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## Unfair and deceptive practices – payment packing

by Gil Van Over

Last week we discussed the definition and a few examples of unfair and deceptive practices, otherwise known as fraud. Over the next few weeks, I will review specific deceptive practices that dealers are being taken to court over. This week – payment packing.

### Examples of Payment Packing

A few years ago, while making a presentation to a 20-group, one California dealer actually said, "Payment packing is not specifically against the law in my state, so I will continue to pack payments."

I couldn't convince him that payment packing is viewed as a deceptive practice and Attorneys General and plaintiff's attorneys use the deceptive practice statutes to litigate claims against dealers and payment packing. Thankfully, the other 19 dealers understood. Now, however, it is specifically against the law to pack payments in California as part of the state's Car Buyer's Bill of Rights.

Additionally, the National Association of Attorneys General (NAAG, how appropriate), led by Oregon's Assistant AG Doug Walsh, have provided guidelines on the practices that are considered payment packing:

Using an undisclosed, short term to quote the payment, then stretching the term out while keeping the payment the same; More than a \$10 payment range; Including undisclosed products in the payment quote, such as service contracts or gap; Using an interest rate that the dealership cannot reasonably place the paper at, i.e. quoting a 800 bureau score a payment calculated using a 25 percent APR; Artificially bumping the payment by any amount, otherwise known as leg.

Undisclosed, short term – If you quote payments, use a short term and do not disclose the term, the dark side will assert that you are artificially quoting a high payment just to accommodate the sale of F&I products later in the process.

Please do not confuse this with quoting a payment using a disclosed, short term. One key to deflecting a deceptive practices claim is disclosure.

Best practice – quote the term whenever you quote the payment in the sales process. Ensure that the payment quoted is correct for the amount, term and APR driven by a rate matrix.

Payment Range – Using a range early in the sales process is acceptable, according to NAAG, as there are still a few variables that may increase the math: 30 versus 45 days to first payment; purchase or transfer plates; potential VSI fee with some lenders; or estimated payoff to name a few.

Still, NAAG recommends a range not to exceed \$10, and quite frankly, \$5 may suffice. Best practice – ensure that any payment ranges you use early in the sales process be limited to a maximum of \$10, preferably, \$5 and that the actual payment falls within that range. Once you finalize the sale and turn the customer over to F&I, there is no need for a range.

Undisclosed Products – Quoting payments that include a charge for a service contract, or gap, or other traditional F&I products without disclosing the base payment without those products is considered payment packing. In some dealerships, an F&I product is included in the quick quote screen so that every payment quote includes the product without disclosing it.

Best practice – strip the products from your quick quote screen. Implement a policy that payments are only quoted with products if the customer asks for the product, but make sure the base payment without the requested product is also quoted alongside.

Unrealistic APR – Using a 25 percent APR on a customer with an 800 bureau score is considered deceptive because, if the customer agreed to the first pencil, you cannot find a lender that will accept the contract with that much dealer reserve. So you end up lowering the rate and selling products to keep the payment the same. Even if you disclose the new payment at a lower rate in the F&I process, the dark side will accuse you of

having a process in place to cover up the fraud through collusion between departments.

Best practice – use a bureau score driven rate matrix to quote your first payment. E-mail me if you'd like to see an example. Alternatively, you can use an average rate if you do not pull a bureau before quoting your first payment. My favored method for determining the average rate to use is to take your captive's buy rate that corresponds to a 678 bureau score and add the amount of dealer reserve you want, say 200 basis points. I prefer 678 because that is the score of the average American, according to recent studies.

Leg – Artificially adding \$25, or \$50 or even \$100 to the actual payment is an old-school practice that must be eradicated. This sales practice was the rage in the '90s and everybody taught it in their sales training classes. These trainers did an outstanding job, which explains the longevity of the deceptive practice at a diminishing number of dealerships. Believe it or not, there are some electronic desking systems being sold and implemented today that allows the dealership to set up leg in each deal!

Best practice – implement a policy that leg is not acceptable. Retrain your sales and desk managers to quote payments with an acceptable range driven by a rate matrix (or average rate) and disclose the term used to quote the payment. If you are using a desking system, make sure the defaults do not automatically add leg to any payment.

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