

It's Easy to Predict Some 2009 Predictions

by : Gil Van Over

I am filled with envy. The talking heads with a face for television and a brain for kindergarten have free reign to predict future events with absolutely no accountability for their predictions.

The fairly empty heads at ESPN spend countless hours telling us which team is going to win, which players are going to be traded, which coaches are going to be fired, and which fantasy players are going to have a huge weekend. They end up being correct about half of the time, unless their names are Chris Mortensen or Lee Corso. Yet no one holds them accountable for their predictions and the audience continues to listen.

The also fairly empty heads on CNN, FOX News and others spend much of their time telling us what to think, who will win the election, which stocks to buy and how many years O.J. Simpson is going to spend in jail this time. They end up being correct half of the time, unless their names are Nancy Grace or Geraldo Rivera. Yet no one holds them accountable for their pronouncements and the ratings continue to climb.

I am filled with envy because they can say whatever they want without worry of being called on their pronouncements.

Even though I have a face for radio, I am going to try to make some predictions about the auto industry. I am about to predict some events that will take place next year. Please don't hold me accountable this time next year.

Some dealer is going to sue some lender

Many sub-prime lenders have been very aggressive in asking dealers to pay off defaulted loans. These lenders cite the dealer agreement reps prohibiting power booking, straw purchases and credit application fraud.

The problem is that these lenders were playing their own version of spot delivery with receivables. They provided a credit approval, sometimes with stipulations. They booked the receivable, apparently without vetting the stipulations. Evidently they thought that even if the receivable was tainted, if it paid out, the lender made out. If the loan defaulted, the lender could recoup its loss from the dealer.

Some dealer is going to get fed up. Some dealer is going to sue some lender claiming lender liability. Some dealer is going to court with the theory that it submitted a credit application to a lender, the lender made a credit decision with stipulations. Some dealer is going to further state that it obtained the required stipulations and forwarded them to the lender for funding. Since the lender funded the deal, the dealer assumed the stipulations were adequate. If the lender did not review the materials submitted prior to funding, it is not the dealer's fault, so the lender must be held liable for its poor business practice.

Some dealer is going to become the poster child for ID theft

You will be reading this after the Red Flags Rule became effective on November 1 and after we've elected a new president. Yet some dealer is not going to have an adequate Red Flags Rule program and process in place by this time next year. The Feds are waiting for a case of identity theft from a dealership that should have been caught with the simplest program in place. The Feds will visit the dealership, ask for documentation of its Red Flags program, and if the dealer can't produce one, the dealer will become the poster child for ID theft.

Some dealer will be forced to close after a manufacturer's audit

The manufacturers appear to be stepping up their rebates and incentives audits, reportedly even to the point of ignoring CSI initiatives. Some dealer who has been playing loose with the rebate/incentive rules will be hit with a chargeback large enough to deplete its bank account.

Some dealers will host the temptations revival

With continuing mounting pressure to sell vehicles and make money, some dealers and/or employees will succumb to the temptation and cross the line from aggressive to fraudulent. These desperate folks will brush off the old bank fraud tricks that they had forgone with their compliance initiatives. Power booking, credit application fraud, straw purchases, falsified down payments and manufactured stipulations will increase in the industry, furthering the lenders initiatives to request chargebacks on deals.

Creative consumers will trick some dealers

As the economy continues to take its toll on everyday Americans, some of these folks desperate for financing will arrange for their own straw purchaser or manufacture phony POI. The web sites are out there to help consumers commit bank fraud. Once some of these criminals figure out how easy it can be, look for a ring to hit a group of dealers in a metropolitan area.

Some dealers will experience doc problems

Dealers in Missouri, Arkansas and New Jersey are being hit with lawsuits targeting the doc or dealer services fees charged on each transaction. The creative plaintiff's bar is likely already reviewing state laws on a state-by-state basis to determine which state to attack next. Some dealers, though, are being proactive and changing the language on their buyers' orders to avoid the technical lawsuits.

There. I did it. Oh, one more...there is a chance of rain today.

Gil Van Over is the president and founder of gvo3 & Associates, a national compliance consulting firm that specializes in F&I and sales compliance and training.