

March 14, 2006

## **Another Reason To Stop Committing Bank Fraud**

*by Gil Van Over*

In the past, indiscretions known as bank fraud seemingly were a matter between the dealer and the lender. Types of fraud include falsified down payments, straw purchases, inflated income and power booking. Most dealers felt that if caught, they would simply pay the lender off or leverage the power of the dealer's future business to convince the lender to look the other way.

Fast forward to our post 9/11 society: Regulators that oversee federally insured institutions have ramped up enforcement of regulations that require institutions to report bank fraud. If they don't, the institutions face stiff penalties, fines or possible closure. As a result, many dealers' seemingly innocent ("wink-wink, nod-nod") approaches to selling cars are being reported via a Suspicious Activity Report to the Department of Justice. Too many filed SARs and the DOJ turns you over to the FBI or your State Police.

As if having regulators and law enforcement agencies investigating you for criminal activities isn't painful enough, plaintiff's attorneys have arrived at a novel way to sue you for bank fraud in civil proceedings.

A recent newsletter published by an association of plaintiff's attorneys tells its dark-side members that it is possible to use the Credit Repair Organizations Act (CROA) to sue "unscrupulous automobile dealers, intent on getting a consumer to buy an overpriced car, (who) often resort to deception to arrange financing for the purchase."

Dealers are just now acknowledging that they are creditors and are subject to The Acts (Truth In Lending, Fair Credit Reporting, Equal Credit Opportunity and Fair and Accurate Credit Transactions). But the Credit Repair Organizations Act? There is no way that dealers get involved in repairing someone's credit for cash. The dark side's novel approach uses two CROA elements.

First, "CROA prohibits any person (covers all of us) from making an untrue or misleading statement about a consumer's creditworthiness, credit standing, or credit capacity to an actual or potential creditor." Second, "CROA bars any person (all of us, again) from making any statement to a creditor or potential creditor which is intended to alter a consumer's identification and conceal adverse credit history information from the creditor."

The first element appears to cover falsified down payments and phony income. The second point describes a straw purchase. Is that extra deal really worth all the exposure?

**Gil Van Over** is president of gvo3 & Associates, a firm that helps dealers develop legal defense strategies. Most recently, the firm announced an F&I compliance audit service offered in conjunction with AFIP.

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