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Stuff I read in depositions – Everybody does it

by Gil Van Over

I've read more than a few depositions over the last couple of years. Some of the questions asked by plaintiff's attorneys shed light on the risks faced in a dealership's operations. Today I will discuss the best rate discussion.

Background

This consumer sued the dealership under the state's unfair and deceptive practices act alleging that the finance manager arranged for a straw purchase and inflated the vehicle's book value to the lender in order to obtain a credit approval. The consumer was also countersuing the lender to get the deficiency balance waived.

Interrogation

Attorney: Ms. Finance Manager, do you remember my client?

FIM: No.

Attorney: You don't remember completing this transaction?

FIM: No, it was over three years ago.

Attorney: Let's look at Exhibit A. This is from the deal jacket your dealership provided. Would you agree it is a credit application?

FIM: Yes.

Attorney: Can you read the name in the 'Applicant' box?

FIM: Joan Straw.

Attorney: Now let's look at Exhibit B. This is also from the deal jacket your dealership provided. What is this form?

FIM: It is a retail contract.

Attorney: Can you read the name of the buyer in the top left box?

FIM: Tom Purchaser.

Attorney: Is Joan Straw listed?

FIM: No.

Attorney: Did Joan Straw sign the contract?

FIM: No.

Attorney: Can you explain why Joan did not sign the contract, yet applied for credit?

FIM: It looks like we put the car in Tom's name. Maybe Joan did not qualify.

Attorney: Moving on. Exhibit C is a condition report from the repossession company. Exhibit D is the NADA book-out sheet from the deal jacket your dealership provided. Exhibit E is a sheet listing the differences in the options on the vehicle. Can you explain why the book-out sheet lists more options than the condition report?

FIM: Maybe the bank needed a higher book value to approve the loan.

Attorney: Why would you put the car in someone else's name and inflate the value of the vehicle to the lender in order to get a credit approval?

FIM: Everybody does it to sell cars.

Solution

First, realize that "Everybody does it" is both a lame excuse and a blatant misstatement of the truth. Most dealerships do not encourage or allow straw purchases or power booking or other forms of potential bank fraud.

That does not mean that a rogue F&I or Sales Manager won't periodically cross the line and put your dealership at risk.

Protect yourself by implementing a few common sense policies.

Expressly Forbid Bank Fraud – I just finished watching the NCAA men's basketball championship game. Memphis coach John Calipari will forever be questioned about why he did not call a time-out with ten seconds left in regulation to review and set up his defense. As the leader, he potentially left a question in his player's minds about what was expected to close the deal.

Do not put yourself in the same situation in litigation. Let there be no doubt about your policy with your employees. Make it known, through your actions and through your employee manual and through your F&I and Sales Procedure Manual that bank fraud is not acceptable or tolerated. Fire the next person who you find committing bank fraud.

Belt and Suspenders Auditing – The guy in front of me yesterday at the airport security check-in line had to take extra time to get undressed for the Magnometer. First, the belt. Next, the suspenders. The TSA agent asked the obvious question, "Why both?" the man's answer; "If one breaks, the other one will hold up my pants."

Set up your own belt and suspenders approach to auditing deals. Start with the billing clerk. Make it part of the checklist to briefly review credit applications for alterations or numbers being printed after the rest of the application is completed. Require that every used deal have a book-out sheet signed and dated by a manager that is affirming that the options listed are indeed on the vehicle.

The second level audits should be completed by the Office Manager or Controller or Compliance Officer. Randomly pull five deals per F&I Manager on a monthly basis and scrutinize the file for potential bank fraud issues.

Finally, get independent help. Periodically, but at least annually, have a sampling of files reviewed by your attorney, accountant or compliance consultant.

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