

# Dealer

## F&I Special Section

by Gil Van Over



# Monk, Columbo and TILA

## *What two TV detectives can teach you about avoiding legal woes*

America's obsessed with Monk," the popular TV show on USA Network, according to the commercials. I have to admit that you can count me among the obsessed (with Monk, that is). My wife just doesn't understand, muttering something that sounds like, "you are both geeks."

I finally figured out why I'm obsessed with Monk. He is Lt. Columbo reincarnated. The only real difference being that Monk is obsessively orderly and Columbo is compulsively cluttered.

Both shows start by showing us the perfect crime, then challenging us to figure out how our hero is going to figure it out.

Both men could be president of their local MENSA chapter.

Both heroes have the highly unusual knack of being able to observe the smallest detail and incorporate it into their theory of the crime. Sounds like some of the evil empires we deal with.

Imagine the angst Monk and Columbo could bring against auto dealers if their powers of observation were used to spotlight Truth-In-Lending (TILA) and its Regulation Z violations. Here are a few of the issues they could find at dealers around the country.

First, let's look at a change to Regulation Z that went into effect on April 9, 2002. Prior to this update to Regulation Z, court dates were common for dealers to fight the Dark Side who alleged that dealers were not complying with the requirement to review the TILA disclosures with the consumer prior to consummating the contract. Some dealers had even gone to the step of printing a TILA disclosure form that was identical to the RISC disclosure to try to avoid the lawsuits: "Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction." - Regulation Z Staff Commentary Section 226.17(b)(3)

Monk and Columbo would pose as mystery shoppers to catch dealers not complying with this Regulation Z requirement. They would go through the entire process of negotiating a

deal, get into the F&I office and see if the manager physically gave them the RISC before reviewing the terms and asking for signatures. To simply show the consumer the TILA terms is not sufficient.

One way to send Monk or Columbo to the next dealer is to hand him the RISC and ask him to verify that you printed their name and address correctly at the top. Then verify the vehicle he is buying. Then (you may want to memorize this word track) simply state, "We'll continue when you are ready," and shut up. As James Bond is fond of thinking, "The next person that speaks, loses."

When the customer hands the RISC back so that your F&I manager can consummate the transaction, your employee has fulfilled your obligation to give the consumer the TILA disclosure in a form that he can keep prior to consummating the deal.

If your F&I manager does this on every deal, she can testify on your behalf that she does not remember the particular deal, and who could after a year. She can say, however, that she knows her process and does it the same way every time.

However, what happens if the observant Columbo tries this trick. He says, "My wife is the accountant in the family. I love the car, but I want her to review the contract before I sign it. Can I take it home for her to look at?" If you do not let the lieutenant leave with the unexecuted RISC, you did not give it to him in a form that he could keep prior to consummating the deal. Unless your state law requires you to do so, you do not have to keep the offer open, but you must allow him to take an unexecuted copy of the RISC from the dealership premises.

If you don't let him take the copy, mystery shopper Columbo will be on the phone reporting the violation to his evil empire employer.

"In a credit sale, the 'down payment' may only be used to reduce the cash price. For example, when a trade-in is used as the down payment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose zero on the down payment line rather than a negative number." - Regulation Z, Section 226.2 (a)(18)(3)

Columbo once knew that an apparent suicide was actually a murder because the cigarette butts in the ashtray were crushed in two different ways. He reasoned that another person had been in the deceased's home and was obviously the murderer.

Imagine the issues Columbo would have with a four-square and a preliminary buyer's order that show a trade allowance of \$10,000 while the menu, final buyer's order and RISC reflected a \$14,000 trade allowance. Another person in the house.

1. The figures are different. I don't know which one is right, but one is wrong and we'll let the judge figure it out.
2. Regulation Z gives two specific methods for properly disclosing negative equity, and since you didn't use one of its methods, we'll let the judge figure it out.
3. As a thorough detective, Columbo also has copies of your print ads, which show this deal's car advertised for \$19,000, and your records show you sold it for \$23,000. Just one more thing, Mr. Dealer. It's time to tell it to the judge.

To keep Columbo from finding two different trade allowance and cash price figures on your forms, check with your third-party lenders to find out how they will accept negative equity disclosed on their RISCs. Then quit bumping the cash price to allow for negative equity.

Incidentally, properly disclosing negative provides a compelling story to sell GAP!

"Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons." - Regulation Z, Section 226.18 (3)(c)(iii)

Monk found a note at the site where a shooter apparently tried to kill Monk's assistant Natalie. The note misspelled Natalie's last name. When the police were questioning their prime suspect, Monk quickly dismissed the fellow obsessive-compulsive as a suspect because the suspect would not have misspelled her name. Such is the power of his observation skills.

What issues would Monk find on the RISCs in your file? Most likely, that the RISCs do not always reflect the person that you have paid other amounts to on the consumer's behalf, specifically for service contracts, GAP, and other F&I products, otherwise known as the 2 x 4 murder weapon. Your RISC must reflect who the amount is being paid "2", what the amount is "4", and the amount that is being paid.

Monk would love to find this issue because it is likely a computer programming issue, meaning it is rarely correct. So Monk has just found a class of consumers who have evidence of technical TILA violations. Ouchthat 2 x 4 hurt!

Check a sampling of recent RISCs. There are two explanations as to why the payee line is blank: 1) The payee is not programmed in your DMS; or 2) Your F&I manager is not loading the payee into the deal (operator error). Both are repairable and must be repaired.

Monk and Columbo share another commonality. Their shows always end with the good guys winning. Focus on the lessons that Monk and Columbo teach us and we can prevail in the fight against the Dark Side.

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