

Article from Dealer Magazine ([http://www.imakenews.com/dealercomm1/e\\_article001287634.cfm?x=b11,0,w](http://www.imakenews.com/dealercomm1/e_article001287634.cfm?x=b11,0,w))

December 9, 2008

## TILA today

by Gil Van Over

The federal Truth in Lending Act (TILA) turned forty this year. It was originally intended to be a disclosure law to protect consumers. It has turned into a confusing quagmire used to sue dealers. Here at the two primary ways dealers are being sued under TILA.

### APR Disclosure

TILA provides the formula to calculate the APR. I doubt that many of us could take a calculator and APR components and calculate the APR. The formula is complex.

The Feds apparently recognized this complexity and permits, by law, a one-eighth of one percent variance in the APR disclosure. In other words, the APR that is disclosed on the retail installment sales contract can be off by .125 percent and still be in compliance with the law. If, however, the APR disclosed is wrong by more than .125 percent, the contract disclosure is not in compliance with TILA.

Two scenarios in play at some dealerships can cause the APR disclosure to be incorrect by more than the allowable variance: recontracting and subprime acquisition fees.

Recontracting – If you backdate the contract to the date of delivery when you recontract a deal, some courts have ruled that you have not properly disclosed the APR. The theory is that the day the final contract is signed is the effective date of the contract. By backdating the contract to a prior date, you are in effect charging interest during a period of time when there was not a valid contract in place. By taking that amount of interest and rolling the shorter period to the first payment into the APR calculation, you run the risk of understating the APR on the contract by more than .125 percent.

Subprime fees – These fees are only charged to credit customers. Cash customers do not pay them. This simple fact is one of the basic definitions of a finance charge that must be included in the APR calculation. If you increase the cash price of the vehicle by the amount of the subprime fee, you have effectively hidden the finance charge and understated the APR on the contract by more than .125 percent.

### Technical Disclosure

TILA requires that optional products sold be itemized. You must indicate what the product is, the premium for that product and the party to whom the premium was paid. Leaving any of these three blank is a technical TILA violation.

Attorneys like to use this as the basis for a lawsuit because your DMS is likely programmed to incorrectly disclose the information on every deal you sell those products to. In other words, you are creating a potential class for class action litigation.

Gil Van Over is the President and founder of gvo3 & Associates, a nationally recognized F&I, Sales and Red Flag Rule compliance consulting and training firm ([www.gvo3.com](http://www.gvo3.com)).

© 2008 by gvo3 Consulting, LLC. All rights reserved.

Published by [Dealer Communications](#)

Copyright © 2008 Horizon Communications Inc.. All rights reserved.

Information in this newsletter is provided by both proprietary and public sources. Dealer Communications makes no claims as to the accuracy of information provided by third party providers.

Powered by [IMN](#)