Why Focus on Auto Transactions

- Usually second largest purchase $5,000 – $50,000
- Multiple variables in the transaction
- Challenging Negotiation
- Long term obligation
- Serious individual Consequences
- Negative impact on mission readiness
Resources

- NADA / Kelly’s Blue Book
- Car Fax / Auto Check / NMVTIS

Relationships
  - Dealerships
  - Local/ State Automobile Dealers Association
  - Lenders / Credit Union / Banks / Sub Prime

Enforcement
  - DMV / MVDB / AG / Civilian Counsel
  - Federal support – FTC, DOJ, CFPB
Legal Tools

- Equal Credit Opportunity Act 15 USC 1691
- Truth in Lending Act – 15 USC 1601
- Uniform Commercial Code  25– 2–608
- Usury
- Buyers Guide – FTC Used Car Rule 16 CFR 455
- Holder in Due Course Rule 16 CFR 433.1
- State Consumer Protection Laws
Dealer Philosophy

- If you are on the lot, you want to buy
- If you don’t buy here, you will buy from a competitor
- You can’t leave without a car

Mission

- Max out loan potential
- Max out profit on sale
  - Inventory
  - Warranties
  - Add on sales
- Manage Financing
  - Sub-prime / Bank / Credit Union
Dealer Tactics

- Confuse
- Exhaust
- Used as New
- Bait and Switch
- Price gouging
- Add-on sales
- Warranties
- YoYo
Client Profile

- Young (E–2 to E–4)
- Limited education (high school)
- Geographically displaced
- Newly indoctrinated to military
- Predisposed to follow authority
- Guaranteed employment/income
- Easy access to credit
Manage Client Expectations

- Why is the client in your office
- What does the client want from you
  - Cancel the deal
    - Principles / co conspirator
  - re-negotiate price/financing
  - Different vehicle
- Time
- Sweat equity
Basic contract law
- The first thing to make clear to the client is that if he/she signed these documents, he/she has agreed to pay for the car, i.e., he bought it.
- Responsibility

Fraud
- Hard to prove
- Witnesses help
Client Responsibility

- Consumer Complaint Process
- Copy of all documents (make two copies)
- Complete thorough narrative
- Complaints
  - AFDCB
  - BBB
  - FTC Military Sentinel
  - CFPB
  - State AG
- Educate / Train FFSC
Documentation

- Important documents
  - Buyer’s order
  - Retail installment sales contract
  - Promissory Notes, Notices, GAP, Service Contracts

- If possible have the client provide the documentation prior to the appointment. If a walk-in have the documents copied prior to seeing the client

- Contact dealership and request copies of missing documents
Contacting The Dealership

- Plan conversation
  - Identify goal of communication
    - Obtain Facts
    - Establish relationship
    - Negotiate
- Understand business model
  - Passion / Ego /
  - Respect / Control
- Initial Inquiry
  - Fishing
The Buyers Order

- Front and Back
  - On the Front,
    - The Numbers
    - Analysis
  - On the Back,
    - Details
    - Clients Obligations
    - Legal
## BUYERS ORDER

### PLEASE ENTER MY ORDER FOR

<table>
<thead>
<tr>
<th>NEW</th>
<th>USED</th>
<th>DEMO</th>
</tr>
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### Base Price

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessories</td>
<td>13,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Processing Fee</th>
<th>400.00</th>
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<table>
<thead>
<tr>
<th>Sub Total (Taxable)</th>
<th>13,400.00</th>
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<table>
<thead>
<tr>
<th>Trade Allowance</th>
<th>5,500.00</th>
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<table>
<thead>
<tr>
<th>Approx. Balance</th>
<th>5,500.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Trade Equity</th>
<th>0.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Trade Difference</th>
<th>1750.00</th>
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</table>

<table>
<thead>
<tr>
<th>VA Title Tax (3% of line 5)</th>
<th>2,000.00</th>
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</table>

<table>
<thead>
<tr>
<th>DMV Lic.</th>
<th>Title</th>
<th>UMV</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Taxable for Business License</th>
<th>(5-6)</th>
<th>12</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Dealer's Business License Tax (% of line 12)</th>
<th>(13)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Service Contract Including tax of</th>
<th>(14)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Purchasers On-Line Systems Filing Fee</th>
<th>(15)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Subtotal (9+10+11+13+14+15+16)</th>
<th>2,000.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Deposit with Order</th>
<th>2,000.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Payment Due On Delivery</th>
<th>11,400.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Total Down Payment (18+19)</th>
<th>2,000.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>BALANCE TO BE FINANCED (17-20)</th>
<th>11,400.00</th>
</tr>
</thead>
</table>

### NO LIABILITY INSURANCE INCLUDED

The front and back of this order comprise the entire agreement affecting this purchase.

By executing this order, Purchaser acknowledges he/she has read and agrees to be bound by all of its terms and has received a fully completed copy. Purchaser certifies that he/she is 18 years of age or older.

Salesperson: ____________________________

This order is not valid unless signed and accepted by an authorized representative of the dealership.

Approved: ____________________________

Authorized Representative of Dealership

Date: ____________________________

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Signed (1) ____________________________

Purchaser

Drivers Lic # ____________________________

Signed (2) ____________________________

Co-Purchaser

Drivers Lic # ____________________________
USURY

- What interest rates does the state allow
- Under what circumstances can the rates deviate from the statute
- Do the rates charged comply with the statute
The Retail Installment Sales Agreement

- Truth in Lending Act
- Disclosure (meaningful)
  - Percentage Rate
  - Amount financed
  - Finance charge
  - Total Payments
  - Total Sales Price
  - Number of payments
  - Amount of payments
Creditor / Seller
The dealership writes the deal and as creditor/seller the terms can be extreme (34%). The contract is sold. The real power lies with the assignee.

Look for buy/sell agreements
May contain promissory note language

Negative Equity
TILA

- Check to see if the amounts as disclosed are accurate – tax, down payment, and trade-in
- The numbers should not just be internally consistent; they should properly reflect reality
- TILA strict liability
  - Even where the consumer assisted in the fraud the dealer is still liable
The basic fraud in a yo-yo sale is making the consumer think the sale was a done deal, when in fact the dealer set it up so that the dealer could call it off, seize the car, and sell it to another purchaser

Look at the Dates

Do not have to accept the second offer
Buyers Guide

- FTC
- Used Car Guide 16 CFR 455
- Disclosure of Warranties
- Required for sale of used cars
  - It is a deceptive act or practice for any used vehicle dealer,
    - (1) To misrepresent the mechanical condition of a used vehicle;
    - (2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and
    - (3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.
Required by Federal law and many states laws.

Failure to provide may result in fines from the FTC.

In Va buyer may terminate the contract if not signed and received 30 days.

Typical: 50/50 30 days or 1000 miles

Warranty / Service Contract
Below is a list of some major defects that may occur in used motor vehicles.

<table>
<thead>
<tr>
<th>Frame &amp; Body</th>
<th>Brake System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frame-cracks, corrective welds, or</td>
<td>Failure warning light broken</td>
</tr>
<tr>
<td>rusted through</td>
<td>Pedal not firm under pressure (DOT spec.)</td>
</tr>
<tr>
<td>Dogcracks—bent or twisted frame</td>
<td>Not enough pedal reserve (DOT spec.)</td>
</tr>
<tr>
<td></td>
<td>Does not stop vehicle in straight line (DOT spec.)</td>
</tr>
<tr>
<td>Engine</td>
<td>Hoses damaged</td>
</tr>
<tr>
<td>Oil leakage, excluding normal</td>
<td>Drum or rotor too thin (Mfr. Specs.)</td>
</tr>
<tr>
<td>seepage</td>
<td>Lining or pad thickness less than 1/32 inch</td>
</tr>
<tr>
<td>Cracked block or head</td>
<td>Power unit not operating or leaking</td>
</tr>
<tr>
<td>Belts missing or inoperable</td>
<td>Structural or mechanical parts damaged</td>
</tr>
<tr>
<td>Knocks or misses related to camshaft</td>
<td></td>
</tr>
<tr>
<td>lifters and push rods</td>
<td></td>
</tr>
<tr>
<td>Abnormal exhaust discharge</td>
<td></td>
</tr>
<tr>
<td>Transmission &amp; Drive Shaft</td>
<td>Steering System</td>
</tr>
<tr>
<td>Improper fluid level or leakage,</td>
<td>Too much free play at steering wheel (DOT specs.)</td>
</tr>
<tr>
<td>excluding normal seepage</td>
<td>Free play in linkage more than 1/4 inch</td>
</tr>
<tr>
<td>Cracked or damaged case which is</td>
<td>Steering gear binds or jams</td>
</tr>
<tr>
<td>visible</td>
<td>Front wheels aligned improperly (DOT specs.)</td>
</tr>
<tr>
<td>Abnormal noise or vibration caused by</td>
<td>Power wheels cracked or slipping</td>
</tr>
<tr>
<td>faulty transmission or drive shaft</td>
<td>Power unit fluid level improper</td>
</tr>
<tr>
<td>Improper shifting or functioning in</td>
<td></td>
</tr>
<tr>
<td>any gear</td>
<td></td>
</tr>
<tr>
<td>Manual clutch slips or chatters</td>
<td></td>
</tr>
<tr>
<td>Differential</td>
<td>Suspension System</td>
</tr>
<tr>
<td>Improper fluid level or leakage</td>
<td>Ball joint seals damaged</td>
</tr>
<tr>
<td>excluding normal seepage</td>
<td>Structural parts bent or damaged</td>
</tr>
<tr>
<td>Cracked or damaged housing which is</td>
<td>Stabilizer bar disconnected</td>
</tr>
<tr>
<td>visible</td>
<td>Spring broken</td>
</tr>
<tr>
<td>Abnormal noise or vibration caused by</td>
<td>Shock absorber mounting loose</td>
</tr>
<tr>
<td>faulty differential</td>
<td>Rubber bushings damaged or missing</td>
</tr>
<tr>
<td>Cooling System</td>
<td>Radius rod damaged or missing</td>
</tr>
<tr>
<td>Leakage including radiator</td>
<td>Shock absorber leaking or functioning improperly</td>
</tr>
<tr>
<td>Improperly functioning water pump</td>
<td></td>
</tr>
<tr>
<td>Electrical System</td>
<td>Tires</td>
</tr>
<tr>
<td>Battery leakage</td>
<td>Tread depth less than 2/32 inch</td>
</tr>
<tr>
<td>Improperly functioning alternator,</td>
<td>Sizes mismatched</td>
</tr>
<tr>
<td>generator, battery, or starter</td>
<td>Visible damage</td>
</tr>
<tr>
<td>Fuel System</td>
<td>Wheels</td>
</tr>
<tr>
<td>Visible leakage</td>
<td>Visible cracks, damage or repairs</td>
</tr>
<tr>
<td>Improper Accessories</td>
<td>Mounting bolts loose or missing</td>
</tr>
<tr>
<td>Gauges or warning devices</td>
<td></td>
</tr>
<tr>
<td>Air conditioner</td>
<td>Exhaust System</td>
</tr>
<tr>
<td>Heater &amp; Defrostor</td>
<td>Leakage</td>
</tr>
</tbody>
</table>

Reliable Used Cars

1000 Downtown Expressway
Lakeside, KS 01243

Stan Jones, General Manager, 202-910-4554

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).
ECOA

- The Equal Credit Opportunity Act and the Fair Credit Reporting Act require notices to consumers when adverse action is taken on a credit application
- A notice is required if the dealer, as the creditor prepares a RISC, takes an adverse action
Preservation of Consumers' Claims and Defenses

- Holder in Due Course 16 CFR 433.1

- ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER
Magnuson–Moss Warranty Act

- Must provide names and addresses of the warrantors or service contract provider
- List the products or parts covered
- Explain what the warrantor will do in the event of a defect, malfunction, or failure, who will be responsible for the expense, and the period of time covered by the warranty or service contract
- Exceptions and exclusions from the terms of the warranty or service contract
Magnuson–Moss Warranty Act 2

- Cannot be conditioned on the consumer’s using, any product or service
- Cannot disclaim or modify any implied warranty the product if written warranty or at the time of sale, or within 90 days thereafter, sells a service contract
- Can limit the terms of Implied warranties to the express warranty or service contract
NC 25–2–608 (1) The buyer may revoke his acceptance of a lot or commercial unit nonconformity substantially impairs its value

Accepted on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured

Accepted without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller’s assurances

Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it

Revocation is not effective until the buyer notifies the seller
Title Documents

- Bill of Lading
- Title
- Re-assignment of Title
- Temporary Registration
Interplay of Laws

- Bad Purchase
  - Truth in Lending Act - Disclosure
  - Usury
  - Equal Credit Opportunity Act - Finance
  - Buyers Guide - FTC Used Car Rule
  - State Consumer Protection Laws

- Bad Vehicle
  - Magnuson-Moss Warranty Act
  - Uniform Commercial Code
  - Holder in Due Course
  - State Consumer Protection Laws
Tactic 1. Follow the money

- Title is not conveyed until the dealer has the money – no title no sale
- Call the finance company
- No financing no Sale – intercept the financing
- Damages if the vehicle is returned
- Cost of actual law suit v. settlement
Tactic 2. Negotiation

- Unless state law requires its return, keep the vehicle during negotiation— if dealer has the money and vehicle they have all the tokens in the game.
- Call the general manager and owner.
- Acknowledge that there are two sides to the story, listen, ask questions, be professional, be polite.
- What does the dealership want? Sales to the military and this sale.
- Did they cross a line – legal or other?
- Is it in their best interest to settle.
- Damages define settlement – commission/fees.
Tactic 3. Set an Example

- You only have to knockdown one bully to gain respect on the playground
- Track the operations and tactics of the dealership – let them know
- Get more data – network with other services and agencies (Navy Relief, FFSC, DMV, Legal Aid, BBB, State AG)
- Work with the BBB, State AG, AFDCB, and Consumer law attorneys to set up a case
Settlement

- Draft release
  - mutual release that releases both parties, or
  - Unilateral a release
- Take photos of the car, inside and out
- Document the mileage
- Get EVERYTHING out of the vehicle
- Return the vehicle
Closure

- Send the client a closure letter.
- Enclose the original Release and Settlement and e-mail from the finance company.
- Great job! You just saved someone a lot of debt and a lot of headaches.