

# You AUTO KNOW®

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## IDENTITY THEFT

### Scenario:

You receive an internet inquiry for a specific vehicle you have for sale. The potential purchaser is from Virginia. The transaction is negotiated by telephone and email transactions. After you have successfully negotiated the sale of the vehicle, you obtain all of the pertinent customer information on the credit application. Further, your customer wants all of the sales documents overnighted to him at an address other than his home or work address. The reason he claims is the vehicle is a surprise for his wife and he does not want her to see the paperwork. Further, he does not want to mix his personal affairs with his business affairs so he does not want the paperwork sent to his office. Your internet sales people do not find this strange since you have negotiated internet sales before and customers have requested the sales documents be sent somewhere other than their home address. The sales documents are returned to the customer with all of the necessary paperwork executed. You have a copy of the purchaser's driver's license and executed credit application, buyer's order and retail installment contract. You are willing to deliver the vehicle to the customer, however, the customer states that he will pick up the vehicle at the dealership. You make arrangements for the delivery at a specific time and date.

Delivery day arrives. The customer calls and says he cannot make it, however, he is sending his son to pick up the vehicle and he will be there at the appointed time. Later, the customer calls and indicates that his son is running late and will be there very close to or soon after closing. You agree to deliver the vehicle after hours. The son shows up and you deliver the subject vehicle.

Approximately 45 days later, an individual contacts you asking why he received a memo title and a payment book from the bank relative to the

purchase of a vehicle from you. You indicate that he purchased a vehicle from the dealership and he disclaims any knowledge of the transaction. Thereafter, you receive correspondence from the individual's legal counsel and it is readily apparent that the individual's identity has been stolen and the sale of the vehicle was fraudulent. What are your obligations?

The facts in the above scenario are real. Recently, this author has been involved in several identity theft sales situations and it must be noted that the facts in each scenario are not significantly different than those stated above. Let me drill down to some additional facts that were not contained in this scenario. First, the purchaser's photo on the driver's license was a magnificent fake. The vital information on the driver's license was the same as the information contained on the buyer's order as far as home address, name and identification. However, the photo on the driver's license was a complete forgery.

In addition, the telephone number that was provided was a temporary phone number and, was more than likely one of those throw away cell phones with a limited amount of time and usage. Further, the purchaser's place of business was almost accurate. The perpetrators took a small company and changed its name very subtly, provided an address close to the actual company and provided a telephone number. Again, the telephone number was more than likely one of those limited usage cell phones. Therefore, when the number was called, an individual acting as the receptionist answered the phone. It must be noted that the perpetrators went to great lengths in order to commit the crime. Also, in each case, the vehicle being purchased was not a new vehicle but was a late model, low mileage, high end used vehicle.

How does the dealership protect itself against this type of fraud and theft? First, there is no one right answer. In the above scenario, litigation or settlement of the theft of the vehicle and damage to the individual's identity are issues that will be left up to the insurance companies to resolve. Obviously, the dealership should be reimbursed for the theft of the vehicle since it will be covered under theft by deception. Damage to the individual whose identity was stolen should be covered through, not only a monetary settlement, but correcting any and all of the individual's credit ratings and credit bureau listings.

I know you are asking the primary question that I specifically asked which is, "What responsibility does the finance company have relative to the approval of the financing for the purchase of the vehicle?" Relatively speaking, when a credit application is provided, the dealership relies on the information provided by the customer and submits to the financial institution to review the credit application and verify the information contained therein. As of the writing of this "You Auto Know," we do not have a definitive response from the bank regarding its due diligence in investigating and approving the loan. This is particularly disturbing since when this matter came to my attention, I not only called the phone numbers and found out they were not active, but Googled the place of employment on the credit application and found out that it did not exist. I called the actual company and, obviously, the individual listed on the credit application was not employed there.

Strictly speaking for the dealership, there are a couple of proactive measures the store can take in order to protect itself. One, state that any and all paperwork be sent to the address on the buyer's order. If it is a

business, have the F & I manager Google the business and verify its veracity and Google the person's name and address to confirm the information. Second, a driver's license of the purchaser is mandatory. Third, have the F & I manager call the business that he found on Google and attempt to determine if the individual is employed there. Fourth, if the actual buyer cannot pick up the vehicle and sends someone else, demand a copy of the driver's license of the individual picking up the vehicle and insist that the vehicle has to be picked up during normal business hours on the premises at the dealership. Next, videotape the delivery so you have actual footage of the individual taking delivery of the vehicle. There are other things the dealership can do, but for the sake of brevity, the ones listed are the most common sense and easily implemented steps to take.

The first line of defense the dealership has in defending itself regarding this type of situation is information. The more information the dealership has of the individual purchasing the vehicle, the better it can assess whether or not the transaction is legitimate and/or to present to a court that the dealership took all reasonable steps to determine that the purchase was legitimate. The next step is to contact your legal counsel and insurance company and follow their advice and, if necessary, file a stolen vehicle report. As the late, great President Reagan used to say, "Trust but verify."

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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.

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