Lenders Forcing Buybacks

by : Gil Van Over

Over the last few weeks, my draw drifted to a fade to a slice. Since my course is set up to draw the ball, my handicap started suffering along with my attitude.

Back to the basics, I thought.

I checked my stance. Everything set up to draw the ball. I checked my grip. Good as ever. I checked my swing path. Textbook.

Finally, after all the cussing and self-doubt and reviewing the basics, I found the problem. Somehow, over time, I had allowed the clubface to open up as I was addressing the ball and this little fact cancelled out all the other basics. By closing the clubface back to its rightful position, I started drawing the ball again.

Even though I have been golfing since I was 10, bad habits still slipped in. Screwing up one of the basics screwed up all the other good things I was doing.

Sometimes we have to go back to the basics to keep things flowing like we want.

With lenders becoming more aggressive than ever looking for reasons to charge back deals to you, it is a good time to review those reasons.

Dealer – lender agreements

Recently I've had occasion to review some dealer-lender agreements either at a dealer's request or in conjunction with litigation support. I again was reminded of just how many promises dealers make to lenders when a dealer sells a contract to a lender. I was also reminded of how many ways a lender can come back to a dealer to buy back a deal.

The two areas some lenders leverage as a way of getting a dealer to buy back a bad receivable are deception and down payments.

Deception

Lenders consider it bad practice for anyone to deceive them. The Feds agree. Bank fraud is a serious crime with some moving parts that dealers do not see.

For example, were you aware that if a federally insured institution receives a tainted receivable, or even an attempt to place a tainted receivable, that it must report this occurrence to its regulator using a Suspicious Activity Report?

Further, were you aware that the institution is prohibited from telling you that you were named on a Suspicious Activity Report that could ultimately find its way to the Department of Treasury and the Federal Bureau of Investigation?

In discussions with lenders, they are rather consistent in the types of deceptive practices that they report to the Feds. These practices include:

• Power booking, or reporting non-existent options when declaring a vehicle's value;

• Manipulation of credit application factors, such as giving the applicant a raise, dressing up her job title, or turning a renter into a homeowner;

• Straw purchases (selling a vehicle to one person and obligating another person on the contract); and

• Down payment issues (keep reading).

Down payments

A few lenders in the market have issued reminders to dealers that down payments are an important consideration when making a credit decision. As such, any of the following, without the lender's knowledge at decision time, are considered reasons for the dealer to buy back the contract once the lender's collection department discovers:

• Promissory or side notes;

• Credit cards;

• Bounced checks;

• Uncollected;

• Payment made by a third party not on the contract; or

• Check guarantee service reimbursement on a bounced check.

Simply put, the lenders consider down payment as skin in the game and a deterrent to a customer defaulting. If the skin came from a skin graft, the customer may not be as committed to keeping the payment up and the car in the driveway.

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