AUTO TRANSACTIONS

October 3, 2013 DWAIN ALEXANDER, II

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

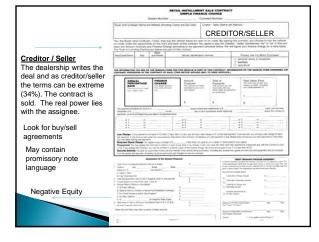


USURY

- 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



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

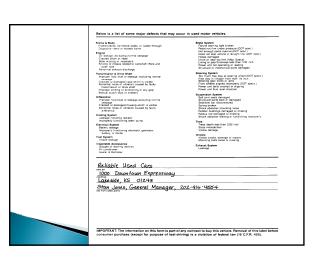
YoYo Impact on TILA

- 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.





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 <u>reasonable assumption that its nonconformity</u> <u>would be cured</u> and it has not been <u>seasonably</u> cured
- Accepted <u>without discovery</u> of such nonconformity if his acceptance was <u>reasonably induced</u> either by the <u>difficulty of</u> <u>discovery</u> before acceptance or by the <u>seller's assurances</u>
- Revocation of acceptance must <u>occur within a reasonable time</u> 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
 - o 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.