

Conundrums, Reduviids and Other Thoughts

by : *Gil Van Over*

When I was just a babe in this industry, long before my last-born was born, I spent a year on the credit desk. I was working deals, finding ways to structure offerings so the dealer could sell a car and we could finance a contract. It was a fun time – give and take between a snot-nosed youngster and veteran F&I managers determined to show the youngster how to play the game.

One game we played for a while was the “Word of the Day” game. I would find an obscure word in the dictionary (this was when the paper Webster’s version was still used), then broadcast it via fax to the F&I managers. Without cheating, the managers would guess what the word meant when they called in to rehash deals.

No prizes were given, just ego gratification for getting it first. No cheaters...right. The game ended when one of the players objected to the word reduviid. He thought I was describing F&I managers. Even though I wasn’t, he complained to my boss and the game went bye-bye.

Conundrum was another popular word during the run of the game. Conundrum describes what car dealers face today when recontracting rehashed deals.

Most dealers spot deliver vehicles. It is the accepted business practice in most states. Most times, the dealer gets the deal structure correct and is able to place the paper at one of the dealer’s lending sources.

Sometimes, there are no takers. The seasoned F&I manager rehashes the deal until he obtains a counter offer or condition. One of his sources will buy the contract at different terms than the customer left the lot with.

This process can take hours or days. When the customer comes back to resign the paperwork, it is usually a different day.

Now the conundrum: What date to use on the new contract?

Since the beginning of rebates, the manufacturers have used the date of the retail contract or lease agreement to determine the eligibility of the transaction for rebate programs. I can only assume they did not trust the dealers to submit the correct date on report of sales forms, so they fell back to the contract signed between the customer and the dealer.

This forces a dealer to backdate contracts in many situations so that the consumer remains eligible for a rebate or APR if the new contract is executed after an incentive program expires.

This practice became a habit for most dealers who backdated every contract to the date of delivery instead of the date it was executed.

Things were fine until the dark side saw an opportunity to attack. A Virginia dealer was sued for a technical Truth in Lending violation because he backdated a contract. Apparently, the argument that “everyone does it” did not suffice.

In plain English, the judge ruled that:

1. Regulation Z does not define contract consummation, so I will
2. A contract is consummated when the final contract is signed
3. All contracts signed before the final contract are no good
4. Backdating a contract prior to consummation date is in effect charging interest for a period of time when no contract exists
5. Recalculating the APR by taking the interest charged for the period of time when no contract existed can create a Truth in Lending violation of the APR disclosure
6. Dealer – Pay up even though the dealer worked hard for two weeks to keep a sub-prime credit in a car and the sub-prime credit did not pay any rental charges

The resulting conundrum is that if a dealer dates the contract the date it is resigned, he runs the risk of losing a rebate, APR or stair step incentive. If the dealer backdates the contract so that the consumer receives the rebate or incentive APR, he runs the risk of violating TILA and a resulting lawsuit.

What's a dealer to do? Dealers have mixed opinions:

- Backdate every contract, or
- Use the current date on every contract and eat the rebate, or
- Backdate only when it affects rebate or APR eligibility and run the risk with the argument that it is to the consumer's benefit.

The ultimate solution is for the manufacturers to wake up and realize that the date of contract is not an accurate indicator of the sale date. The sale of the vehicle and the financing of the vehicle are two different transactions.

By the way, a reduviid is a blood-sucking insect.

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