



Selling A Truck Is Hard Enough, Don't Let Your Truck Deal Get In The Way!

We live in a rapidly changing and, despite all of the technological advances, seemingly more complex world. It used to be that when a motor vehicle dealership made a mistake it had an opportunity to fix it, but today that first mistake can come at a high cost. Surprisingly to many, compliance of the “truck deal” itself is one of the biggest challenges and the area that presents some of the greatest legal exposure for a motor vehicle 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 Motor Vehicle Titling and Retail Installment Sales Acts, the Uniform Commercial Code, the Truth in Lending and Leasing Acts, the Magnuson Moss Warranty Act, the Fair Credit Reporting Act 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 periodical revision, but also numerous case decisions and regulatory interpretations addressing compliance with these Laws are rendered on an ongoing basis (think Military Lending Act). Putting all of this together, achieving compliance for a motor vehicle dealership and keeping current with legal, regulatory and legislative developments that impact the dealership's truck deal can be extremely challenging.

One of the most important things to remember is that the individual documents in the deal must not be designed to stand-alone in a vacuum, but rather to work together as part of the overall truck deal. Just as important is to recognize that the different variables impacting a transaction, such as whether a truck is new or used, being sold or leased, it's history, who its 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 truck deal.



For example, the Uniform Commercial Code and the Magnuson Moss Warranty Act 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 of the agreements of the parties, including all material statements made prior to obtaining the customer's signature on the purchase contract. If a dealership is to be in compliance with all of these Laws, it must ensure that the Retail Buyers Order and Limited Warranty Document contain the required disclosures and those disclosures must be consistent and properly integrated.



The difficulties motor vehicle dealerships face in making sure that their documents comply with the maze of overlapping State and Federal Laws has not been overlooked by attorneys. They have adopted a strategy for handling motor vehicle cases in hopes of recovering large damage awards and attorney fees. Instead of focusing on what the vehicle owner 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 dealership's deal looking for incorrect or inappropriately completed documents that might provide the basis to successfully rescind the transaction, recover damages and collect attorney fees.

No truck deal is complete without financing. In virtually all of the hundreds of Lender Dealer Agreements I have reviewed over the years, the dealership must warrant both that it has complied with and 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 deal from the lender. Such a warranty takes on even more significance in today's market given the declining creditworthiness of the population and the likelihood of defaults increasing. Dealerships should be cautious about making such compliance warranties to a lender without first taking a good look at their truck deal.

What are the odds the these documents on their own all work together to produce a complete 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 and the documents and information contained therein don't conflict with any of our electronic processes? Who within the dealership has the responsibility and the expertise to make sure the documents in you deal do this? And when was the last time a comprehensive review of all things impacting your 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 deal documents and related procedures within the last year or so, they probably are not in compliance with applicable State and Federal Laws. And remember, if you don't review your deal, someone else will!

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