

F&I and Showroom

A BOBIT PUBLICATION FI-MAGAZINE.COM

THE INDUSTRY'S LEADING SOURCE FOR TRENDS AND TECHNOLOGY

The SAVVY Dealer

Wade Ford's Steve Ewing Plugs Into the Connected-Car Era

Embracing Mobile F&I
F&I Trainer Offers Seven Reasons Why You Should

Hail of an Idea
Learn How Paintless Dent Repair Landed on the F&I Menu

Filling the Compliance Gaps
Tighten Up Your Documentation Process With These Four Steps

Finding Greatness in the Box
F&I Expert Explains Why True Pros Don't Swing for the Fences





DON'T LET THE DEAL RUIN THE SALE

Compliance expert lists four steps dealers and F&I professionals can take to fill the gaps in your documentation process and prepare your dealership for regulatory inquests.

BY KEITH WHANN

We live in a rapidly changing and, despite all the technological advances, seemingly more complex world. It used to be that when a motor vehicle dealer made a mistake, they had an opportunity to fix it. Today, that first mistake can come at a high cost.

Surprisingly to many, compliance of the “car deal” itself is one of the biggest challenges and the area that presents some of the greatest legal exposure for your dealership. There are a whole host of state and federal laws that impact a motor vehicle transaction, including state unfair and deceptive acts and practices (UDAP) statutes and administrative rules, state laws governing title and retail installment sales contracts (RISC), the

Uniform Commercial Code (UCC), the Truth in Lending and Leasing Acts, the Magnuson-Moss Warranty Act, the Federal Trade Commission’s Used Car Rule, the Fair Credit Reporting Act (FCRA) and federal privacy and anti-terrorism laws and their implementing regulations, to name a few.

What’s more, not only do these state and federal laws go through periodic revision, they are subject to case decisions and regulatory interpretations addressing compliance with these laws on an ongoing basis, e.g., the Department of Defense’s recently issued interpretive rule under the Military Lending Act.

Putting all this together, achieving compliance for a motor vehicle dealer-

ship and keeping current with legal, regulatory, and legislative developments that impact your next car deal can be extremely challenging. Let’s discuss four steps you can take now to tighten up your process.

STEP 1: COMPLETE THE JACKET

One of the most important things to remember is that the individual documents in a car deal must not be designed to stand alone in a vacuum. Rather, they must work together as part of the overall car deal.

Just as important is to recognize that the different variables impacting a transaction — such as whether a vehicle is new or used, being sold or leased, its history,

whom it's being sold to, and what activity occurred online — will impact the content of the documents and the types of disclosures contained therein.

As a result, while an individual document may be appropriate for the specific purpose for which it was designed, it may cause a problem for the dealership when used in conjunction with the other documents in a car deal.

For example, the UCC, Magnuson-Moss Act, and the Used Car Rule each impose specific requirements on dealerships when offering or disclaiming warranties. Many state UDAP statutes also require that every retail sale of a motor vehicle be preceded by a written contract that contains all the agreements of the

recovering large damage awards and attorney fees.

Instead of focusing on what the consumer alleges the problem is with a motor vehicle transaction, the consumer's lawyer goes for what has become known as the "quick kill." They carefully scrutinize the car deal looking for incorrect or inappropriately completed documents that might provide the basis to successfully rescind the transaction, recover damages, and collect attorney fees.

STEP 3: RETHINK YOUR COMPLIANCE WARRANTIES.

No car deal is complete without financing. In virtually all of the hundreds of dealership lender agreements I have re-

meant looking at a series of printed documents and a few photocopies stored in a paper deal jacket. Look at the makeup of a car deal today. While you will still see some printed documents and photocopies, it now contains documents produced from the internet, various formats of menus, items that are presented electronically, and screenshots from various sources.

All of these "documents" come from a number of dealership product and service providers and are produced by various methods and sources. It seems hard to imagine, but that is what comprises today's car deal.

What are the odds these documents on their own all work together to produce a complete car deal where everything works together and that:

- No required documents are missing.
- All documents are drafted correctly such that they don't conflict with other documents.
- All required disclosures are made correctly.
- The obligations, rights, and remedies of all parties are correctly stated.
- All material statements are properly integrated.
- Each document is used properly by dealership employees.
- Documents and information contained therein don't conflict with your electronic processes.

Who within the dealership has the responsibility and the expertise to make sure the documents in your car deal do this? And when was the last time a comprehensive review of all things impacting your car deal was done?

The answers: slim, they don't, nobody, and a long time ago, if ever. If you have not updated your dealership's car deal documents and related procedures within the last year, they probably are not in compliance with applicable state and federal laws. And remember, if you don't review your car deal, someone else will! ■

ABOUT THE AUTHOR

Keith Whann is the founder of The Whann Group LLC and has more than 33 years of legal and compliance experience on issues affecting the automotive industry. Email him at keith.whann@bobit.com. Single publication rights only to *F&I and Showroom*. Nothing in this article is legal advice and should not be taken as such. Please address all legal questions to your counsel.



©GETTYIMAGES.COM/PRAETORIANPHOTO

parties, including all material statements made prior to obtaining the customer's signature on the purchase contract.

If you wish to be in compliance with all of these laws, you must ensure that the retail buyer's order, FTC buyer's guide, and limited warranty document contain the required disclosures — and those disclosures must be consistent and properly integrated.

STEP 2: PREPARE FOR THE LOT LAWYERS

The difficulties you face in making sure your documents comply with the maze of overlapping state and federal laws has not been overlooked by consumer attorneys. They have adopted a strategy for handling motor vehicle cases in hopes of

viewed over the years, the dealer must warrant that the documents used in the transaction are in compliance with applicable state and federal laws, rules, and regulations. Breach of that warranty requires a dealership to repurchase the car deal from the finance source.

Such a warranty takes on even more significance in today's market, given the declining creditworthiness of consumers and the likelihood of consumer defaults increasing. Dealerships should be cautious about making such compliance warranties to a lender without first taking a good look at their car deal.

STEP 4: GET SERIOUS ABOUT AUDITING

Not that long ago, auditing a car deal