

Shortcuts Will Come Back To Haunt You

I am on an early morning plane on my way to work with a new client in Salem, Oregon. I expected today's security screening to be particularly painful as the morning news was devoted to Homeland Security's announcement regarding the raised security level in New York and the nation's capital. Little did I suspect that the witch I'd run into was not the TSA screening agent, but a fellow frequent flier businesswoman!

Here's my story, and I'm sticking to it.

I used the kiosk and quickly obtained my boarding pass, then headed for the priority security check-in line. Us frequent fliers use this line so we don't have to deal with the vacationers and first time fliers. You know, the flier who doesn't realize that you have to show your ID *and* your boarding pass to the TSA agent; the ones who leave their laptops in their cases when they get to the X-Ray machines. Generally speaking, the ones who hold up the entire process. But I rant...back to the story.

I pass the TSA Queen with a smile and I'm on my way. I head to the back of the line where other frequent fliers are dutifully extricating their laptops, putting their cell phones in their briefcases, removing their shoes, yadda yadda yadda. All the steps we take to keep the line moving.

As I straighten up from bending over to remove my laptop, I notice that a professionally dressed woman has cut in front of me. She was at least ten people behind me before I reached the TSA Agent, now she is in front of me. I politely said, "The line is back there" to which she replied, "No, I was in front of you".

Now, I am at the airport in plenty of time. In fact, I still have time to get my shoes shined, check my email at the Red Carpet Club, stop for a cup of coffee and board my flight. It's not like I'm running late, but this woman's lie and boldfaced assumption that as the ruler of her hive she can just go to the front of any line she so pleases gets under my skin a little. OK, a lot.

I sternly replied, "No. You were well behind me over there and I know you are line jumping." Well, you would have thought the world was ending. She immediately yells to the TSA screener at the X-Ray machine, "Get this guy the F... away from me"!

He looks at me and I calmly state, "She cut in line, I called her on it, and now she wants to make a big scene". The TSA agent replied, "Let's go ma'm" and ushered her through the process (through which she exaggerated every movement, even to the extent of removing her fake Tiffany bracelet so the metal detector would not beep). When I get to the machine, he whispers, "Takes all kinds in this world, doesn't it"?

After I pass through the metal detector, the witch is still putting her stuff together. "I hope I ruined your day" she prods.

My reply shocked me and floored her.

“You take shortcuts in business and they will come back to haunt you” I said.

I could tell by her new jawline and shocked eyes that I struck a nerve. I simply smiled and walked off.

But my response also struck a nerve with me. I see too many dealers taking shortcuts in their processes that come back to haunt them in the form of litigation, governmental inquiries and negative publicity. Here are a few of the shortcuts and the appropriate steps to take to make sure you aren't haunted by witches.

Shortcut: Photocopying Forms

Many dealers purchase two- or three-ply forms used to document the vehicle's purchase and delivery. Included are Privacy Notices, Spot Delivery Agreements, Arbitration Agreements, Finance Riders and Credit Applications. The intent is to provide the customer a copy of the form s/he has signed as part of the deal documentation.

So what happens when the supply starts running low? Some dealers simply make a photocopy. Then, when those supplies start running low, they make a photocopy of a photocopy. After the tenth iteration, either the margins are truncated or the quality of the font is so poor that it reads like a foreign language. The issue is one of defensibility. Can your attorney use this form to adequately defend you in litigation?

A second issue is that some of these forms (or perhaps state law) require that the customer get a copy of the form. I dare any F&I Manager to truthfully state in a deposition that he obtains the customer's signature on the photocopy of the Privacy Notice, then gets up and goes to the copy machine outside of his office to make a photocopy of the signed form.

The remedy: Do not allow multi-ply forms to be photocopied in lieu of placing another forms order.

Shortcut: Using Paper Menus

Now that you are likely using an F&I Menu (most industry pundits estimate that the majority of dealers have implemented menus), you probably feel you are as fully protected as the payment you want your customers to take. Don't get too comfortable.

If your primary purpose in implementing a menu was to ensure legal compliance, a paper menu does not fulfill that purpose. With a paper menu, a nefarious F&I Manager can still pack payments, stuff products, bundle products, trade rate for product and improperly disclose product pricing.

The remedy: Subscribe to a computer-based menu, preferably one that will not allow an F&I Manager to override recommended disclosures or the date and time stamp feature.

Shortcut: Signature On File

Some credit card companies apparently permit “signature on file” where the customer’s signature is required on a credit card slip. I say apparently because the florist who delivers my wife’s roses four times a year puts “signature on file” and my credit card company accepts the charge.

Some Aftermarket and F&I Managers use this scenario as an excuse for putting “signature on file” for the customer’s signature on environmental or gap enrollment forms. This shortcut performed once can quickly become a pattern to stuff products into a transaction without the customer’s knowledge.

The remedy: Expressly forbid the use of “signature on file” in your dealership and require that the Office Manager bring any deal to you with these curse words. Then deal with the culprit.

Shortcut: Credit Card Down Payments

This shortcut (and its cousin, Promissory Notes) is often agreed to in the sales process, but is executed in the F&I Office, so both processes are complicit.

Three issues are present with this shortcut: 1. A violation of most dealer-lender agreements; 2. A potential Truth-In-Lending Act (TILA) violation; or 3. A potential Consumer Leasing Act (CLA) violation.

The first issue has been around for a long time. A credit card (or promissory note) down payment is borrowed funds and the dealer usually asserts in the reps and warrants to a lender that all funds represented on the face of the Retail Installment Sales Contract (RISC) are in good funds (cash or its equivalent).

The promissory note not disclosed as a deferred down payment is technically a TILA violation. But be careful...I am not aware of a lender in the indirect auto finance marketplace that will accept a RISC with a deferred down payment!

Finally, a dealer must disclose a credit card used for the starts on a lease as a credit card remittance, not as cash. Some lease agreements have the additional line in the starts section to disclose a credit card remittance, but check with the lessor about its procedure for cashing a lease agreement with a credit card remittance disclosed before paying your programmer to make the change.

The remedy: Stop accepting credit cards or promissory notes as down payments unless your lender or lessor expressly approves of the practice.

Shortcut: Power Booking

This shortcut is a deceptive practice as old as my Grandparent's wedding picture. Power Booking (according to the gvo3 Consulting Dictionary of Automotive Terms) is the practice of improperly inflating the value of a vehicle through the use of phantom options. The nefarious few (another term from the dictionary...means the two percent of F&I Managers that set out to deceive everyone they deal with) will increase the wholesale value to the lender to get a higher percent advance on a deal where there is excess gross or negative equity.

Until recently, the lender was the one to be wary of. If the lender caught the dealer power booking, it would require that the dealer pay off the loan, normally at repossession time. Many power booked deals slipped through the cracks, making the risk reward proposition an attractive one for the nefarious few. A recent lawsuit in the Pacific Northwest has put a new twist on the dealer's potential liability.

A group of consumers filed a class action lawsuit against a public consolidator, one of its stores, the F&I Manager *and* the lenders that bought the allegedly tainted receivable. The thrust of the complaint is that the F&I Manager engaged in a deceptive practice, the store's management condoned it, the public company failed to have proper procedures in place to prevent it and the lenders did not exercise due diligence to catch it.

It is much too early to tell how the case will end up, but its filing has surely caught the eye of the rest of the trial lawyers from the Evil Empire. Watch for class action lawsuits to sweep across the country faster than the headwinds that are delaying my landing in Portland.

The remedy: Implement a parallel process for used vehicles that mimics your process for new vehicles. Create a used vehicle invoice when you take a vehicle into inventory and require that your Used Car Manager certify the options, model and mileage on the invoice. File a copy as you would an invoice and ensure that a certified copy remains in the deal file. Let your lenders know that all book out sheets from your dealership are to be certified ones and that you want to know if and when a counterfeit version is being passed.

There you have it. Some shortcuts that may be in play in your dealership today and ways to fix them. After all, you don't want any witches coming back to haunt you!

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