

Dealer



F&I

They Ain't Got Your Back

Check your vendors closely to ensure legal compliance

By [Gil Van Over](#)

Have you ever stopped to think about how many people's livelihoods are dependent on you selling cars? Here's a partial list I've come up with:

- 1. Your family
- 2. Your employees
- 3. Your accountant
- 4. The dent-buster guy
- 5. Consultants
- 6. Some advertising folks
- 7. Indirect auto lenders (both captive and independent)
- 8. F&I product providers
- 9. Aftermarket product providers
- 10. Dealer management system (DMS) providers

Now, stop to think about how many of these folks watch your back. Hopefully you can count on your family, employees and accountant without a second thought. There's probably not much risk associated with the dent-buster guy. And even though I'm a consultant (who helps dealers keep the money they make), I will have to agree that some consultants are in the game solely for the almighty dollar.

My real issue is with the bottom five in this list. Some folks in these industries have an opportunity through the normal course of business to help dealers with risk management issues and simply choose not to. Granted, there are exceptions to every rule. For example, there are honorable journalists around that tell a balanced story, unlike Stone Phillips.

But there are too many advertising agencies, lenders, F&I and aftermarket product providers and DMS companies that knowingly allow dealers to make business decisions that can land a dealer in court or in front of the attorney general because of potential violations of federal or state law.

Advertising

Dealers spend a lot of money putting together the two-page, four-color spread for the Sunday edition. Too often, Reg Z trigger terms are tripped, or perceived deceptive wording is used in these ads and the dealer ends up taking a call from the state telling him how much his fine is this week.

Another common violation I see is that the dealer's doc fee is not stated correctly in the Sunday ads. Let's say a dealer in Texas (where the doc fee is \$50) buys a dealership in Florida (where the dealer can charge a market-driven rate, sometimes up to \$495). She continues to use her Lone Star-based ad agency to develop the Sunday ads for her new store in Florida and the ad agency continues disclosing a \$50 doc fee. The first customer that pays a \$495 doc fee would appear to have grounds for a lawsuit alleging deceptive trade practices. The hundredth customer that pays a \$495 doc fee could potentially join the other 99 customers and file a class action lawsuit.

Indirect lenders

Every indirect lender a dealer does business with includes a warrant in the dealer-lender agreement whereby the dealer asserts that he has complied with all federal and state regulations surrounding the sale and financing of the vehicle. The lenders interpret this to mean that the dealer is responsible for Truth In Lending Act (TILA) violations, even though the violations are evident on the face of the contract the lender is buying!

For example, Regulation Z requires a creditor (and yes, car dealers that regularly spot deliver vehicles have been defined as creditors by both the courts and by federal law) to state who certain payments (premiums) are being paid to, what the payment is for and that the creditor may be retaining a portion of the payment.

Simply stated, this means that if a dealer is selling a vehicle service contract (VSC), the retail installment sales contract must disclose who the VSC premium is being paid to, that it is for VSC, the amount of the VSC premium and a notation that the dealer may be retaining a portion of the VSC premium. You would be surprised at how many contracts I look at where the VSC provider is not listed on the contract. This is a technical TILA violation, and since it is programmed into the DMS, it is consistently violated, leading to a potential class action lawsuit.

F&I, aftermarket

I will lump these two together, since the risk management concerns are the same with both. There are two risk management issues with these product providers. The first issue is product forms that either do not have a place for the price of the product or the pricing information is left blank. The second issue is with remitted certs that are not signed by the customer (or worse yet denoted as "Signature on file").

These two issues are at the heart of the dark side's conspiracy theory that the dealership is stuffing products into deals without the customer's knowledge. After all, they reason, if there is no price listed on the cert, then obviously the nefarious F&I manager told the customer that the product was included or free. Continuing with this theory, the dark side then further asserts that since a significant portion of the certs are not signed (or SOF), these were simply printed after the fact and the customer does not know she even has the product.

DMS companies

You want proof? Call your DMS provider and ask the representative to make a programming change that is a blatant Truth In Lending violation and see what the response is. Going along with the discussion above about VSC providers, call your DMS provider and see if it will change the programming so that the VSC provider is left blank.

Hopefully, your long-term contractual arrangement for a DMS is with a company that will tell you that your requested change is a technical TILA violation. If you aren't told that, and the company is ready to make any change you want, your DMS is not watching your back.

The structure of this magazine is sectioned off by the various disciplines that a dealer has to say grace over: ownership, sales & marketing, F&I, etc. A dealer deserves the right for those companies whose bottom line depends on a dealer selling a car to demand that those companies be true business partners and help watch the dealer's back. After all, these companies specialize in what they do; shouldn't they extend their specialization to help the dealer?

If you wish to discuss this article with other dealers, or with the author, please go to the "Discussion Forums" at www.DEALER-magazine.com and enter the "F&I" forum.

Gil Van Over is the president of gvo3 Consulting, LLC (www.gvo3consulting.com). He assists dealers in developing and implementing a litigation defense strategy for the F&I Office.

For more information contact [Gil Van Over](#)

