

## A Complete Customer File

When implementing an F&I policy and procedure manual at various dealerships, I'm often approached with a form of this question, "*What law requires us to have this particular form?*"

Granted, there are some laws that require you to obtain and retain certain forms. For example, you must keep all credit applications you take for either 25 months (required under Equal Credit Opportunity Act) or 60 months (recommended under Fair and Accurate Credit Transactions Act). The Retail Installment Sales Contract (RISC) should be on hand to defend against charges of Truth In Lending Act violations. The Used Car Buyer's Guide should be available to prove compliance with the Federal Trade Commission's Used Car Rule.

Dealers often use other forms, such as a spot delivery agreement or arbitration agreement, as part of an overall litigation defense strategy. Although these forms are not required by law (in most states), this is mandated by the dealer's attorney to defend the dealer in potential litigation.

Here are the forms I see in dealerships that even though they are not required by law, they potentially provide the dealer with the litigation defense it is seeking:

- Arbitration Agreement
- Buyer's Order
- Deal Recap Sheet
- Due Bill
- Do Not Call Waiver
- F&I Menu
- Four Square
- Spot Delivery Rider

### *Arbitration Agreement*

An arbitration provision, whether standalone or as a dispute resolution on the Buyer's Order, is intended to require that all disputes between the dealer and the consumer be resolved through binding arbitration rather than through the courts. By keeping disputes in an arbitration setting, the dealer's attorney is also attempting to limit class action litigation.

### *Buyer's Order*

This agreement, also known as a Purchase Order, helps to set forth certain reps, warrants and agreements between the buyer and the dealer. Some of these reps include:

- A self-contained dispute resolution
- The Magnuson-Moss Warranty Act disclosure
- The Used Car Buyer's Guide supersedes any other document
- The dealer is not liable for failure to deliver if beyond dealer control
- The dealer may be retaining a portion of the finance charge
- The consumer signs that he received a completed copy

- The amount due

California dealers are probably acutely aware that their state's Single Document Rule effectively precludes them from using a Buyer's Order.

#### *Deal Recap Sheet*

The venerable deal recap sheet. What would we do without it? Unfortunately, the dark side feels the same way. This is usually the first document the plaintiff's attorney will ask for in discovery because it tells the tale of how much the customer was truly charged for various products, the Buyer's Order or RISC notwithstanding. A well-constructed deal recap sheet that properly allocates profit to the various products and is consistent with the Buyer's Order and RISC will go a long way toward defending against charges of product stuffing.

#### *Due Bill*

A.K.A. a "We Owe." This is another favorite discoverable item of the Evil Empire's forces. This simple little form can be powerfully damaging, or effective, to a dealer's litigation defense depending on how accurately the form is completed. The cute catch phrase, "*We owe nothing, but great service*" is not going to get a dealer in as much trouble as "*Etch windows*" can. Especially if the Buyer's Order and RISC do not have Etch disclosed, the customer did not sign an Etch enrollment form and the deal recap sheet shows the dealer made \$500 profit on Etch.

#### *Do Not Call Waiver*

The Do Not Call Waiver is a recent phenomenon simply because of the newness of the FTC's Do Not Call Rule. This waiver asks the consumer to agree, "*By signing this Order you give us permission to contact you at the above-listed telephone number(s) during business hours, even if you have previously enrolled the number(s) in the National Do-Not-Call Registry. You may request at any time to be placed on the Dealer's 'Do Not Call' List.*" While this waiver has not yet been tested, it is an interesting approach to short-circuit an FTC inquiry.

#### *F&I Menu*

Certainly, you have read about the benefits of using a menu in your F&I process. To recap, a menu that presents every product to every customer is shown to:

1. Improve CSI
2. Improve product penetration
3. Reduce chargebacks

Compliance is an ancillary benefit of a well-constructed menu. I can build a very strong case as an expert witness on the dealer's behalf with the proper reps, warrants and consistent product pricing on a menu. Unfortunately, the Duane Overholt's of the world can also spin a horrible story against the dealer with a poorly constructed or executed menu.

A compliant menu should disclose:

- All the products are optional
- Purchase of the products is not required to obtain financing
- Purchase of the products will not affect the interest rate
- The base payment, term, balance and APR
- The agreed upon term and payment
- The individual product pricing

#### *Four Square*

This form of a selling doc remains the industry's tool of preference. There are electronic versions that clean up the four-color Sharpie puzzle of old. Either way, after the deal is done, some dealers want to shred this document. Verboten, I say! Here is a typical exchange I read in depositions all the time:

Darth Vader:            "*How do you negotiate the sale of a vehicle?*"  
 Sales Manager:        "*I use a four square.*"  
 Dark Vader:            "*Why didn't you produce a four square in discovery?*"  
 Sales Manager:        "*We always shred them.*"  
 Darth Vader:            "*What are you trying to hide?*"

This testimony can be damaging in a jury trial when the six citizens in the jury box don't trust dealers to begin with. A well-executed four square can prove the dealer acted in a professional, above board fashion. A poorly completed four square can accelerate the settlement discussions.

#### *Spot Delivery Rider*

A spot delivery rider helps to set forth certain agreements when a vehicle is sold and delivered prior to obtaining a credit approval (Wisconsin dealers can immediately jump to the closing statement below). Check your spot delivery agreement for the following reps and warrants:

- The agreement is tied to Buyer's Order and RISC
- It is pending third party financial institution credit approval
- The dealer is to make best effort to secure financing
- Consumer can rescind if dealer is unable to secure financing
- Consumer agrees to return vehicle in reasonable time
- Dealer will refund of down payment/return of trade vehicle
- A provision for excess wear and tear, excess mileage
- The Dealer has the right to repossess

There you have them; some forms that are not required by any particular law, but can potentially help your attorney to mitigate litigation. If you are using any of these forms, check for the recommended reps and warrants in your agreement. If you are not using one of the particular forms listed, check with your attorney to see if you should. Finally, make sure your attorney is involved in any creation or revision to your forms.

Good luck and good selling!

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