

## FTC Used Car Rule

The Federal Trade Commission (FTC) is responsible for administering many of the laws passed by Congress. Among the rules implemented by the FTC to administer those laws that affect automobile dealers are:

- Used Car Rule
- Privacy Rule
- Safeguards Rule
- Do Not Call Rule

The next four issues of this newsletter will review these Rules in detail, starting with the Used Car Rule.

### **Dealer's Requirements**

The Used Car Rule outlines a dealer's requirements for providing consumers with important purchasing and warranty information, primarily using a Buyers Guide. This guide tells consumers:

- Whether the vehicle is sold "as is" or with a warranty
- The percentage of the repair costs a dealer will pay under warranty
- That oral promises are difficult to enforce and to get all promises in writing
- The major mechanical and electrical systems on the vehicle
- Some major problems that consumers should look out for
- To have the vehicle inspected by an independent mechanic before they buy the vehicle

### **Common Issues**

Some of the common issues I see in deal file audits include:

- Neither the "as is" or warranty box is checked
- The "balance of factory warranty" is not properly disclosed
- The dealer advertises "Se habla Espanol" in the newspaper, but does not have Spanish translation Buyers Guides prominently displayed on the used vehicles offered for sale
- The dealer uses a Buyers Guide with the optional customer signature, but is not consistently obtaining the customer's signature
- Both copies of a two ply Buyers Guide are in file, making it apparent the customer did not receive a copy
- The dealer name, address and contact information on the back side of the Buyers Guide is blank
- The Buyer's Order is lacking the required disclosure

*The “as is” or warranty box is not checked.* The FTC rule is clear. A used vehicle has to be either sold “as is” or with some sort of warranty. One of the two boxes must be checked.

*Balance of factory warranty.* Many of the used vehicles a dealer sells have a remaining factor warranty. The Used Car Rule provides safe-harbor language a dealer must use on the Buyers Guide to ensure compliance with the rule. First, the dealer is to disclose this fact by checking the "Warranty" box and including this disclosure in the "systems covered/duration" section: "MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc."

*Se Habla Espanol.* A dealer's obligation under the rule is to have a Spanish translation Buyers Guide prominently and conspicuously displayed if the transaction is negotiated in Spanish. If you advertise the fact that you speak Spanish, you probably should have a Spanish and English version of the Buyers Guide on every used vehicle offered for sale, since you can't realistically predict which of the used vehicles a Spanish speaking consumer will land on.

*Optional Signature Line.* The Used Car Rule offers an option for the customer to sign acknowledging receipt of the Buyers Guide. While it is not a requirement to obtain the customer's signature, it certainly is a good business practice to have affirmation in the file that the customer did receive a copy as required by the rule.

*Customer Copy.* Speaking of providing the customer with a copy of the Buyers Guide, it is another one of the dealer's obligation under the rule. Many dealers purchase a stock of the Buyers Guide that have two plies (one for the customer, the other for the dealer) and the optional signature line. This business practice, if properly executed, helps to document that the dealer fulfilled its obligation.

*Dealer Information.* The dealer is required to provide the customer with the dealer's name, address and contact person on the back side of the Buyers Guide. Too often, I see this information omitted. The FTC allows the dealer to preprint this information on the form, take advantage of this legitimate shortcut.

*Buyers Order.* Finally, the rule requires that a dealer's sales contract (commonly called the Buyers Order or the Retail Installment Sales Contract in California) contain this language: The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Take a look at your Buyers Order to ensure that you are in compliance.

### **Penalty for Noncompliance**

Like other FTC promulgated rules, dealers who violate the Used Car Rule may be subject to penalties of up to \$11,000 per occurrence. Good luck in convincing the FTC a visit

counts as one occurrence if you have ten vehicles on the lot offered for sale that do not have compliant Buyers Guides prominently displayed.

### **Checklist**

Use this checklist to help administer your compliance with the Used Car Rule:

- Is there a Buyers Guide properly completed for each used vehicle offered for sale?
- Is the Buyers Guide prominently and conspicuously displayed on each used vehicle you offer for sale?
- If you include an optional signature line for the buyer's signature, does your form include the required disclosure language?
- Does your Buyer's Order contain the required disclosure?
- Does your customer receive a copy of the Buyers Guide as part of the closing documents?
- If the sale was conducted in Spanish, are you providing your customer with a Spanish translation version?

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