

Dealer

F&I Special Section

by *Gil Van Over*



Defining Moments and Prohibited Practices

First in a series of trouble-making activities - and how to avoid them

Phil Mickelson finally broke through the majors' barrier this year when he won the Masters in April. Now admittedly, although I'd rather see Boom Boom Couples or Doom Doom Daly win every tournament, I was still happy to see Phil pull this one out once my two favorites were out of contention.

If you were among the less fortunate (like me) who were not at Amen's Corner on Saturday and instead watched the broadcast, you may recall Jim Nance talking about the "defining moment" for Mickelson. Apparently, Phil's Titlist attaching itself to a piece of Velcro in the rough off the green instead of rolling into the water earned him his first green jacket and qualified as a defining moment.

We all have defining moments in our lives. Sometimes it is a personal mistake we learn from. Other times it is making business decisions based on observing the effects of others' mistakes.

I have seen the effects on dealers who have made mistakes in the way they have decided to document the sales and F&I transaction with customers. These observations have been gathered through reading depositions as an expert witness and from articles available in various industry publications. From these observations, I've generated a list of prohibited practices that tend to cause dealers grief and deplete bank accounts. Unfortunately, this list is growing as the dark side continues to generate new conspiracy theories in its quest to separate dealers from the money deposited in their cash management accounts.

Here, in alphabetical order, is my list of common prohibited practices that are being scrutinized by the dark side.

- 1. Blank, signed documents
- 2. Bundling products
- 3. Completing documents after the fact
- 4. Credit card down payments
- 5. Dealer rebates

- 6. Falsifying information to lenders
- 7. Forging customer's signatures
- 8. Front end improvement (a.k.a. selling air)
- 9. Handwritten entries
- 10. Including F&I products in the vehicle price
- 11. Inconsistent product pricing
- 12. Menu manipulation
- 13. Missing enrollment forms
- 14. Payment packing
- 15. Power booking
- 16. Product stuffing
- 17. Scooping rebates
- 18. Signature on file
- 19. Straw purchases
- 20. Trading rate for product

The balance of this particular article will deal with the definitions of the first half of this list and provide detection methods you can put into place to ensure your employees are not practicing what some consider deception. We will pick up the second half of the list next month.

1. Blank, signed documents

This one is self explanatory. Asking a customer to sign a blank legal document such as a credit application, a retail installment sales contract or product enrollment form is simply wrong. Many of these documents have language above the signature line that basically says "I acknowledge that I am signing a completed document."

Be warned - F&I managers have good-sounding excuses!

For example, you may hear that the captive lender requires its proprietary credit application be signed as a condition of purchasing the contract and that the F&I manager prefers to use the generic credit application to shop the deal to other lenders. Therefore, he or she gets the customer to fill out and sign the generic credit application and have the customer sign the captive credit application in the event the deal is funded through the captive. Baloney! Permitting your F&I managers to continue this practice is providing them with the tools to change the customer's demographic information in the event the deal is turned down. Don't allow it!

Detection methods

- 1. Include a review for blank, signed documents on your F&I checklist that is completed by the billing clerk.
- 2. Arrive before your F&I manager on Monday morning and pull all of the weekend's open deals from his or her office. Look through the files before the manager has had an opportunity to clean the file out.

2. Bundling products

Each product must be priced and disclosed separately. While it is permissible to sell products as a package via a menu, each product must be available for purchase individually and the customer must understand what the price of the product is. A menu simply helps to package products for the customer's convenience and to allow for discounting of non-regulated products if a group of products are sold. Do not combine products into one price on any document (sometimes done with vehicle service contracts

and pre-paid maintenance).

Detection methods:

- 1. The premium pricing for products is not consistent between all forms that disclose the premium.
- 2. The dealer management system (DMS) prints a combined price for products on the washout sheet and the billing clerk handwrites the correct allocation.
- 3. The pricing on product enrollment forms is left blank or denoted as "NA," and the premium is combined on the buyer's order and/or retail installment sales contract (RISC) and the products are broken out separately on the washout sheet.

3. Completing documents after the fact

All documents presented to the customer for signature must be fully completed before obtaining the customer's signature. This is sometimes common with F&I menus. An experienced F&I manager who has spent a career step-selling is now being asked to change selling techniques. Resistance ensues. But the office manager is strong. She will not bill out a deal unless there is a menu in the file. Guess what happens. The F&I manager says to himself, "You want a menu? I'll give you a menu." He continues to step-sell, and then tells the customer, "My boss makes me fill out one of these. You've already agreed to buy the moon, so please sign here" on a blank menu. The manager then fills the menu out after the customer leaves.

Detection methods:

- 1. Some F&I menu software provides a date and time stamp on the form. Compare the date and time stamp to the other documents in the file.
- 2. Compare the balance to finance on handwritten menus to the amount financed on the RISC. If the balances are the same and the customer purchased products, the menu had to be completed after the contract was prepared.
- 4. Credit card down payments

Most dealer-lender agreements prohibit borrowed down payments and a down payment on a credit card is considered borrowed. Some lenders will permit a credit card down payment if the lender knows of the down payment prior to making a credit decision. Regulation M (Consumer Leasing Act) requires that credit card down payments be separately disclosed on the lease agreement, along with trade in equity, rebates and other non-cash credits, and cash.

Detection method:

- 1. Check the receipt in file. Be careful not to confuse a debit card transaction with a credit card transaction.

5. Dealer rebates

In its strictest sense, cash back to the customer is called and considered a rebate. If the manufacturer is providing cash back to a purchaser, it is called a manufacturer rebate. Doesn't it stand to reason that if a dealer gives cash back to the customer as part of the deal that it is a dealer rebate? A recent phenomenon that is surfacing goes like this:

Some lenders are providing dealers with a maximum loan-to-value guideline when they provide a credit decision. For example: "Approved up to 120 percent LTV." Some dealers figure that since the lender is willing to go 120 percent, they can increase the amount

financed to that level. If that increase in the amount financed exceeds the purchase price of the car, why not give the difference to the customer?

Now that the dealer knows this works to close one deal, it becomes part of the sales negotiation and is disclosed on the four-square.

Rebates must be specifically disclosed on the RISC, but most lenders look unfavorably upon dealer rebates. If a dealer rebate is not disclosed, a case could be made by the lender that this practice constitutes bank fraud.

I can also see the dark side coming up with a conspiracy theory that alleges that this practice is a Truth In Lending violation since the RISC typically discloses that line one on the contract is for the cash price of the vehicle, accessories and taxes not disclosed elsewhere. Where does a side loan fall within those definitions?

Detection method:

- 1. A check or similar media supporting a check to the customer in the file.
- 2. Notes on the four-square alluding to "Cash Back" that is not a manufacturer's rebate.

6. Falsifying information to lenders

Providing false or misleading information to lenders in an attempt to obtain a credit approval is a violation of the agreement executed between this dealer and the lender. Lenders can require that the dealership repurchase the contract once it discovers the violation, whether the lender has repossessed the vehicle or not. If the lender is a federally insured institution, the institution is required to report the tainted receivable and/or falsified credit application information to the Department of Justice using a form called a "Suspicious Activity Report." I don't know about you, but I sure don't want any document at the DOJ tying my name to a suspicious activity.

Detection method:

- 1. Substantial changes to the customer information on a credit application that enhances the applicant's creditworthiness.
- 2. Representing a false down payment amount on the RISC. Compare the down payment on the RISC to the down payment receipts in the file.
- 3. Accepting a promissory note as a down payment and not disclosing it as a deferred down payment on the RISC.

7. Forging customers' signatures

Forgery is a crime. 'Nuff said. Other forms of affixing a customer's supposed approval to any document is "Signature on file" or as I recently saw at a dealership, "Amended."

Detection method:

- 1. Compare signatures on all forms.
- 2. For verification, use the signature on the driver's license or on a form that was completed in the sales process where a different person obtained the signature (four-square, customer welcome form, privacy notice, delivery receipt).
- 3. Look for shaky signatures. It is difficult to mimic another person's signature and some forgers write the name slowly to get the loops right.

8. Front-end improvement

This practice is usually specific to sub-prime transactions. It occurs when the agreed upon vehicle price negotiated during the sales process is increased by the F&I manager. The F&I manager is paid a percentage of the increased sales gross. Commonly called "selling air," this increased gross could be construed as a hidden finance charge, since the customer likely would not have had to pay the additional gross if he or she were paying cash for the vehicle.

Detection methods:

- 1. Notes on the washout sheet disclosing a commission to the F&I manager for front-end improvement or other such language.
- 2. Increase in the purchase price of the vehicle from the four-square to the top of the F&I menu or buyer's order.
- 3. A pay plan that pays the F&I manager for front-end improvement.

9. Handwritten entries

The only forms where it is permissible to have handwritten entries are the four-square, the handwritten buyer's order and the aftermarket agreement. All other forms should be properly programmed into the DMS and must be printed by the DMS.

Detection Methods:

- 1. Any number generated by the DMS that is stricken over and a handwritten entry is in its place.
- 2. Common on F&I product enrollment forms where the system generates an "NA" for the product price or does not print a price on the enrollment form.

10. Including F&I products in the vehicle price

The salespeople are to sell the vehicle. The F&I manager is to sell ancillary F&I products. Salespeople are not to include ancillary F&I products in any price quote. Be wary of addendum window stickers that include products with the purchase price of the car, typically etch, environmental protection packages and tire and wheel coverage.

Detection methods:

- 1. Products are included on the addendum window sticker and used to increase MSRP in the pricing negotiations. Check the initial price on the four-square to the vehicle's MSRP.
- 2. The four-square has a note that payment "includes service contract or other product," yet the price of the service contract is not separately disclosed.
- 3. Notes in the file to the F&I manager that price and/or payment include a product.

Have fun correcting these prohibited practices in your dealership while I write the next edition, giving you more homework! I reserve the right to modify this list between now and then if anything else comes up

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