

Litigation Defense Strategy – Process Review

By: Gil Van Over

In last month's *Jeff Sacks Newsletter*, I discussed performing a review of all of the forms used in the Sales and F&I processes. It is equally important for a dealer to understand the processes a customer goes through in implementing a litigation defense strategy.

Generally, a customer purchasing a vehicle goes through three processes: Sales, Aftermarket and F & I. Each process has a specific function, the primary goal being to maximize the dealer's profitability. A secondary goal is to generate the documentation that will stand up in court clearly showing that the sale of the vehicle and ancillary products was conducted in a completely open and fully disclosed manner. This secondary goal is typically accomplished if the customer signs at least *three* times acknowledging and accepting the purchase price of the vehicle and all ancillary products.

Sales Process

The Sales process involves greeting and establishing rapport with the customer, uncovering the needs of the customer, presenting the features and benefits of vehicles reflecting these needs and accompanying the customer on a test-drive.

By this point, the sales person has probably started to capture information that will be used in a four square or other similar selling worksheet. At a minimum, the sales person photocopied the customer's driver's license and maybe the insurance card. Since the sales person has obtained non-public, personal information about the customer, this triggers the requirement to give the customer a copy of the dealership's privacy notice.

Negotiations will include the vehicle purchase price, trade value and payoff, cash down and monthly payments. If a payment is quoted, it should be for the terms being presented, without including room, or a leg, for the sale of aftermarket and F&I products. This practice, termed payment packing, is considered unfair and deceptive by states' attorneys general and is being successfully leveraged by plaintiffs' attorneys seeking class action attorney's fees. The Sales Manager should also quote the term and APR used to calculate the quoted payment, using a consistent methodology that is documented in the dealer's procedure manual.

The final agreed upon terms should then be handwritten onto a Buyer's Order and signed by the customer and the dealer's authorized agent. These terms should not change unless a deal structure is not approved by any of the dealer's lenders, which means a rewrite has to be done, necessitating further new negotiations and an entire new set of forms and agreements.

Aftermarket Process

Some dealers insert an aftermarket representative into the process map. This person's objective is to sell specific hard and soft adds to the customer. Examples of soft adds include environmental protection packages and etch. The aftermarket representative must specifically list the aftermarket items being purchased, including the price, on an

Aftermarket Agreement and obtain the customer's signature acknowledging and accepting the items and the price.

F&I Process

The F&I process has two objectives: 1) to sell various F&I products and 2) to document the sale and pertinent information.

The F&I Manager must take the handwritten Buyer's Order generated in the Sales process, the Aftermarket Agreement completed in the aftermarket process and generate an F&I Menu completely disclosing the agreed upon terms at the top. These terms must include the agreed upon price including accessories, cash down, trade value, trade payoff, total taxes and fees, balance to finance, term, APR and base monthly payment. This base monthly payment must be the payment the customer can take delivery of at that point if she declines all products. Make sure the customer is signing (or at a minimum, initialing) showing acceptance and acknowledgement of these terms.

The body of the menu should list all of the products available to the customer and include the product pricing. These products can be combined in different suites of products, with the suite on the left usually including every product available.

The bottom of the menu must show the monthly payment if the customer chooses a suite of products. The dealer can show various terms at the bottom, but one of the terms must be the same term as used to calculate the base monthly payment.

Once the customer has agreed upon a suite of products, he must sign the menu again at the bottom accepting and acknowledging the purchase of the products and the resulting adjusted monthly payment. This monthly payment and associated term must be the same as the payment and term on the Retail Installment Sales Contract.

The acid test needs to be: It is critical that the customer's intention be clear when reviewing a menu in a completed deal jacket.

The F&I Manager then must print a Buyer's Order which fully discloses the agreed upon price of the vehicle, all aftermarket products and all F&I products. The total balance due at the bottom of the Buyer's Order must equal the amount financed on the Retail Installment Sales Contract **(unless there are VSI fees).**

Finally, the F&I Manager prints and executes the Retail Installment Sales Contract and all Aftermarket and F&I product enrollment forms. These enrollment forms must require the customer's signature, acknowledging and accepting the purchase price of the product listed on the enrollment form.

Standardizing the processes a customer goes through from the time she walks onto your lot until she drives away in a shiny vehicle enhances a dealer's ability to defend the dealership against the various litigation and governmental inquiries that exist today.

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