

Complexity of Dealership Compliance

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The motor vehicle industry is one of the most heavily regulated industries in America today. Often overlooked is the fact that motor vehicle dealerships have to be licensed, can only sell vehicles at a licensed location and can only use licensed salespeople. To complicate matters even more, there are a whole host of state and federal laws that impact a motor vehicle sales transaction, including State Unfair and Deceptive Acts and Practices (UDAP) Statutes, State Motor Vehicle, Titling and Retail Installment Sales Acts, the Uniform Commercial Code, the Magnuson Moss Warranty Act, the Fair Credit Reporting Act, the Truth in Lending and Leasing Acts, the FTC Used Car Rule and the new Federal Privacy and Anti-Terrorism Laws and their implementing Regulations, to name a few. Not only do these laws often overlap, but regulators and the courts are continually modifying interpretations of these laws. Putting all of this together, achieving compliance for a motor vehicle dealership can be extremely difficult and keeping current with legal, regulatory and legislative developments can be extremely challenging.

Not surprisingly, paperwork compliance is one of the biggest challenges and the area that presents the greatest legal exposure for a motor vehicle dealership. State Motor Vehicle Codes and Unfair and Deceptive Acts and Practices (UDAP) Statutes typically 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. One of the most important things to remember is that none of the forms in a transaction is meant to stand-alone. Rather, the dealership's forms must work together and be considered in the context of the entire transaction. Just as important is to recognize the different types of transactions a dealership engages in, such as whether it sells new or used motor vehicles and the types of financing it offers, all of which will impact the content of the dealership's forms and the types of disclosures contained therein.

The fact that dealerships often obtain their forms from multiple sources can further complicate the issue. While an individual form may be appropriate for the purpose for which it was designed, it may cause a problem for the dealership when used in conjunction with other forms in a transaction. For example, the Uniform Commercial Code, the Magnuson Moss Warranty Act and the FTC Used Car Rule each impose specific requirements on dealerships when offering or disclaiming warranties. **If a dealership is to be in compliance with all of these Laws, it must ensure that the Retail Buyers Order, FTC Buyers Guide and Limited Warranty Document contain the required disclosures and those disclosures must be consistent and properly integrated.** The task for a dealership's consultant can therefore be significant when it comes to paperwork issues. They have to understand the applicable laws and the impact of recent case decisions interpreting them, the type of business the dealership engages in, and the related products and services involved in the dealership's transactions.

Selling a vehicle and completing the appropriate sales related paperwork is only half of the dealership's battle; it often has to assist the consumer to obtain financing for the transaction. The typical dealership will have business relationships with a number of lenders and must enter into a lender agreement with each one of them before offering financing to customers. These agreements are often not reviewed by the dealership or are reviewed by someone who does not have experience in the motor vehicle industry. Unfortunately, these agreements can create legal exposure for the dealership that it never anticipated. In virtually all of the agreements we have reviewed during the past several years, the dealership must warrant that it has complied with and the documents used in the transaction are in compliance with applicable federal and state laws, rules, and regulations. In many cases, the dealership makes this representation even though the lender has provided the financing contracts and trained the dealership's personnel on how to complete them. Often times, the agreements also have indemnity provisions for the lender (i.e. if something goes wrong, the dealership holds the lender harmless for any damages, costs and expenses, including attorneys' fees), but there is no reciprocal provision for the dealership if the problem arises because of an error on the part of the lender. Experience has shown that lenders may be willing to negotiate revisions to these agreements which are more favorable to the dealership if the dealership's representative can articulate why the revisions are appropriate.

While we are on the subject of contracts, the same principles that apply to lender agreements apply to the agreements the dealership enters into with other service providers. In order to comply with the service provider provisions of the Gramm-Leach-Bliley Act and the FTC's Privacy Rule, motor vehicle dealerships should have by now entered into new agreements or amended their existing agreements with all of their service providers to include provisions whereby the

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parties agree to comply with the applicable privacy laws. When entering into an agreement with a third party, keep in mind that the dealership and its salespeople are subject to licensing requirements and regulations that limit the types of activities that may be conducted at the dealership. Generally speaking, dealers can only sell motor vehicles and products and services incidental to the sale of a motor vehicle at their licensed location. Ultimately it is the dealership's responsibility to ensure that it is complying with the appropriate licensing requirements and is conducting all facets of its business in accordance with applicable laws.

With the recent downturn in the economy and the increasing number of customers with impaired credit, many dealerships are turning to subprime and buy here-pay here financing. When retail sellers engage in these types of financing activities they have to consider taxation and accounting issues along with legal and compliance issues. Dealers frequently have individuals advising them who are not familiar with the motor vehicle industry in general, let alone the nuances of subprime and buy here-pay here financing. They often are not even aware that guidance is available from the Internal Revenue Service on many of these issues and that the industry has worked with the Service to develop a written Audit Technique Guide that contains specific chapters on subprime lending and related finance companies.

Lastly, in the Year 2002 no article of this type would be complete without considering the impact of the Internet on a motor vehicle dealership. Many companies have gained experience with the Internet and conducting business via e-commerce from other sectors of the marketplace. Motor vehicle dealerships should, however, exercise caution before working with these vendors. Remembering that the motor vehicle industry is heavily regulated and that the dealership is subject to licensing requirements, most of the traditional methods used to conduct sales online are not useful in the motor vehicle industry. Furthermore, consumers cannot complete the required paperwork electronically and a dealership cannot ship a vehicle to the consumer's front door. Federal and state laws governing consumer transactions, dealer licensing, titling laws, advertising laws and even lender agreements will all have an impact on what, if any business, a dealership conducts via the Internet. It should be noted that the role of the Internet in the motor vehicle industry was recently the subject of a public forum held by the FTC and will likely receive further attention in the future.

Clearly, the motor vehicle industry is unlike any other. For many consumers, the purchase of a motor vehicle is the second largest purchase they will make. The sale of a motor vehicle often includes other related products and services and financing for the transaction. As a result, the transactions that take place at a motor vehicle dealership often come under the scrutiny of federal and state regulators and consumer attorneys who use the maze of rules and regulations to break car deals. Given the complexity of the motor vehicle industry, more and more dealerships are turning to the NIADA and its State Affiliates for assistance with these issues. They can often help dealers sort through the legal and regulatory maze and point them in the right direction when it is necessary to obtain assistance from professionals or vendors familiar with the motor vehicle industry.