GAP: The ~~Consumer~~ Dealer Protection Gap

Huge Exposure (Bigly)

Before a financial institution prepares a (or approves a third party's) retail installment sales contract (a "retail contract") or a lease agreement for you to use, they go to great pains to assure that their documents adequately protect your interests.

And if you believe that, then we should talk about that bridge in Brooklyn I've got for sale….

The bank's agreements, whether the retail contract or lease agreement, are not intended to protect you. While those contracts do have some dealer "protections," those "protections" are incidental to the primary objective of those contracts – that being to protect both the payment stream and the collateral.

Because the dealer "protection" provisions within the retail contracts are inadequate, dealers have always used a buyer's order to fill in this protection gap in the retail setting. This begs a simple question. Why do an alarming number of dealers view lease transactions differently such that they fail to address this protection gap in a lease setting?

While there are obvious legal distinctions between a retail contract and a lease agreement, from a practical perspective they are fundamentally the same. Using different language, both protect the payment stream and the collateral and both are either prepared by the financial institution itself or is an approved third party form. The same dealer protection deficiencies in a retail contract also apply to lease agreements. Yet, frankly inexplicably, we have come to learn that in lease transactions many dealers, perhaps even a majority of dealers, are NOT filling in this gap with a lease order form or some other buyer's order-like agreement designed for lease transactions.

"It is not worth it" and "We don't do that many leases" seem to be the primary explanations we hear. However, this rationale swiftly fails when the dealer has to call counsel to discuss a consumer demand stemming from a lease transaction.

While far from an exhaustive list, here are just a few examples of those dealer protections that dealers address in their buyer's orders and which are typically left unaddressed in lease agreements:

1. FS 501.98 – Stop me if you've heard this before, but the Plaintiff's bar is looking for ways to make easy money off of dealers. That's why we came up with the s.501.98 notice – consumer's can't effectively sue you under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA) without giving you the "head's up" as to how you violated the act and without giving you an opportunity to settle on a reasonable basis BEFORE plaintiff's attorneys add substantial attorneys fee demands. However, you can't be protected under the statute unless you give the customer the notice required by s.501.98. Again, because financial institutions don't often have state-specific disclaimers or sufficient disclaimers, you will not find the s.501.98 disclaimer on Lease Contracts.
2. Deposits – Financial institutions worry about their stream of payments; they don't worry about yours. Lease Agreements will often exclude the language required by F.S.501.976(10) that allows you to retain a customer's deposit in the event of a breach by the customer.

3. Demo Disclosure – Lease contracts typically have two check boxes – “New” or “Used.” But what if you’re leasing a demonstrator? The Buyer’s Order provides the opportunity to disclose this to the consumer (and avoid any issues down the line).

We strongly encourage dealers to review their lease transaction documents and properly fill in this protection gap in lease transactions. The cost of doing so is insignificant. The cost of failing to do so is typically not. For a no brainer solution, contact your Reynolds & Reynolds forms representative and ask them to send you a draft of their Lease Buyers Order (FADA-LOVI) which is offered both with and without an arbitration provision.