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## **What compliance looks like: Defining the dark side**

*by Gil Van Over*

This year's columns have been dedicated to describing this whole thing called compliance. We are now in the process of describing best practices that, if implemented, are designed to help reduce exposure to litigation and regulatory inquiries. Today's topic is defining the dark side.



### **Dark Side?**

I have fun in my articles and presentations by using the Star Wars Dark Side terminology as an analogy for the forces that attack the Good Side dealers. Perhaps the first thing I need to say about the Dark Side...not every plaintiff attorney or attorney general is a card carrying member of the Dark Side. After all, I am a consumer. If I believe I have been scammed by a business, I reserve my right to sue the business, to file a complaint against the business with my attorney general, to feed the story to my local television station.

The Dark Side I refer to are the folks who attack car dealers with unfounded or frivolous lawsuits or inquiries or exposes, not the honorable lawyers, attorneys general or television stations who pursue truly unscrupulous businesses.

### **Plaintiffs' Attorneys**

It seems there are too many attorneys for too little legitimate litigation. Look in the yellow pages of your phone book. I don't care what city you live in. Your yellow pages will have more pages devoted to attorneys than it has devoted to auto dealers. You are outnumbered!

As a result, some plaintiffs' attorneys will file lawsuits with over ten complaints that you and your legal team will have to sort through. For example, I saw one lawsuit that complained that the consumer did not receive the Used Car Buyer's Guide. On a new car! Of course, time spent sorting through frivolous complaints equates fees for attorneys.

### **Attorneys General (AG)**

Everyone knows that AG really stands for Aspiring Governor. These people need votes to continue their political careers and the Attorney General office is usually just a stepping stone to the Governor's mansion. Most see the best way to get votes is to aggressively pursue bad businesses in their state that take advantage of consumers.

Great, the consumer in me says. Go after the scam artists who are trying to steal money from senior citizens or the traveling band of roofers who leave leaking tops on houses. Just leave the honest auto dealers alone. Don't pursue an upstate dealer with a two year inquiry that had no merit to begin with. Don't put misleading brochures on your website comparing car dealers to mortgage brokers and calling the mortgage brokers the honest one.

## **Local Media**

During sweeps month, somewhere, some dealer is going to get lambasted with a highly emotional expose alleging that the dealer unfairly dealt with a consumer or five. You can expect to see word bites from sympathetic “victims”, files containing hundreds of pages of paper thrown on the desk and a look at a “secret” internal document proving that the dealer screwed the consumer(s).

Unfortunately, the dealer is powerless to respond. The DP cannot go on camera and say, “Well, the reason the consumer paid 28 percent interest was because the consumer had a 310 credit score, has never paid anyone in his life, did not have any money to put down, was \$5,000 upside down in his trade that was not running and had just started a new job.” The dealer never has an opportunity to defend itself in the court of public opinion. The dealer can only say, “If it happened, we will take appropriate action” and hope the adverse public opinion does not close down the business.

## **Preventative Medicine**

So, what’s a dealer to do to defend itself against the Dark Side? Unfortunately, there is nothing anyone can do to prevent from being sued. There are, however, some steps a dealer can take to limit the likelihood of a Dark Side attack:

Handle complaints when they start and don’t let them escalate into lawsuits. Most of the lawsuits I work on start as a complaint of some sort not related to the complaints in the lawsuit.

Establish processes, policies and procedures that mandate full disclosure in sales and F&I. Document that the consumer made informed decisions at each step in the process.

Establish working relationships with your regulators and local media. Most regulators want little problems to go away. They will appreciate the opportunity to call you and get a complaint handled rather than move forward with an inquiry. Most local media are looking for legitimate stories and will move on if they call you with a complaint and you handle it instead of stonewalling them.

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