

# Dealer

## F&I Special Section

by *Gil Van Over*



## The Seven Year Itch

I have always been intrigued by *The Seven Year Itch*. Not the movie, the title. The movie was released before I was released from my mom's womb. The title, however, has frequently made me think about the things in life that make you go hmmmm.

What happens after seven years that makes one itch? In the movie, people start to feel the need to look outside their marriage for pleasure. In the superstition, people can start having good luck after breaking a mirror. In the real world, class-action lawsuits are going to start hitting auto dealers between the eyeballs and in their bank accounts.

Huh?

October 1 marks the seventh anniversary of the change to Regulation Z that outlines how dealers should disclose negative equity. Yet, seven years later, many dealers do not comply with Regulation Z as it relates to negative equity.

Mark my words: The next wave of class-action litigation against auto dealers will involve negative equity.

Here's my evidence.

1. The majority of consumers are upside down in their trades.
2. The majority of consumers know what negative equity is.
3. The majority of dealers are not properly disclosing negative equity.
4. Plaintiff attorneys are comfortable presenting negative equity cases to judges.
5. The Dark Side has "20 Groups" just like dealers do and meet to discuss how to litigate claims against dealers.
6. A California court recently opined that negative equity rolled into line one is a violation of state and federal disclosure laws.
7. Rolling negative equity into the cash selling price increases the price above potentially advertised prices, leading to false advertising claims.
8. In those states that do not assess sales tax on the trade difference, the consumer ends up paying more in sales tax because of rolling negative equity into the cash price.

Complicating the issue, some creditors are taking the position that they are not the dealer's compliance cop. These shortsighted companies (who generate a nice revenue stream from

the dealership distribution channel) just don't seem to understand that dealers look to them for guidance on all things credit related. Yet some are still not permitting dealers to properly disclose negative equity, while others are leaving it to the dealers to figure it out. GMAC is one company that has taken the correct approach. It recently announced that it would accept negative equity on contracts in all states except Vermont. The rest of the lending community needs to get on board and follow GMAC's lead.

**Netting versus non-netting**

According to Reg Z, negative equity can be disclosed in one of two ways: netting or non-netting (see examples on Table A).

Netting: You apply a customer's down payment toward any negative equity, and reveal any remaining difference on line 4 (or 6) of the retail installment sales contract.

Non-netting: You disclose the full amount of the negative equity on line 4 (or 6) of the retail installment sales contract.

**What's a dealer to do?**

Every time I discuss negative equity with a dealer or a finance manager, I invariably hear "My lenders will not let me disclose negative equity on the contract." To which we simply get the lender on the phone and find out that negative equity is acceptable. We also receive the directions on which method the lender will accept.

You should do the same and then instruct your programmer to change the programming in your DMS for both your Buyer's Orders and the Retail Installment Sales Contract.

Now, I recognize this is a time consuming solution, but a little bit of time spent up-front can save a lot of angst down the road.

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