

# You AUTO KNOW®

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## GET BACK TO BASICS AND CHRISTMAS CHEER

### PAPERWORK/SALES CONTRACTS

This is a timely topic, again! I have received several consumer lawsuits recently and, again, paperwork is an issue. As you are aware, I constantly stress in You Auto Know® that properly completed paperwork is very important. The one thing that upsets me the most when representing a dealership is reviewing the paperwork, whether a sales order or repair order, and discovering incomplete documentation. Remember, the first and best line of defense in any consumer conflict is completed paperwork. If your service writers and/or sales personnel properly fill out each and every document that needs to be executed by the consumer, then the dealership is in a better legal position for any claims made by a consumer. Further, this will help overcome the basic underlying premises of the Consumer Sales Practices Act, O.R.C. §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 a transaction. This goes beyond basic contract law, which states the jury or the judge must only look at "the four corners of the contract."

Further, as you are aware, the Consumer Sales Practices Act Administrative Rules, specifically 109:4-3-10, Sale of Motor Vehicles, states that any and all agreements, including oral promises must be put in writing. Otherwise, if problems arise, the consumer can utilize the oral statements in an attempt to rescind the agreement.

The most important point that sales personnel and service people fail to realize is once a sales order and/or repair order is executed, it becomes a

legal, binding contract enforceable by either the dealership or the consumer. Sales people have a tendency to view a sales order as nothing more than a piece of scrap paper since they write and re-write offers. However, they must be aware that the document is a legal, binding contract.

The disclosures printed on Buyer's Orders are for specific purposes. The majority of the purposes are to comply with various Ohio and federal laws. As you are aware, a previous You Auto Know© discussed odometer disclosures pursuant to O.R.C. §4517.26. This law specifically states that on the contract for the sale of a motor vehicle, the mileage appearing on the vehicle at the time of delivery must be disclosed and whether the mileage is accurate or inaccurate. Recently, there has been a rash of lawsuits filed specifically claiming that the appropriate box regarding mileage accuracy was not marked, or the disclosure was not on the Buyer's Order. This can lead to a claim for rescission of the transaction. Further, dealerships either fail to display the FTC Buyer's Guide on used cars and/or fail to have the consumer execute the Buyer's Guide pursuant to CFR §455. It must be executed at the required signature line on the document. Although it may be a technical violation, signing the document on the front as opposed to the specific signature line on the form is cause for a claim of rescission of the agreement. Further, the selling dealer must be identified on the back.

It is absolutely imperative for dealerships to review the paperwork prior to a consumer executing the documentation and taking delivery of the vehicle. Believe me, I have heard all the arguments before. The consumer signs the federal and Ohio odometer form, so why is it necessary to mark the mileage accurate or not accurate on the front of the Buyer's Order? Because, Ohio law dictates that the selling dealer perform this disclosure. Why is it necessary to have the consumer sign on the signature line of the Buyer's Guide instead of on the front? Because federal law specifically states that the consumer has to sign where indicated on the document. Further, it is imperative for your sales personnel to actually look at the mileage on the odometer of the vehicle being sold and the vehicle being traded-in. Lawsuits have been filed where the sales person assumed that the mileage on a new vehicle was minimal when in fact, there were 100 miles on the odometer; the sales person put 40 miles on the odometer statement. Although the damages in such a case are negligible, the fact of the matter is this is a technical violation of the law where attorney's fees and damages can be awarded to the plaintiff.

I have seen more lawsuits involving technical violations of laws. It must be noted that in the majority of Ohio and federal laws, the consumer can request rescission and attorney fees if the laws are not properly followed. **YOU MUST IMPRESS UPON YOUR SALES PERSONNEL AND MANAGERS THAT THE PAPERWORK HAS TO BE PROPERLY FILLED OUT AND EXECUTED.** Further, keep copies of all the sales work sheets, offers and counter offers. By doing so, you will establish the sales/negotiating history of the transaction, and the fact that the consumer understood the transaction. Further, alleviate problems which are incumbent on you. Make sure your computers and printers are properly programmed and aligned to avoid the appropriate "X" not printing in the appropriate boxes and not properly filling out the information.

Again, make sure you review all documents BEFORE the customer leaves the dealership and if the customer adds items to the contracts, address the

problem/issue immediately. The bottom line is, don't complain about being named as a defendant in a lawsuit if your sales personnel and managers did not perform their jobs properly.

As always, these are highlights of the law and are not to be construed as containing the entire law.

## **CHRISTMAS CHEER?**

It is the holiday season again, and, as I have stated in the past, the best policy is not to be a "Scrooge," but remember the dealership is responsible for the actions of its employees. Injuries or accidents that occur as a result of too much "holiday spirit" on the dealership premises, or at parties that are sponsored by the dealership, may become the basis for workers' compensation claims or worse. Also, accidents that occur off the premises, but are directly attributable to a dealership holiday party or are caused by an employee's overindulgence with the dealership's knowledge, may expose the dealership to legal liability.

As the Christmas season approaches, there is always so much activity and personal business to attend to that it is easy to forget to thank our valued clients, like you, for their business.



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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.