

Spot delivery

by Gil Van Over

The dark side is once again focusing on spot deliveries in car dealerships as a potential revenue stream.

They are attacking dealerships with various claims, such as spot delivery is illegal (not that I or any of the bright side attorneys I work with can tell), all spot deliveries are yo-yo transactions (not true) and that whenever a deal is unwound or de horsed, the dealer is always at fault (including those times when the consumer lied about credit information). So, what's a dealership to do to protect itself?

Spot Delivery Defined

First, let's define spot delivery, since the dark side doesn't seem to know the definition. A spot delivery is when a vehicle is delivered to a consumer pending approved credit. The dealership's management has struck a deal to sell the vehicle and now addresses the issue of how the consumer is going to pay for the vehicle. Often, the consumer pays for the vehicle with the help of dealer-assisted financing. The dealership's manager, in his or her infinite wisdom and experience, reviews the consumer's credit worthiness and makes a decision that a third party lender will likely finance this consumer at a certain deal structure.

More than 95 percent of the time, the manager is right. It is the other five percent of the time that are generating the attacks.

Protection

A dealer can help protect itself against dark side attacks on the spot delivery process.

Get an approval

The first protection is to obtain a credit approval before delivering the vehicle. Today's technology certainly gives a dealer an avenue to obtain approvals before delivering the vehicle in a timely fashion.

If, for whatever reason, a dealer is not ready or willing to make that process change, beware of the reasons the dark side believes spot delivery to be a deceptive practice: recontracts and unwinds.

Recontracts and yo-yos

A yo-yo claim is being made when a consumer is brought back to the dealership after having a vehicle for a period of time and is offered a restructured deal that is not as advantageous as the first deal, such as a higher APR or higher payment or more cash down required.

If you are involved in a fair amount of recontracts, consider having your attorney develop a rescission agreement similar to the ones required by law in California, Nevada or Oregon. This rescission agreement should lay out in very clear language that the original deal is being rescinded, a new deal is being offered and that the consumer does not have to accept the new deal.

Unwinds

Finally, whenever you are involved in an unwind, make absolutely certain that you send an adverse action notice to the consumer

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