

AUTO TRANSACTIONS

October 3, 2013
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- ### Why Focus on Auto Transactions
- ▶ Usually second largest purchase \$5,000 – \$50,000
 - ▶ Multiple variables in the transaction
 - ▶ Challenging Negotiation
 - ▶ Long term obligation
 - ▶ Serious individual Consequences
 - ▶ Negative impact on mission readiness

- ### Resources
- ▶ NADA / Kelly's Blue Book
 - ▶ Car Fax/ Auto Check/ NMVTIS
 - ▶ Relationships
 - Dealerships
 - Local/ State Automobile Dealers Association
 - Lenders/Credit Union/ Banks/ Sub Prime
 - ▶ Enforcement
 - DMV / MVDB / AG / Civilian Counsel
 - Federal support – FTC, DOJ, CFPB

- ### Legal Tools
- ▶ Equal Credit Opportunity Act 15 USC 1691
 - ▶ Truth in Lending Act – 15 USC 1601
 - ▶ Uniform Commercial Code 25- 2-608
 - ▶ Usury
 - ▶ Magnuson–Moss Warranty Act, 15 U.S.C. §2301
 - ▶ Buyers Guide – FTC Used Car Rule 16 CFR 455
 - ▶ Holder in Due Course Rule 16 CFR 433.1
 - ▶ State Consumer Protection Laws

- ### Dealer Philosophy
- ▶ If you are on the lot, you want to buy
 - ▶ If you don't buy here, you will buy from a competitor
 - ▶ you can't leave without a car
 - ▶ Mission
 - Max out loan potential
 - Max out profit on sale
 - Inventory
 - Warranties
 - Add on sales
 - Manage Financing
 - Sub-prime / Bank / Credit Union

- ### Dealer Tactics
- ▶ Confuse
 - ▶ Exhaust
 - ▶ Used as New
 - ▶ Bait and Switch
 - ▶ Price gouging
 - ▶ Add-on sales
 - ▶ Warranties
 - ▶ YoYo

Client Profile

- ▶ Young (E-2 to E-4)
- ▶ Limited education (high school)
- ▶ Geographically displaced
- ▶ Newly indoctrinated to military
- ▶ Predisposed to follow authority
- ▶ Guaranteed employment/income
- ▶ Easy access to credit

Manage Client Expectations

- ▶ Why is the client in your office
- ▶ What does the client want from you
 - Cancel the deal
 - Principles / co conspirator
 - re-negotiate price/financing
 - Different vehicle
- ▶ Time
- ▶ Sweat equity

Reality Check

- ▶ Basic contract law
 - The first thing to make clear to the client is that if he/she signed these documents, he/she has agreed to pay for the car, i.e., he bought it.
 - Responsibility
- ▶ Fraud
 - Hard to prove
 - Witnesses help

Client Responsibility

- ▶ Consumer Complaint Process
- ▶ Copy of all documents (make two copies)
- ▶ Complete thorough narrative
- ▶ Complaints
 - AFDCB
 - BBB
 - FTC Military Sentinel
 - CFPB
 - State AG
- ▶ Educate / Train FFSC

Documentation

- ▶ Important documents
 - Buyer's order
 - Retail installment sales contract
 - Promissory Notes, Notices, GAP, Service Contracts
- ▶ If possible have the client provide the documentation prior to the appointment. If a walk-in have the documents copied prior to seeing the client
- ▶ Contact dealership and request copies of missing documents

Contacting The Dealership

- ▶ Plan conversation
 - ▶ Identify goal of communication
 - Obtain Facts
 - Establish relationship
 - Negotiate
- ▶ Understand business model
 - Passion / Ego /
 - Respect / Control
- ▶ Initial Inquiry
 - Fishing

The Buyers Order

- ▶ Front and Back
- ▶ On the Front,
 - The Numbers
 - Analysis
- ▶ On the Back,
 - Details
 - Clients Obligations
 - Legal

USURY

- ▶ What interest rates does the state allow
- ▶ Under what circumstances can the rates deviate from the statute
- ▶ Do the rates charged comply with the statute

The Retail Installment Sales Agreement

- ▶ Truth in Lending Act
- ▶ Disclosure (meaningful)
 - Percentage Rate
 - Amount financed
 - Finance charge
 - Total Payments
 - Total Sales Price
 - Number of payments
 - Amount of payments

Creditor / Seller

The dealership writes the deal and as creditor/seller the terms can be extreme (34%). The contract is sold. The real power lies with the assignee.

Look for buy/sell agreements

May contain promissory note language

Negative Equity

TILA

- ▶ Check to see if the amounts as disclosed are accurate – tax, down payment, and trade-in
- ▶ The numbers should not just be internally consistent; they should properly reflect reality
- ▶ TILA strict liability
 - Even where the consumer assisted in the fraud the dealer is still liable

YoYo Impact on TILA

- ▶ The basic fraud in a yo-yo sale is making the consumer think the sale was a done deal, when in fact the dealer set it up so that the dealer could call it off, seize the car, and sell it to another purchaser
- ▶ Look at the Dates
- ▶ Do not have to accept the second offer

Buyers Guide

- ▶ FTC
- ▶ Used Car Guide 16 CFR 455
- ▶ Disclosure of Warranties
- ▶ Required for sale of used cars
 - It is a deceptive act or practice for any used vehicle dealer,
 - (1) To misrepresent the mechanical condition of a used vehicle;
 - (2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and
 - (3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

Required by Federal law and many states laws.

Failure to provide may result in fines from the FTC.

In Va buyer may terminate the contract if not signed and received 30 days.

Typical: 50/50 30 days or 1000 miles

Warranty / Service Contract

BUYERS GUIDE

IMPORTANT: Select purpose and vehicle details. See the form to get all purposes in writing. See the form.

Chevrolet
 Cadillac
 1995
 1G4AD774D123456

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any and statements about the vehicle.

WARRANTY

SEE THIS BLOCK FOR THE MOST IMPORTANT ADDITIONAL INFORMATION, INCLUDING A LIST OF SOME MAJOR DEFECTS THAT THIS VEHICLE IS SOLD UNDER WARRANTY.

SYSTEMS COVERED:

Engine	90 days or 3,000 miles, whichever comes first.
Transmission & Drive Shaft	
Differential	

— A \$50 deductible applies to LABOR CHARGE ONLY.

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.

— SERVICE CONTRACT: A service contract is available at an extra charge on this vehicle. Ask to details as to coverage, deductible, price, and limitations. If you have a service contract when we buy the car, we will honor the "original warranty" that gave you additional rights.

SEE YOUR OWNERS MANUAL FOR THE LOCATION OF THIS LABEL AND THE LOCATION OF THE VEHICLE IDENTIFICATION NUMBER (VIN) ON THE LABEL.

SEE THIS BLOCK FOR THE MOST IMPORTANT ADDITIONAL INFORMATION, INCLUDING A LIST OF SOME MAJOR DEFECTS THAT THIS VEHICLE IS SOLD UNDER WARRANTY.

Below is a list of some major defects that may occur in used motor vehicles.

<p>Frame & Body</p> <ul style="list-style-type: none"> Cracked, bent, twisted, rusted, or rusted through Distorted—bent or twisted frame <p>Engine</p> <ul style="list-style-type: none"> Oil leakage including normal seepage Cracked block or head Block or head cracks, especially around the water pump Block or head cracks, especially around the water pump Abnormal exhaust discharge <p>Transmission & Drive Shaft</p> <ul style="list-style-type: none"> Excessive fluid level or leakage, including normal oil level Clutch or damaged case which is visible Abnormal noise or vibration, except for heavy idling Abnormal or noisy gear Excessive shifting or lurching in any gear Excessive clutch slip or failure <p>Drivetrain</p> <ul style="list-style-type: none"> Excessive fluid level or leakage including normal oil level Clutch or damaged housing which is visible Abnormal noise or vibration, except for heavy idling <p>Cooling System</p> <ul style="list-style-type: none"> Leaking including radiator Inoperative functioning water pump Water pump damage Water pump failure Water pump failure <p>Ignition System</p> <ul style="list-style-type: none"> Excessive spark plug wear Excessive spark plug wear Excessive spark plug wear <p>Wheels & Tires</p> <ul style="list-style-type: none"> Excessive tire wear Excessive tire wear Excessive tire wear 	<p>Brake System</p> <ul style="list-style-type: none"> Excessive brake light brake Excessive brake light brake Excessive brake light brake <p>Steering System</p> <ul style="list-style-type: none"> Excessive steering wheel play Excessive steering wheel play Excessive steering wheel play <p>Electrical System</p> <ul style="list-style-type: none"> Excessive battery discharge Excessive battery discharge Excessive battery discharge <p>Exhaust System</p> <ul style="list-style-type: none"> Excessive exhaust noise Excessive exhaust noise Excessive exhaust noise
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Reliable Used Cars
 1000 Downtown Expressway
 Lakeside, KS 64543
 Stan Jones, General Manager, 202-916-4854

ECOA

- ▶ The Equal Credit Opportunity Act and the Fair Credit Reporting Act require notices to consumers when adverse action is taken on a credit application
- ▶ A notice is required if the dealer, as the creditor prepares a RISC, takes an adverse action

Preservation of Consumers' Claims and Defenses

- ▶ Holder in Due Course 16 CFR 433.1
- ▶ ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS **SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER**

Magnuson-Moss Warranty Act

- ▶ Must provide names and addresses of the warrantors or service contract provider
- ▶ List the products or parts covered
- ▶ Explain what the warrantor will do in the event of a defect, malfunction, or failure, who will be responsible for the expense, and the period of time covered by the warranty or service contract
- ▶ Exceptions and exclusions from the terms of the warranty or service contract

Magnuson-Moss Warranty Act 2

- ▶ Cannot be conditioned on the consumer's using, any product or service
- ▶ Cannot disclaim or modify any implied warranty the product if written warranty or at the time of sale, or within 90 days thereafter, sells a service contract
- ▶ Can limit the terms of Implied warranties to the express warranty or service contract

UCC 2-608 Revocation of Goods

- ▶ NC 25-2-608 (1) The buyer may revoke his acceptance of a lot or commercial unit
- ▶ **nonconformity substantially impairs its value**
- ▶ Accepted on the **reasonable assumption that its nonconformity would be cured** and it has not been **seasonably** cured
- ▶ Accepted **without discovery** of such nonconformity if his acceptance was **reasonably induced** either by the **difficulty of discovery** before acceptance or by the **seller's assurances**
- ▶ Revocation of acceptance must **occur within a reasonable time** after the buyer discovers or should have discovered the ground for it
- ▶ Revocation is **not effective until the buyer notifies the seller**

Title Documents

- ▶ Bill of Lading
- ▶ Title
- ▶ Re-assignment of Title
- ▶ Temporary Registration

Interplay of Laws

- ▶ Bad Purchase
 - Truth in Lending Act - Disclosure
 - Usury
 - Equal Credit Opportunity Act - Finance
 - Buyers Guide - FTC Used Car Rule
 - State Consumer Protection Laws
- ▶ Bad Vehicle
 - Magnuson-Moss Warranty Act
 - Uniform Commercial Code
 - Holder in Due Course
 - State Consumer Protection Laws

Tactic 1. Follow the money

- ▶ Title is not conveyed until the dealer has the money - no title no sale
- ▶ Call the finance company
- ▶ No financing no Sale - intercept the financing
- ▶ Damages if the vehicle is returned
- ▶ Cost of actual law suit v. settlement

Tactic 2. Negotiation

- Unless state law requires its return, keep the vehicle during negotiation- if dealer has the money and vehicle they have all the tokens in the game
- Call the general manager and owner
- Acknowledge that there are two sides to the story, listen, ask questions, be professional, be polite
- What does the dealership want? Sales to the military and this sale
- Did they cross a line – legal or other?
- Is it in their best interest to settle
- Damages define settlement – commission/fees

Tactic 3. Set an Example

- You only have to knockdown one bully to gain respect on the playground
- Track the operations and tactics of the dealership – let them know
- Get more data – network with other services and agencies (Navy Relief, FFSC, DMV, Legal Aid, BBB, State AG)
- Work with the BBB, State AG, AFDCB, and Consumer law attorneys to set up a case

Settlement

- Draft release
 - mutual release that releases both parties, or
 - Unilateral a release
- Take photos of the car, inside and out
- Document the mileage
- Get EVERYTHING out of the vehicle
- Return the vehicle

Closure

- **Send the client a closure letter.**
- Enclose the original Release and Settlement and e-mail from the finance company
- Great job! You just saved someone a lot of debt and a lot of headaches.