

Litigation Defense Strategy – Documenting Policies, Procedures and Processes
Jeff Sack's Dixon Odom Newsletter – December 2003

In the past few newsletters, we've outlined a litigation defense strategy that we feel dealers should implement in the F&I Office. This comprehensive strategy includes:

- Conducting a thorough forms review
- Understanding the process your customer goes through to purchase and finance a vehicle
- Documenting your policies, procedures and processes
- Performing initial and ongoing deal jacket and TILA audits
- Providing training and industry certification
- Doing it again and forever

This month's newsletter will focus on documenting your policies, procedures and processes.

Thus far in the development of your litigation defense strategy, you've taken a critical look at your forms and walked the walk of your customer. Now, it is time to document your expectations in the form of an F&I Policy and Procedures Manual. You will also begin to collect and compile certain information to retain in a Corporate Diary.

F&I Policy and Procedures Manual

An all encompassing F&I Policy and Procedures Manual should supplement the dealership's employee handbook and policy and procedures manual. At a minimum, the F&I Manual should include the following items or topics:

- Policy statement
- Acknowledgement letter
- Job description
- Pay plan
- Process maps
- Rate caps
- Product profit caps
- Fee collection
- Retail and lease deal paperwork
- Paperwork retention
- Payment quoting methodology
- Negative equity
- Unwinds
- Cash reporting
- Identity theft deterrence
- Privacy Notice
- Safeguards Policy
- Pulling credit bureau reports
- Dealer – Lender agreements
- Prohibited practices

Let's briefly describe the above items.

Policy Statement – This statement outlines the dealership's policy regarding up front and ethical treatment of customers.

Acknowledgement letter – An acknowledgement letter requires the F&I Manager to assert that she has read the F&I Manual, understands the contents and agrees to abide by the policies and procedures set forth.

Job description – This outlines the job responsibilities of the F&I Manager.

Pay plan – Self explanatory.

Process maps – A process map standardizes and outlines the process all employees are to follow in the sale and financing of a vehicle.

Rate caps – This section defines the dealership's maximum allowable rate mark-up.

Product profit caps – Like the rate cap section, this defines the maximum allowable profit permissible on all F&I products. Some caps are driven by state regulations; others are determined by the dealership.

Fee collection – Most dealers charge a doc fee with each transaction. Here, a dealer addresses the policy on which transaction, if any, it is permissible to waive the doc fee.

Retail and lease deal paperwork – A dealer should expect a minimum amount of paperwork in each transaction. This section outlines the paperwork required in each deal.

Paperwork retention – Set forth the retention requirements for all paperwork that the dealership generates in the sales and F&I processes.

Payment quoting methodology – Once you have established a consistent methodology for quoting the payment on the first pencil, you document it in this section of the F&I Manual.

Negative equity – Here, you set forth the policy for disclosing negative equity on the buyer's order and the retail contract.

Unwinds – If you spot deliver cars, you will eventually unwind a deal. You must document the various steps required to unwind a deal.

Cash reporting – This section must be consistent with the FINCen 8300 reporting requirements.

Identity theft deterrence – Identity theft is most likely one of the fastest growing crimes in America. You must identify the red flags that managers must watch out for to help deter identity theft in your dealership.

Privacy Notice – Provide a copy of your dealership’s Privacy Notice and delineate the responsibilities for its delivery and retention.

Safeguards Policy – Include a copy of your Safeguards Policy in the F&I Manual.

Pulling credit bureau reports – Identify who in your dealership is authorized to pull a credit bureau report, when it is pulled in your process, how it is retained and safeguarded and require that the customer’s signature be obtained before pulling a credit bureau report. Be sure to include applications received over the phone, fax and Internet.

Dealer – Lender agreements – Compile a list of the reps and warrants in the agreements you executed with all of your indirect lenders.

Prohibited practices – This section lists the deceptive practices that some dealers continue to use in the sale and financing of a vehicle. Make absolutely certain that this section clearly establishes the fact that these deceptive practices are not permissible and that any employee who violates this procedure is “Subject to disciplinary action, up to and including termination.”

Corporate Diary

The intent behind a Corporate Diary is to compile documentation from various sources that your attorney may use to assist in the defense of a governmental inquiry and/or plaintiff’s lawsuit. You should consult with your corporate counsel to determine what documentation would be helpful down the road, and for the length of time you must retain the information. At a minimum, this diary should include:

- Lender’s rate sheets and underwriting criteria
- Communications from the factory, lenders and F&I providers
- Manufacturer incentive programs
- Any and all revisions to your F&I Manual
- Any and all revisions to your Safeguards Program
- The results of your quarterly Safeguards audit and the corrective steps put into place as a result of the audit
- Any and all revisions to F&I Managers’ job description and pay plans
- Any and all adjustments to your payment quoting methodology, including interest rate changes and the reasons for the change
- Sample F&I product enrollment forms and future revisions
- Sample sales worksheets and Buyer’s Orders and future revisions
- A training record of the training and certification for all employees tangentially associated with the F&I process

A well thought out policy manual and corporate diary will go a long way in assisting your attorney in the defense of a governmental inquiry or plaintiff lawsuit. Make sure you have something in place!

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