now, however, the crafty dark side has put forth an argument that a judge believed that potentially makes backdating contracts a Truth in Lending violation.

Solution – date the contract the day it is signed when recontracting a deal. You must start every deal over from the menu and include a new Buyer's Order, new product enrollment forms and new Retail Installment Sales Contracts.

These are just a few of the nit-picky, non-damaging issues that dealers face in lawsuits. The more of them that you can eliminate from your process, the better chance you have in defending or deflecting these lawsuits.

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