

5 Legal Drawbacks to a Unified Front-End

November 01, 2007

Recently, there have been discussions about unifying the sales and F&I departments. Among other reasons, unifying the front-end gets sales personnel to begin introducing F&I products to a potential customer. At first glance, this idea makes sense. If the customer trusts the salesperson enough to buy the car, the customer should also be willing to hear about other products and services that will enhance his or her overall buying experience. However, before we start moving down this path, we should take an historical look at other attempts to merge F&I functionality into the sales department.

1. The Sticky Truth About Addendum Window Stickers

Let's start with the addendum window sticker. It's only within the last couple of years that most dealers have discontinued the practice of adding F&I-related products to the addendum window sticker. Prior to that, surface protection products and theft deterrent products were regularly added to the addendum sticker.

The problem with this practice was that it was used mainly as a discounting tool and it potentially gave the appearance to the consumer that the products were not optional — both considered unfair and deceptive sales practices.

2. The Legalities Surrounding Credit Applications

Then there's the credit-application process. This is a multi-step process that involves completing a credit application, getting the customer's consent to investigate his or her credit, obtaining a credit report and reviewing it. There are potential issues with completing the application when sales personnel are involved. Accuracy of the information and the possibility of alterations are two that come to mind. There are also some dealers who continue to use a customer registration card or some other form to capture customer information, which includes the customer's consent to investigate credit.

Unfortunately, the consent statement can sometimes be in micro print. This is one of the main reasons dealers have to retain credit applications for five years. Other issues include safeguarding the credit reports and reviewing them for fraud alerts and other identity-theft-related information. And don't forget the requirements of sending adverse action notices and providing privacy notices. All of these potential risks fall under the requirements of the Equal Credit Opportunity Act, Reg. B, the Fair Credit Reporting Act and the Gramm-Leach Bliley Act, which includes the Privacy Rule and Safeguards Rule. { +PAGEBREAK+ } **3. Desking and Its Potential Risks**

The desking process is also popular with many dealerships. In many cases, the desk managers will calculate the first pencil, sometimes before credit is run and sometimes after credit is run. Some desks also will submit the deal for lender approval. Sometimes, the deal

is structured before the customer is turned over to F&I. This includes deals with negative equity and deals with high upfront acquisition fees. I refer to this practice as the “Larry the Cable Guy” approach, or “Git-R-Done.”

This is why I believe the desk is another area for potential risk. Discriminatory pricing, unfair and deceptive trade practices, and Reg. Z Truth in Lending disclosure violations are a couple of potential problems related to this approach.

4. Safeguarding the Used-Car Department

Let’s not forget the used-car department. Quite a few dealerships use an outside service to produce laser-printed FTC Used Car Buyer’s Guides, which are affixed and prominently displayed in used cars. When the vehicle is sold, the sales personnel are required to have the customer sign a duplicate copy as evidence that he or she was provided a copy of the FTC Buyer’s Guide. They are also required to complete the reverse side of the guide, disclosing the dealership name, address, phone number and a person or position to contact should they have a question about the vehicle’s warranty.

This process may seem simple, but it is consistently listed as an issue on many compliance reviews. The potential risks fall under the FTC Used Car Rule and the Magnuson-Moss Warranty Act.

5. Expansion of Sales Training

One of the problems we’re dealing with is quite simple. Sales personnel are not trained to be F&I professionals. They follow the process and complete the forms because they know they won’t get paid if they don’t.

Another problem we face today is F&I managers are being held more accountable for production than compliance. Ask a dealer who’s been on the wrong side of a class-action lawsuit or an attorney general’s investigation the cost of compliance. { +PAGEBREAK+ }

Getting F&I Involved at the Start

Is there a solution? Absolutely. Instead of moving the F&I processes out into the sales department, why not integrate F&I personnel into the sales process? A good example of this concept is the use of an F&I administrative assistant. This is a person who typically comes out of the back office environment and is familiar with the paperwork flow and F&I process. This person’s job is to assist in the administrative functions of F&I, which include ensuring that all the required paperwork is properly executed, acting as a liaison to the office, fulfilling lender stipulations and putting the funding packages together.

The bottom line result is that the F&I director and managers have more time to sell products and get deals approved. Not to mention, this approach can help reduce contracts in transit.

Instead of having a salesperson take a credit application, let an F&I professional be a part of your qualification process, and let him or her coach the customer on completing a properly

executed credit application.

Instead of letting the desk manager run the credit report, review it and structure the deal, let an F&I professional work with the desk manager. This will ensure that the credit information is properly secured, that the credit report is reviewed for fraud alerts, that the customer was cleared through the Office of Foreign Assets Control (OFAC), and that the deal is properly structured and falls within compliance and underwriting guidelines.

Instead of the salesperson reviewing warranty-related information at delivery, have an F&I professional take over this responsibility to ensure the forms are properly executed and the warranty terms are properly explained. Customers will appreciate someone who is proficient in explaining the differences between an "AS IS" vs. "IMPLIED" warranty, the differences between a "FULL" and "LIMITED" warranty, a "REMAINING FACTORY WARRANTY" or "PRE-OWNED CERTIFIED FACTORY" warranty, and between a warranty and service contract.

F&I professionals who are more involved with the sales process are also going to be able to train sales personnel on planting seeds and eventually selling more products. As an example, during the appraisal process, do you ask the customer if there is a service contract on the vehicle? This technique is very effective when the appraiser asks the question. If there is a payoff on the trade, do you try to get a copy of the previous RISC to see what products the customer purchased and if you can help with the refund process? Do you work with the service advisors to have them check to see if customers have purchased a service contract? Does an average salesperson know that offering GAP to a person who is financing 30 percent of the Manufacturer's Suggested Retail Price (MSRP) is akin to selling credit insurance to a cash customer? Being more visible in the sales process will also remove some of the fear and anxiety customers have when they are turned over to F&I.

Consider this scenario: Your dealership is sued by a customer who claims the dealership ran his credit without consent. It is documented that a salesperson was involved in the credit application process. The salesperson is being deposed by the plaintiff's attorney and is asked to describe what training he or she received regarding credit applications. How would your salespeople respond?

It's time for a paradigm shift.

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