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## Time for a Forms Check-up

by Gil Van Over

Amazingly, August is here and we are closer to fall than spring. It's time for annual tasks such as getting the kids ready for school, scheduling the pool closing, practicing for the Club Championship -- or the proctologist's visit.

Ouch.

Add a forms review to your annual August task list.

You use many forms in the transaction of selling and financing a vehicle. You developed or implemented each form for your process to provide a greater level of protection against potential litigation.

If each form was developed independently of each other, there may be conflicting language between two forms, which may cause issues in court.

For example: do you have two different forms that state that *this* form contains the final agreement between the parties? If so, which one applies?

To conduct an annual forms check-up, collect all the forms used to close a deal. Take them to your attorney. Ask your attorney to review the forms for consistency and litigation defense adequacy.

Here are some issues your attorney should look for, among others:

Adverse Action Notice – Safe harbor language in compliance with Equal Credit Opportunity Act (ECOA) and Fair Credit Reporting Act (FCRA) requirements.

Arbitration Agreement – Enforceable within parameters of decisions made within your jurisdiction.

Checklist – Does the checklist look for the major litigation areas dealers are exposed to?

Completed Addendum Window Sticker – Potentially deceptive issues on addendum window stickers.

Credit Application – The appropriate Regulation B disclosures.

F&I Deal Recap – This is usually the first document that the plaintiff's attorney looks for in discovery because it confirms the products sold and the profits made on those products. Make sure no smoking guns exist.

F&I Menu Selling Form – Review this form for disclosure and pricing best practices pricing. The product descriptions should be consistent with the descriptions on the policies. Pay particular

attention to the Gap description.

**F&I Product Enrollment Forms** – All product forms should list the product's price and term. We review each form to ensure it is properly completed and signed and that the product pricing and terms are consistent to other documents in the file. We pay particular attention to ensure that every product sold has a completed and signed product enrollment form.

**Privacy Notice** – Confirm with safe harbor language as provided by the Federal Trade Commission.

**Selling Form (Four-Square or similar)** – Look for potentially deceptive language, such as “Lenders require 30% cash down.”

**Spot Delivery Agreement** – Carefully review language, particularly each parties responsibilities in the event deal can't be funded.

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