

LAW OFFICES OF  
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COOK

A DEAL JACKET REVIEW  
NABD MAY 24-26, 2016

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# What is a deal jacket review?

- No substitute for a compliance management system or a full-fledged compliance review.
- Think of it in health care terms – it's like checking your pulse, blood pressure and temperature.
- Can provide a window into compliance programs.

# How Many Documents are in a Typical Deal Jacket?

- **Credit Application**
- **Buyers Guide**
- **Four Square**
- **Menu**
- **Buyer's Order**



# How Many Documents are in a Typical Deal Jacket? (Cont'd)

- **Lease Order**
- **Retail-Installment Sale Contract**
- **Lease Contract**
- **Notice to Cosigner**
- **Agreement to Provide Insurance Policy**

# How Many Documents are in a Typical Deal Jacket? (Cont'd)

- **Payoff Authorization**
- **Test-Drive Agreement**
- **Borrowed-Vehicle Agreement**
- **All-Communication Authorization**
- **Payoff-Optional Product Disclosure**

# How Many Documents are in a Typical Deal Jacket? (Cont'd)

- **Damage-Disclosure Form for New Vehicle**
- **Damage-Disclosure Form for Used Vehicle**
- **Deal Recap**
- **We Owe – Due Bill**
- **Limited Warranty**

# How Many Documents are in a Typical Deal Jacket? (Cont'd)

- **Delivery Summary**
- **Goodwill Repair Addendum**
- **Acknowledgment of Rewritten Contract**
- **Service Contract**
- **Mechanical-Breakdown Protection**
- **Certificate of Title**

# How Many Documents are in a Typical Deal Jacket? (Cont'd)

- **Power of Attorney**
- **Odometer**
- **IRS Form 8300**
- **Red-Flags Form**
- **Adverse-Action Notice**
- **Privacy Notice**



# Why Care About Documents?

- Documents will always be with us
- Will always need words on a page
- Lifespan and record of dealer-customer relationship
- Compliance, liabilities, and risk
- Serve as a final defense



# Features in Preprinted Documents

- Print date
- Effective date
- Length
- Text/fonts
- Face and backer
- Legibility
- Simple language
- Creation date
- Copyright
- Multi-part
- Color
- Second person
- Verbatim language
- Internal consistency
- Consistent terms
- Language translations
- Signatures and initials
- Single-document rule

# Laws Found in Dealer Documents

- **Federal Laws**
  - **Equal Credit Opportunity Act (ECOA)**
  - **Fair Credit Reporting Act (FCRA)**
  - **Fair Credit and Accurate Credit Transactions Act (FACT)**
  - **Federal Trade Commission Act (FTC)**
  - **FTC Credit Practices Rule**
  - **Gramm-Leach-Bliley Act (GLBA)**
  - **Truth in Lending and Consumer Leasing Acts (TILA)**
  - **Holder in Due Course Rule**

# Laws Found in Dealer Documents (Cont'd)

- **State Laws**
  - Retail Installment Sales Act (RISA)
  - Unfair and Deceptive Acts and Practices (UDAP)
  - Uniform Commercial Code (UCC)
  - Contract Law
- **Various Other Laws**
  - Civil Theft
  - Civil Fraud
  - Civil Racketeer Influenced and Corrupt Organizations Act (RICO)

# Potential Liabilities and Fines

- TILA
- Criminal Violation
  - Year in jail and/or \$5,000 fine.
- Civil Liability
  - Plaintiff's actual damages, statutory damages, attorney fees, and court costs
- FTC
  - \$16,000 per infraction following cease and desist order

# Potential Liabilities and Fines

- State UDAP
  - A multiple of the consumer's damages plus legal fees, costs, and restitution (details depend on the state)
- State RICO
  - Forfeiture of assets
- Class Actions and Individually
  - Actual damages, nominal damages, consequential, punitive, legal fees, and costs

# Potential Liabilities and Fines

- Civil and Criminal Fraud and Theft
  - Forfeiture, heavy fines, and imprisonment**
- Dodd Frank Act (if it could ever apply)
  - \$5,000 for each day of the violation**
  - Reckless violation: \$25,000 for each day of the violation**
  - Intentional violation: \$1,000,000 for each day of the violation**

# Process Recommendations

- Understand and implement:
  - Safeguards Rule
  - Disposal Rule





# Process Recommendations

- Appoint a Compliance Officer

- Do not fly blind – read and understand each document

- Observe the effective dates of the documents

- Keep inventory of up-to-date documents

- Purge superseded documents

# Process Recommendations

- Have a written plan, timeframe, and method for destroying old files
  - Comply with records-retention requirement, but otherwise only the absolutely necessary documents should be in the deal jacket
  - Are you harmed or benefited by the Statute of Limitations?

# Three Questions to Ask Yourself

1. Do you conduct a compliance review of the 20-30 documents you use in a F&I deal jacket on at least an annual basis?
2. Does your attorney review the 40 or more state and federal laws that affect F&I documents to help you maintain compliance?
3. Do your documents support your dealership's F&I processes?

# What a deal jacket review can't reveal

- Problems outside of your documents
  - pricing, discrimination, oral representations to your customers
- Problems with underwriting, servicing, collections, privacy and other policies and procedures

# Neatness Counts!

- One copy of every applicable document in the same place in every jacket
- No unnecessary documents
- Documents completed neatly and data entered within appropriate blanks

# These are contracts!

- Dealer signatures?
- Customer signatures?



# Credit Application

- ECOA income warning
- Individual/joint credit election
- Credit bureau and phone authorizations
- Prohibited questions

# Buyers Orders

- Implied warranty disclaimers – conspicuous
- Implied warranty disclaimers and warranty/service contracts
- Arbitration agreements different from arbitration agreements in the RISC



# Buyers Orders (continued)

- FTC Used Car Rule – not conspicuous, not in Spanish, not verbatim
- Overreaching “unwind” language
- Warranty/service contract confusion
- Pedigree problems

# Retail installment sales form

- Who drafted the RISC?
- Who maintains the compliance of the RISC with law and regulation changes?
- If a “universal” form, is it the latest version for the state?



# Retail installment sales form (Cont'd)

- Is Spanish language Used Car Rule language present? Conspicuous? Verbatim?
- Is FTC “holder notice” present? Conspicuous? Verbatim?
- Are pickup payments handled correctly?

# Privacy Notice

- Not taking advantage of safe harbor form
- Using an “off the shelf” or the safe harbor form without assuring that it accurately describes the dealership’s policy



# Questions?



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