



## In This Issue

### FAQ: What Do I Do?

Page 1

### Retirement Problems?

Page 1

### Federally Mandated Form Updates

Page 4

## Driving Your Success® Blog

Between issues of this newsletter, check the Driving Your Success® Blog at [www.cwattorneys.com](http://www.cwattorneys.com) for updates and new developments.

### FAQ: WHAT DO I DO?

Often, a dealer will be presented with the question that will require a quick decision. The right answer may mean the difference between proper operation of the dealership or a lawsuit. Here are some questions this office gets from time to time. See how your reaction compares to the law.

Q: **The Customer won't sign the privacy notice. What do I do?**

A: The law requires delivery of the privacy notice. If the customer is in the dealership and won't sign, note

that on a copy and give the original to the customer. If the customer will not take the original, note that in the file. Spot check files to make sure privacy notices are being delivered. Most customers will sign a privacy notice and take it. If there are a large number of files with notations that the customer would not take it, you may have an employee who does not want to take the time to present it.

Q: **The customer demands that we negotiate our privacy notice and make changes. What do I do?**

FAQ continued on page 2

### RETIREMENT

Recently, Automotive News reported that 45 General Motors salaried retirees filed a lawsuit against Metropolitan Life Insurance Companies for reducing life insurance benefits after their retirement. Time will tell about the outcome of this case, but the fact that it was filed should be a warning for all business people to give attention to their retirement, pension, and other defined benefit plans.

Prior to the financial crisis that so recently decimated our economy, some agents marketed pension and

retirement plans like siding. After all, there was a need to be met. Business people were making money, and they were concerned about sheltering income while providing for their retirement years. The financial professionals that designed the programs and the insurance companies that underwrote them with insurance policies and annuities were interested in generating quantities of financial paper that could be bundled, securitized, and sold on Wall Street. Quality sometimes took a back seat to quantity. This is not an indictment of every retirement or pension plan. Most

were established conscientiously and appropriately qualified. However, this may be a good time to review your pension and retirement plans with your accountant. If you are in any way concerned about their establishment, adoption, maintenance, or reporting, you may want to consider some legal advice about your alternatives. Charapp & Weiss specializes in assistance for business people who have found themselves with pension or retirement plans that were improperly marketed, developed, adopted, or administered.

A: The Company's privacy notice must not be negotiated. It is not an agreement with the customer. It is a notice to the customer of the company's privacy policy. Hopefully, you are using the new, form notice that provides a safe harbor under the law. Negotiating privacy notices will leave a dealership with different policies for different customers, and revisions may eliminate the safe harbor protection. If the customer won't sign the privacy notice, see the previous question.



**Q: We sold a car, and the customer wants to bring it back. We told him that we will not take it back. Now his lawyer is calling. What do I do?**



A: You will want to investigate the claim of wrongdoing and the facts of the deal. But the very first thing that you want to do is to make sure that the caller is an attorney. It's easy for a customer to get a buddy at the local bar to call you claiming to be his lawyer. Advise the caller that the company does not respond to attorneys without written verification of representation. Advise the caller to contact the dealership in writing on the attorney's letterhead specifically stating that the attorney represents the client. This need not be a long process. The communication on letterhead can be sent through the mail, or by fax, or can be turned into a .pdf and sent by e-mail. It is important, however, that the attorney provide proof of who they are and whom they claim to represent.

Inquiries from attorneys should be directed to specific senior personnel at the dealership. Operators, salespeople and others who are likely to take calls should be trained that they are not to deal with attorneys. When they receive a call from anyone who implies or states that they are an attorney, the call should be forwarded to a responsible senior person trained to deal with such callers.

A dealer should consult with its own attorney whenever contacted by a customer's attorney in the event there is any concern about how to proceed. Often, an attorney calls the dealership directly to get some free early discovery to see if it is a case the attorney wants to pursue. Or the attorney may want to ask some questions to see if the problem for which there may not be a legal claim can be turned into "the case that never was" – a lawsuit alleging wrongdoing that the attorney's client never knew about but that the attorney came up with since he had a client who did business with the dealer. The dealership's attorney can help dealership personnel through the process and can become involved if necessary.



**Q: When we sell a used car with our in-house warranty, we don't give the customer a separate document since the information is on the FTC buyer's guide. A customer is demanding a separate warranty document. What do I do?**



A: Give the customer a separate warranty document. The FTC buyers guide is not a substitute for a written warranty document. The federal Magnuson Moss warranty law requires that a dealer provide a separate warranty document. That law requires that the warranty contain provisions that are not included on a

buyers guide. If you provide the dealership's warranty when you sell a used car, have a warranty form that complies with applicable law, and give your customer that form for each used car sold with a warranty.



**Q: A finance company called and said that one of our customers defaulted on his finance contract. The company is demanding that we buy the contract back. What do I do?**



A: From time to time, a finance source will demand that you repurchase a finance contract for a customer who is in default. When you ask why, the company will tell you that you breached a representation and warranty in the indirect finance master agreement. Remember, a demand for repurchase is based on the finance source's interpretation of the indirect finance master agreement that you signed when you set up the relationship. Carefully review the demand for repurchase and the facts of the deal to determine your rights. If you do not believe that the demand for repurchase of the contract is appropriate, challenge it. Here are some common claims to support a buy back demand and what to do about them.

\* *The deal contains a promissory note or a hold check for the down payment.* What does the indirect finance agreement say? A hold check or a promissory note should not be a problem if the instrument was collected before you assigned the retail installment sale contract to the

finance company depending on the wording of the master agreement.

\* *The customer does not have insurance.* What does the agreement say? If you were careful in negotiating the master agreement provision on insurance, you should only have been required to verify insurance at the time the retail installment sale contract was done.

\* *The debtor's signature or the cosigner's signature on the RISC was forged.* A finance company may even have an affidavit of forgery. Don't blindly accept that. Customers unhappy with their obligations, especially cosigners, will often complain that they never signed the RISC. Check the details of the transaction carefully. If you believe you can prove that the RISC was appropriately signed, challenge the finance company as well as the customer claiming a forgery.

\* *The customer went bankrupt and the lien was not perfected in time.* Under federal bankruptcy law, a dealer has 30 days from the time the customer takes possession of the vehicle to perfect the lien and protect the creditor's security in the event the customer declares bankruptcy. Under many state laws, perfection is achieved when the paperwork is processed or filed, not when DMV finally notes the lien. Carefully check the claim of the finance company. If you are in a state which deems a lien perfected when the paperwork is filed or processed and you filed the papers in time, you may have complied with your obligation.

**CHARAPP & WEISS, LLP**  
8300 GREENSBORO DR. SUITE 200  
MCLEAN, VA 22102  
TEL: 703.564.0220  
FAX: 703.564.0221  
[WWW.CWATTORNEYS.COM](http://WWW.CWATTORNEYS.COM)

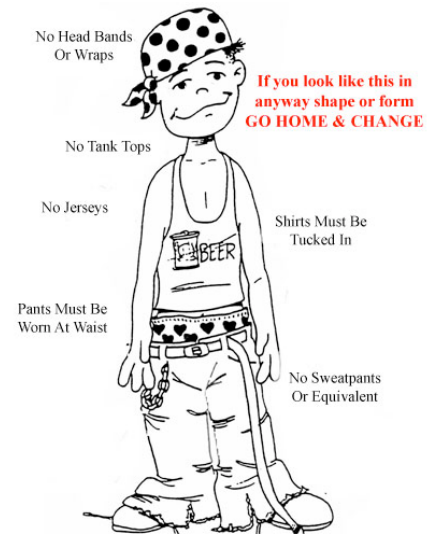
*Contents©2011 Charapp & Weiss, LLP.  
Articles are for information only and  
do not constitute legal advice.*

**Q: One of our salespeople just came to me because he has been negotiating with a buyer who wants to put down \$7,500 in cash from a roll of bills that he has been hinting is from drug dealing. I don't think that I have to report this deal since we will not get more than \$10,000 in cash. What do I do?**



A: Don't deliver the vehicle! All employees should understand that there is a difference between the cash reporting obligations of the dealership and the obligations of everyone in the dealership to prevent money laundering. Under the Internal Revenue Code and the USA Patriot Act, a dealer must report the receipt of cash (currency, travelers checks, money orders, and cashiers checks with a face amount of \$10,000 or less that are not the proceeds of a loan) when the total of cash or cash equivalents is in excess of \$10,000. Under the United States Criminal Code, and under many state laws, dealership employees and the dealership are prohibited from engaging in a transaction that they know, or should know, involves use of funds that are the result of a criminal activity. The money laundering laws apply regardless of the amount of funds received or the form in which they are received. Money laundering is a serious felony no matter how much is involved. Don't do a suspicious transaction. And report your suspicions to the authorities even when you do not do a deal.

**Q: One of my employees just complained that I cannot tell him how to dress because it violates the civil rights laws. What do I do?**



A: Your dealership is permitted by law to have, and your dealership should have, a policy setting employee dress and grooming standards. Policies about grooming and dress are generally viewed by courts as not subject to the same level of scrutiny as policies relating to gender, race, age, disability, and the like. A carefully written policy can provide for reasonable differences between men and women. A policy can also provide for differences depending upon the employees' job classification – those with public contact can be treated differently from those who do not have such contact. Your employees project your image to those with whom they deal. You want that image to be a positive one.

**COMING SOON**

*Auto Dealer Law: the Definitive Legal Guide to the Purchase, Sale, and Operation of Vehicle Dealerships.* Check the Driving Your Success blog at [www.cwattorneys.com](http://www.cwattorneys.com) later this month for publication and ordering information.

# Federally Mandated Form Updates

**N**ow that July is here, there are some revisions to forms that you use in your dealership of which you should be aware.

## Adverse Action and Risk Based Pricing Notices

As of July 21, 2011, your dealership will be required to be using updated adverse action and risk-based pricing notices. Here is what the notices must disclose:

- 1) the consumer's credit score;
- 2) the range of possible credit scores under the model used to generate the score;
- 3) the key factors that adversely affected the consumer's credit score in the model used;
- 4) the date on which the score was created; and
- 5) the name of the person or entity that provided the credit score.

You should discuss this with your present supplier of adverse action and risk based pricing forms to be sure that you are using the appropriately updated versions.

## IRS Form 8300

The IRS has revised Form 8300 for reporting receipt of cash in excess of \$10,000. The revisions do not appear to affect the two pages of the form that are filled in by a dealer. The form does, however, mandate that it is the version to be used for transactions after June 30, 2011. Consequently, if you have hard copies of IRS Form 8300 that are not the June 2011 revision you should discard those. Go online to [www.irs.gov](http://www.irs.gov) and access the online Form 8300. It can actually be filled in online, and by that method you will ensure that you are using the most current form.

And while you are checking to make sure that you have available the right IRS Form 8300, you might want to

review with your staff the store's procedures for reporting qualifying cash. You may also want to see if your staff has any misconceptions about the program. Here are some common ones.

**The customer is financing the car so this isn't a cash deal where we have to report the \$11,000 cash downpayment to the government.**

False! Dealers are required to report receipt of cash in excess of \$10,000 on an IRS Form 8300 within fifteen days of receipt and to notify the customer that receipt of the cash was reported. Sometimes dealer personnel overlook reporting cash received on a financed deal because they don't view it as a "cash" deal as that term is used in the car business. The vast majority of deals that have led to IRS penalties for non-reporting have been financed deals for expensive vehicles with cash downpayments in excess of \$10,000. If you receive cash or cash equivalents such as money orders, travelers checks or cashier's checks with a face amount of \$10,000 or less, which when combined total more than \$10,000, report the receipt to the IRS even if the deal is financed.

**The general office has the responsibility to report the receipt of cash. Our process should be OK, right?**

Maybe not. Do not make the general office solely responsible for compliance. In cash reporting situations, there is information that may not be available if the compliance process does not start on the sales floor. Identification of a person in addition to the vehicle buyer who provides cash and itemization of the number of \$100 bills are examples of information

required by an IRS Form 8300 that will generally be unavailable if the cash reporting process starts in the general office.

**I have one person who is very good at spotting deals with more than \$10,000 in cash. If our store ever has a problem, the government will agree that this is a solid system, right?**

Not necessarily. When the cash reporting responsibilities were originally created twenty years ago, \$10,000 bought many cars. Today, \$10,000 is just a nice down payment, and alarm bells sometimes don't ring in the sales department when a cash down payment in excess of \$10,000 is received in a deal to be financed. That's why back up is critical. One solution is to use the capabilities that most DMS vendors provide to run a report to identify transactions that should be reported. To activate these reports, cashiers must be trained to code receipts accurately about the form of funds received in a deal.

**Since the law allows us to wait until next January to notify customers that we filed IRS 8300 forms this year, we will send them all at one time then. That's legal, right?**

Yes, it's legal. But it is not the best way to proceed. You really should know if someone has given you a bad address so that you can follow up and report the deal to the authorities if you become suspicious. The earlier that you send a notification that you filed an IRS Form 8300, the better the chance that you will know if the notification bounces so that you can investigate.