

7 Ways to Legally Shield Your Dealership

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How many times have you heard, “I’ve got good news and bad news — which do you want to hear first?” As a compliance auditor, I often find myself saying, ‘I’ve got bad news and more bad news — where do you want me to start?’ It’s not that I enjoy being negative, but that’s what my clients pay me to do. As one dealer executive put it to his management team, “I’m not paying him to tell us how good we are.”

This year our firm, gvo3 & Associates, will conduct compliance reviews at hundreds of dealerships across the country, documenting numerous potential compliance issues. At the same time, we do observe many compliance “best practices” dealerships have incorporated into their sales and F&I processes. In this article, I would like to focus on the positive and share some of those best practices.

The Sales Process

Let’s start with the sales process. Most dealers use a four square, a preliminary buyer’s order or some other worksheet to work the deal. The multi-colored Sharpie presentation is also very popular. No matter what style you employ, your presentation can be deemed deceptive if it appears confusing. Trying to figure out what the customer agreed to shouldn’t be like trying to find Waldo.

A best practice is to have the customer initial a summary of the deal terms. This allows you to keep a record of the deal, and eliminate any chance for error. Some dealers refer to this process as the “five square.” The summary should include the selling price, agreed trade value, down payment, rebate, monthly payment, rate and term. The deal terms should agree with the deal terms at the top of the F&I menu, providing evidence that you are not packing payments.

Today, the credit application process has migrated into the sales department with both salespeople and F&I personnel taking credit applications. Our recommendation is to have the customer complete the credit application with the assistance of a trained F&I professional. If you find it necessary to interview the customer and complete the application, then you should have the customer initial his or her income, time in present job and time in current residence. In addition, you should have the customer sign the agreement at the bottom of the application. Dealerships that incorporate this best practice avoid accusations of altering customer information, bank fraud and violations of their dealer/lender agreement.

Electronic Menu Selling

The F&I menu is a great sales tool and a great compliance tool if used properly. Let’s assume you’ve finally convinced your dealer to invest in an electronic menu. It discloses the deal terms, including the base payment, rate and term. It also lists all products, coupled with great benefits statements for each product. The menu also discloses product pricing, as well as the appropriate disclaimers. A best practice is to take it one step further by having your customers acknowledge with their initials that the following elements were disclosed: base payment without products, the final payment with products and all disclaimers.

Another best practice is to recap the final menu structure and have the customer acknowledge the products accepted and the products declined.

The Purchase Agreement

The final buyer's order/purchase agreement is a document that can easily demonstrate a dealership's level of compliance. Those willing to embrace the spirit of full disclosure will use this document to recap and finalize all deal terms agreed upon, and use it as a stepping stone to the retail installment sales contract (RISC). They will disclose the list price and additional accessories, any discounts, agreed trade value, trade payoff, down payment, rebates applied and all the F&I products with pricing the customer agreed to on the F&I menu. The cash due at delivery will equal the amount financed on the RISC. With this best practice you have a very logical transition to the RISC, eliminating the confusion most customers feel when they try to figure out the origin of the numbers on the RISC — a problem plaintiff attorneys don't have.

Book-Out Sheets

Book-out sheets are another area requiring compliance controls. Dealerships with the most control are using automated inventory control applications that allow them to electronically value a vehicle when it comes into inventory. These applications include VIN decoders that automatically determine the standard manufacturer equipment for the model and trim level of the vehicle. The applications are password protected, allowing only the general manager, general sales manager and used-car manager to have access to add any additional options.

Dealership personnel are also required to take digital pictures of the vehicle, confirming the mileage, equipment and condition of the vehicle. A best practice is to print the book-out sheet at the time the vehicle comes into inventory, and then again when the vehicle is sold. If a book-out sheet is required by the lender, then it should be OK'd by the general manager, GSM or U/C manager. Dealerships using this process virtually eliminate any chance of "power booking."

FTC Used Car Buyer's Guides

Proper disclosure of the FTC Used Car Buyer's Guides continues to be one of the top three issues we uncover. The biggest problem occurs when dealerships use an outside service to affix the FTC guide to the window. On average, we find 15 to 20 percent of the dealership's inventory without the guides prominently displayed.

There are only a couple of choices to disclose the dealership's warranties: either "as is" or "implied." That all depends on the state you're in or the warranty you have, which is usually a LTD Warranty. If you elect to disclose that there is a balance of the factory warranty remaining, you must use very specific language provided by the FTC. You also have the option of checking the box indicating the availability of a service contract. Once you've determined how many different versions you'll need, have them pre-printed with the reverse side — which requires the dealership's name, address and phone number, as well as the phone number and position of the contact person — included.

The U/C manager determines the appropriate warranty for each vehicle and has the "get-ready" department place a temporary guide inside the vehicle until the outside service or an inventory specialist gets to the lot. The temporary guide is then placed in an inventory file until the vehicle is sold. At the time of sale, the customer is asked to sign the temporary guide and is then given a copy. The original is retained in the deal file. At \$11,000 per violation, this should be a no-brainer. If you need to catch up on the dos and don'ts of the FTC Used Car Rule, visit: <http://www.ftc.gov/bcp/online/pubs/buspubs/usedcarc.pdf>. You'll find this to be an excellent tutorial.

The Deal Jackets

The contents of your deal jackets can be your best defense or a smoking gun — the decision is really up to you. Here are some questions you need to answer to get yourself on the right track:

- When was the last time you surveyed all the forms used in the sales and F&I process, especially those in your showroom control system?
- How many of those forms are outdated or redundant?
- How many are photocopied forms?
- If you're using a generic credit application, does it have all the required ECOA, FCRA and Reg. B disclosures?
- When was the last time you updated your deal checklist?
- Do you have a plethora of disclosures and disclaimers customers are required to sign?

I have two favorites. The first one is having nonprime customers sign that they agree not to quit their job or get fired in the next 30 days, will not disconnect their phone and will not move. Violating any of these terms, the agreement states, means they risk losing their deposit or trade vehicle. The second is having customers acknowledge that you are increasing the selling price and trade allowance on the deal to cover the negative equity and to accommodate their financing needs. When was the last time you had an attorney review all of your forms? Have you ever considered purchasing LAW forms from Reynolds and Reynolds? Reynolds invests hundreds of thousands of dollars each year on legal reviews to ensure their forms are compliant in all 50 states.

Employing the Buddy System

Consider using the "buddy system" if you have a problem with sloppy paperwork, and have two people complete the deal checklist. This will make them both accountable for any errors and omissions. You'll definitely see rapid improvement.

Check the quality of your programming by entering a test deal that includes all possible deal elements, such as a trade with negative equity, a rebate, cash down and all the F&I products you offer. Then print a copy of the RISC for each lender, a final buyers order and the product enrollment forms. Look for proper disclosures, product descriptions and product pricing. Don't forget to manually check the math on the final buyer's order to see if it balances and that it is printing the proper disclosures.

Make sure you can produce at least three documents that confirm that the customer knew the product he or she was buying and the price he or she paid. These documents could include the F&I menu, final buyers order, the retail installment contract and the product enrollment forms.

Encourage the general manager, general sales manager, controller and even the dealer to select five deals a month and have them go through them document by document.

And finally, consider having a formal compliance risk assessment of your sales and F&I departments. It's a great first step in developing a formal litigation defense strategy at your dealership.

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