

Dealer

F&I Special Section

by Gil Van Over



Old Habits and New Lawsuits

Don't let power booking send you to jail

I used to bite my nails. I quit when I was six. I used to smoke a pack a day. I quit when my son was six. I still enjoy my beer. I quit when I finish a six-pack.

We all know that old habits are hard to break. In the car business, old habits are especially hard to break, particularly when the person believes that the habit ties to the size of the bank account.

For example, sales managers continue to pack payments because they believe it is more important to continue making money in a deceptive manner than it is to give the customer an honest answer to the question "How much a month?"

The same is true of the finance manager who represents an inflated used vehicle value to the bank by including non-existent options in a book-out sheet. I know this practice has been around the industry for more than 20 years because I was catching F&I managers in the deception when I was collecting loans in the early '80s.

Some call this practice power booking. Oregon's attorney general calls it bushing. Most lenders call it a lie. Unfortunately, many F&I managers call it an acceptable risk to take to get more deals bought.

How power booking works

Essentially, the scam works like this:

A customer (normally with negative equity) lands on a used vehicle. Sales works the deal, gains the customer's agreement to the purchase price, trade allowance, cash down and monthly payment. This deal structure normally carries a nice gross.

Sales turns the deal over to F&I, whose manager's stomach wrenches at the 140 percent over-advance he is going to have to wrench out of the credit analyst. The finance manager decides to take an ounce of deception instead of a spoonful of Maalox to settle his stomach. He starts a new book-out sheet and begins adding phantom options, which boosts the vehicle's value to the lender. Options like wide tires on a mini-van. Leather captains chairs instead of cloth bench seats. Premium sound system while the customer can only tune into an AM station if the coat hanger antennae is facing the right direction.

After the F&I manager finishes with the power booked out-sheet, the deal now looks like it only needs a 120 percent advance, well within the guidelines of the targeted lender. The

credit analyst approves the deal believing the book-out sheet to be accurate.

The ramifications

This shortsighted finance manager puts the dealership's reputation and finances at risk. He or she also exposes him or herself to criminal charges. Many banks check the options on the repo agent's condition report to the options that the dealer represented were on the vehicle on the book-out sheet if the vehicle ends up as a repossession. When discrepancies are discovered, the bank's remedies vary from the dealer paying the difference to the dealer paying off the balance. In addition, I guarantee you that the credit analyst will tighten his or her underwriting screening and scrutinize every credit application.

A lesser-known fact, though, is that it is a violation of federal law to submit fraudulent credit information to a federally insured institution.

From U.S. Title 18: "Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of a Federal Reserve bank, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the National Credit Union Administration Board shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

A million bucks!

Thirty years with Martha Stewart!

While your captive lender may not be federally insured, the independent banks and credit unions you sell receivables to likely are. Criminal offenses are the ones that can put iron bracelets on offenders while leading them off to jail.

An emerging legal theory tied to power booking goes beyond the damage to the lender. This theory, now certified in a class-action lawsuit, claims that the consumer is the one damaged when a dealer engages in power booking. The lawsuit contends that a class of consumers whose vehicles were repossessed due to payment defaults would not have qualified for the loans in the first place if the dealer had not misrepresented the vehicle's value to the lender.

No, it does not matter to the Dark Side's attorney that his clients agreed to the payment and assumedly knew whether the payment amount was manageable or not. We all know in our tort reform-less society that individuals cannot be held accountable for decisions they make.

While this lawsuit is still in the early stages, it is crucial to note:

- The F&I manager is named because he allegedly did it
- The dealership is named because it allegedly allowed it
- The parent company is named because it allegedly did not have a process to prevent it
- The lenders are named because they allegedly did not exercise sufficient due diligence and should have caught it
- This is a class-action lawsuit over an old practice that will be noticed and applied by other plaintiffs' attorneys across the country.

A practical solution protects you

Those people more learned than I tend to come up with profound statements that deliver a ton of information with a few ounces of words. One of those statements I've come to respect is "The best way to rid yourself of a bad habit is to replace it with a good habit." A practical solution to protect your dealership against power booking is to install a process

that effectively prohibits a disreputable finance manager from damaging your reputation and threatening your livelihood.

This process is a parallel process to one you likely have in place for new cars. Most dealers make a copy of the new vehicle invoice when it arrives. They keep this invoice in an invoice book or in the new vehicle jacket. Either way, a copy of the invoice is included in the customer's deal jacket and provided to the bank at its request.

Establish this same process for used vehicles. In place of an invoice, require that your used car manager complete a book-out sheet for every used vehicle he or she puts into inventory. The used car manager should sign and date the book-out sheet, attesting to the options and mileage on the vehicle. This used car manager-certified book-out sheet is the only one to be completed and retained in the customer deal jacket.

There are two reasons to permit the F&I manager to update a book-out sheet:

- In those occasions when the book-out sheet was completed in a prior period (a book-out sheet from the September-October period for a November deal)
- There have been legitimate adds to the vehicle since it was placed into inventory. These adds must be supported by a valid repair order, a copy of which must be attached to the revised book-out sheet.

Insist, however, that the original book-out sheet accompany the revised one with the deal to the lender in either case. Make sure all of your lenders know that any other book-out sheet is unacceptable and that they are to bring any violations to your attention.

Protect yourself and your investment. Don't permit the old power booking practice to deplete your bank account and damage your reputation.

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.

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