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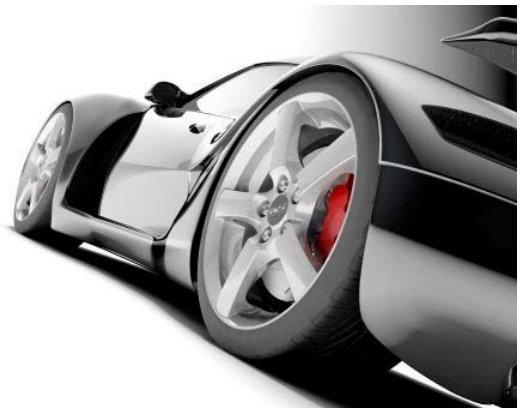

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DISCLOSURES

Recently, I have been reading a flurry of emails from attorneys in other states regarding disclosing the prior history of a vehicle to the consumer prior to, and during the sale of the vehicle. The majority of emails were concerned with the disclosure of the rental history of a vehicle. It must be noted that many states have convoluted definitions of rental vehicles, other were silent and others indicated that disclosure had to be made but did not indicate how, when or where. Therefore, this author thought it would be appropriate to review, again, the issue of properly completed paperwork.

For years, Ohio has made it abundantly clear that the prior rental history of a vehicle has to be disclosed to the consumer during and at the time of sale of the vehicle. Specifically, Substantive Rule 109:4-3-16, "Advertisement and Sale of Motor Vehicles," defines a rental vehicle, at (A)(10), as follows, "rental vehicle means a motor vehicle which has been operated for hire by an entity which is engaged in the business of renting vehicles, includes daily rentals of dealers." Further, Substantive Rule, 109:4-3-16 (B), "Advertisement and Sale of Motor Vehicles," states "it shall be a deceptive and unfair act or practice for a dealer, manufacturer, advertising association, or advertising group, in connection with the advertisement or sale of motor vehicle, to: (15) fail to disclose prior to the dealer's requiring signature by the consumer on any document for the purchase or lease of a vehicle, the fact that said vehicle has been previously used as a demonstrator, factory official vehicle or rental vehicle. The above disclosures are required when such is known by the dealer. . ."

It is interesting to note that when searching for updated case law on this point, the leading case in Ohio is one that this author was involved in in 1994 entitled *McCullough v. Spitzer Motor Center*, 1994 Ohio App. Lexis 262. For your information, the dealership did win the case. However, it is

clear in Ohio that the prior rental history of a vehicle must be disclosed to a customer before and during the sales process. If you review your buyer's order, it has a place for the rental disclosure.

Although the vast majority of dealerships are operating on a high level of transparency in regard to dealing with consumers, there are still some that fall between the cracks. Recently, the wife of a colleague of mine was shopping for a vehicle. Fortunately, his wife did not execute a buyer's order and brought the proposal home to her husband for review. Remember, this author knows how to read a buyer's order and reconcile the math. When I reviewed the sales proposal, I had no idea how the sales price was derived. The numbers were not in the proper places; in one instance it looked like a rebate was added, then subtracted and the bottom line did not make sense. In this day and age, I find this troubling and irresponsible on behalf of the sales person and manager who allowed a customer to leave the dealership with this type of documentation.

As you know from previous *You Auto Knows*, I constantly stress that properly completed paperwork is very important. It is your first line of defense in any issue with a consumer. Compliance is necessary, not only on the sales end, but the service end also. This will assist in overcoming the basic underlying premise of the Consumer Sales Practices Act, ORC §1345 *et seq*. which generally states that any conversations or activities prior to, during or after the transaction are actionable and can be utilized to determine the basis of the transaction. This goes beyond basic contract law which states that a judge or jury can only look toward "the four corners of the contract."

Again, in the Administrative Rules, specifically 109:4-3-10, Sale of Motor Vehicles, any and all agreements, including oral promises, must be put in writing, otherwise, the consumer can utilize those oral statements in an attempt to rescind the agreement or make additional claims under the Consumer Sales Practices Act.

This applies to the service department under Administrative Rule 109:4-3-05, Repairs or Service, which states that the consumer is entitled to a written or oral estimate relative to the repairs being made and that the work performed on the subject vehicle must be properly recorded on the repair order.

Most importantly, it must be emphasized to your sales and service personnel that once a sales order or repair order is executed, it becomes a legal, binding contract, enforceable either by the dealership or the consumer.

The disclosures printed on the buyer's order are for specific purposes, the majority of which are to comply with various Ohio and federal laws. Further, properly filling out the Federal Odometer Statement is a must in order to disclose the actual mileage on the odometer at the time of sale and whether it is accurate or inaccurate. The failure to display the FTC Used Car Buyer's Guide or have the consumer execute the Buyer's Guide pursuant to CFR §455 is a breach of federal law. Although it might be a technical violation, signing the document on the front as opposed to the specific signature line on the form can be cause for a CSPA claim. Further, the selling dealer must be identified on the back of the document.

I have seen more lawsuits involving technical violations of law and a consumer can request rescission and attorneys' fees if the procedures are not properly followed. You must impress upon your managers, sales and service personnel that paperwork has to be properly filled out and executed. By the way, when I say paperwork, I also mean the electronic version of same. I always stress that the dealership should keep copies of any sales worksheets, offers and counter offers

because the dealership can reconstruct the transaction and prove the consumer understood the transaction. In the sales transaction, your F&I and your sales manager should review the executed documents prior to delivery of a vehicle. I have seen instances where the customer has signed their name and then underneath printed "UNDER DURESS" or "PER THE VOICES IN MY HEAD." Obviously, this is an immediate red flag which should be addressed prior to the time the vehicle is delivered to the consumer.

I know you have heard this admonition from me over the years *ad nauseum*; however, in many cases, the new breed of sales and/or service personnel are making the same mistakes that were made years ago.

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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.