

You AUTO KNOW®

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LET'S CALL THE POLICE

Scenario No. 1:

You deliver a vehicle to a daughter and her elderly mother. After a week your sales manager calls them and states that there is a problem with the paperwork and asks them to return to the dealership with the vehicle. Your salespeople do not handle the subsequent meeting in the most professional manner and tempers rise, there is a heated exchange, and the mother and daughter proceed to get into the vehicle. Your F&I manager attempts to block the vehicle in with another vehicle and as the customers/plaintiffs' testimony stated; the mother/daughter panicked thinking they were being detained and did not understand why they were being blocked in. In an effort to "escape" the clutches of your F&I manager and sales manager, the daughter and mother drive over the parking lot curb, across a sidewalk and tree lawn and proceed down a busy five-lane highway. Your F&I manager jumps into a car in hot pursuit while your sales manager calls the police indicating that a vehicle has been stolen from the dealership premises. While in "hot pursuit," your F&I manager is in contact with the police and indicates the route that the customers are taking. The police subsequently stop the vehicle by placing a blocker in front of the vehicle and two blockers in back of the vehicle and rush out with shotguns and pistols drawn. At gunpoint, the mother and daughter are asked to exit the vehicle. The mother has a panic attack which requires EMS intervention while the daughter is asked to back towards the police with her hands in the air. The mother and daughter file a very extensive lawsuit against the dealership with allegations including but not limited to Consumer Sales Practices Act, breach of contract, fraud, false arrest, false imprisonment, intentional tort, claims for physical and emotional distress including but not limited to post-traumatic stress syndrome, and slander and defamation.

Scenario No. 2:

Your F&I manager delivers a high performance vehicle that has been leased to a successful businessman. There is an unintentional mistake on the lease agreement regarding a mileage penalty. The dealership asks the customer to return the vehicle and as a courtesy to the customer increases the mileage on the two-year lease by an additional 2,000 miles per year without cost to the customer. The customer states he is not sure when he can come in due to his business schedule but will try to come in on a Thursday. Thursday comes and goes. The sales manager calls the customer and the customer states, "My schedule didn't permit me to get in on Thursday." The dealership demands that the vehicle be returned no later than Saturday. The customer states he's not sure he can return it on Saturday but, will try. He does not make it on Saturday. On Monday, the sales manager calls the police and asks for assistance in having the vehicle returned. The police contact the individual and the customer immediately contacts his attorney. The attorney states that the police were specifically told that his client had stolen the vehicle and that there was an electronic communication regarding same from the dealership. When asked to follow up on the claim about an email, the sales manager states that neither he nor the F&I manager ever sent an email indicating that the vehicle had been stolen. Upon further investigation it was determined that the salesperson, on his own, sent a text message to the customer indicating that if he didn't return the vehicle, it would be reported stolen and he would be a criminal. When legal counsel for the dealership interviewed the police officer, the police officer specifically stated that yes, indeed, he was told that the vehicle was stolen and told the customer and customer's attorney that the dealership was going to make a claim for a stolen vehicle.

Unfortunately, this author was involved in both of the above scenarios. Further, the question regarding filing a stolen report against a customer has been posed by several of my colleagues throughout the United States. Therefore, it was appropriate to focus on this issue for this *You Auto Know*.

In the first scenario, the matter went to trial, was appealed by both parties, and ultimately settled before being remanded for a retrial. Yes, the dealership did settle the matter.

In the second scenario, the customer may have come back to the dealership and re-signed the lease papers but for the call to the police. As indicated, this was an experienced businessperson who, quite frankly, was furious that the dealership would besmirch his reputation by calling the police. In that scenario the dealership rescinded the lease and paid nominal damages in the amount of the plaintiff's attorney's fees.

In Ohio, "a statement is defamatory per se if it consists of words that import an indictable criminal offense involving moral turpitude," (i.e., theft or fraud). *Kanjuka v. MetroHealth Med. Ctr.*, 151 Ohio App.3d 183, 2002 Ohio 6803, 783 N.E.2d 920.

I know this is difficult for many dealership personnel to understand and stomach but unless the vehicle was removed from the premises of the dealership without permission, i.e., it was not delivered pursuant to a sales or lease transaction, do not call the police. I know the next question is going to be, "What happens if it's an NSF check and the customer won't return the car?" In that situation there are laws in each state regarding the presentation of NSF checks and a proper course of action regarding same for a criminal prosecution and civil recovery. The next question is, "We have a spot delivery agreement. Can't we go after the customer and call the police based upon that?" The answer is no.

Yes, a spot delivery agreement is a good document to utilize, however, the enforcement of a

spot delivery agreement will rely on the filing of a civil action with the court. Further, an attempt to repossess the vehicle will rely on the cooperation of the local police. Again, in the majority of instances the police do not want to get involved, indicating that this is a civil matter, or they cannot do anything without a court order. The course of action that I recommend, although it does take some time, is to first have the dealership contact its insurance company and, if it is an insurable matter, let the insurance company take the appropriate action. Second, if there is no coverage, then a petition for emergency possession of the vehicle along with a civil complaint should be filed. Once a court order is provided regarding the repossession of the vehicle, it is easier to obtain the cooperation of the local police department to aid in finding the vehicle and assisting the repossession company to obtain the vehicle. Thereafter, the dealership can pursue any damages under the contract and damages to the subject vehicle. Obviously, with an NSF check you send the appropriate notification to the customer demanding payment within a certain amount of days, then turn the matter over to the local prosecutor and follow up with a civil action.

There is absolutely no easy solution to these situations; with self help you really are at the mercy of the local police department and if the matter goes to trial, it will need the cooperation of your salespeople, sales managers, F&I managers, and general managers that were involved in the case to properly prosecute the action, providing they are still at the dealership or can be located.

Regardless, do not call the police, unless it is truly a crime.



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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.

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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.