



The Coming Crackdown on Dealer Fraud

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Sometimes you get blindsided. Or sometimes you can see something coming from a mile away. This is one of the latter.

Dealerships that employ flim-flam artists are about to get slammed. When I use the term “flim-flam artists,” I am referring to those folks, usually but not always resident in the dealership’s F&I operation, who are committing felonies.

One of the sorts of felonies I’m referring to is “power booking,” or overstating the features and equipment of a car in order to bulk up the loan-to-value ratio, thus conning a finance company into a larger advance on a contract than the car would ordinarily bear. This practice violates several federal and state laws – the sorts of laws that come with civil penalties, jail time, and orange jumpsuits.

Another of the felonies involves creating new – and false – information for the buyer’s credit application. This one is sometimes accompanied by the counterfeiting of the various “stips,” such as proof of income, proof of employment, proof of length of residency, and the like. Again, federal and state laws are implicated, and these are also the sorts of crimes that can get you an orange jumpsuit.

Fake or “loaned” downpayments, “side notes” that are never enforced, “straw” purchasers – the list of ways to defraud the banks, sales finance companies, and credit unions that buy the dealership’s retail installment contracts goes on and on.

And, I haven’t even started on the sorts of fraud that dishonest dealers pull on consumers. An example: “We can’t get you bought.” Telling a buyer that the dealership cannot get financing unless the buyer agrees to a GAP contract or a vehicle service contract violates federal disclosure laws unless the cost of the required additional product is included in the disclosed finance charge and annual percentage rate. Another example: telling a buyer that the original financing for the car fell through and that the buyer must return to the dealership and sign another contract, when the buyer is under no contractual or legal obligation to do so. Fraud like this could, but usually doesn’t, result in jail time (more’s the pity), but these violations are certainly actionable by enforcement authorities and by private plaintiffs’ lawyers representing consumers.

So, who’s going to rain on the parade of dealers who tolerate fraud in their operations? The Consumer Financial Protection Bureau and the Federal Trade Commission, for sure, but both of these organizations have regularly attacked dealer fraud. They will continue to do so, but their

efforts aren't the "crackdown" mentioned in the title to this article.

The crackdown I see coming is from the companies that buy RICs from dealers. Those companies have recently found themselves under attack by state attorneys general for tolerating fraudulent conduct by the dealerships from which they acquire RICs. The result was millions to be paid under settlement agreements in which the targeted companies agreed to ride fraud patrol on their dealers.

Just as dealers periodically have conferences to catch up on new developments, the AGs from the various states talk and meet regularly to share information on their latest efforts to enforce the laws. You can bet that the AGs involved in these actions will be crowing about their successes to their colleagues from other states.

The companies involved in these actions will certainly be tightening up their anti-fraud practices, but they won't be the only ones. Every finance company, bank, and credit union in the business of buying RICs from dealers has by now gotten the word that the AGs are targeting dealer fraud. They will be parsing every word of the settlement agreements to see what steps the companies were required to incorporate into their RIC-buying process.

Several vendors are hitting the market with various sorts of verification solutions that will assure the buyers of RICs that the contracts they are buying, and the information supporting those contracts, are on the up-and-up. Look for a new round of revisions to dealer agreements that will increase dealerships' responsibilities for fighting fraud.

Dealers will promptly begin to feel the heat of a tightened monitoring and buying process. The crackdown is on the way. It would be a really good idea to get out in front of this one.

One final thought, lest readers think that I am unfairly claiming that dealer fraud is widespread. I don't think that's the case. I believe that most dealerships are operated in a legal and compliant way. But the continued reports of "evildoers" indicate that there are dealerships that misbehave.

In the lawyering trade, the joke is that 90% of the lawyers give the other 10% a bad name. In the car business, I think it's closer to the truth that 10% of the dealers give the other 90% a bad name. It's the dealerships in that 10% group that the good guys in this business have to thank for the coming crackdown.

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