

Best Practices – What Wise Dealers Do and Know
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I occasionally get telephone calls from buy here/pay here dealers telling me about a deal gone bad. I thought it might be helpful to take these accounts and turn them into a list of the “best practices” that wise dealers do and know.

Cash sales paid by personal check are a really bad idea. It can be difficult to get the vehicle back if the check bounces. Depending upon your paperwork, you may not be able to merely “repossess” and may have to file a lawsuit instead. You can lose the vehicle entirely if your purchaser sells the vehicle to an innocent third party. Insist that payment in a “cash deal” is by cash or cashier’s check.

A deferred down payment is where the vehicle is being sold on credit and the down payment is being paid over time in one or more installment payments. A deferred down payment is legal, but there are rules and restrictions that apply. First, it needs to be properly disclosed on the finance contract. You cannot make the deferred down installment payment due later than the due date of the second regularly scheduled payment. (This is true regardless of whether the scheduled payments are weekly, bi-weekly, or monthly).

A counterfeit, fraudulent, or altered certificate of title is easier to detect when you know what to watch for. Oklahoma certificates of title are printed in a fluorescent ink that glows when held under a black light. There is a green mosaic pattern of leaf/feather like shapes and engraving appearing on their borders. Be sure you pay close attention to out-of-state titles and make sure you know the color codes for that state. (Don’t mistakenly take a “green” salvage title from another state thinking it is a green Oklahoma original certificate of title. Watch out for “strategic folding”, erasures, strikeovers with a thick black felt tip pen, or number games. One trick is for the trickster to turn the first numeral of the odometer statement into an “A” and then tell you that it stands for “actual.” Other tricks are to turn a 1 into a “0” (e.g., making 137,516 look like 037,516), or adding decimal points and moving commas (e.g., 137,516 versus “13,751.61.”) Remember, Oklahoma Certificates of Title state clearly on the back that odometer mileage is to be reported with “NO TENTHS.”

There is no three-day right to cancel on motor vehicle sales. There is generally a three-day right to cancel a non-emergency sale of goods (other than farm equipment) or services when both the seller’s sales pitch and the buyer’s agreement or offer to purchase occur in the buyer’s home. Another situation when the right to cancel exists is when a non-purchase-money lien is being given on the debtor’s home to secure the debt. These situations do not typically occur with used motor vehicle sales. When the paperwork is signed and the vehicle is delivered, you have a deal. There may be other ways to for the customer to get out of it, but there is no three-day right to cancel.

Get your lien recorded with the Oklahoma Tax Commission within 25 days of vehicle delivery and absolutely not later than 30 days. As long as the lien is between you and your customer (only), it is enforceable solely by reason of your security agreement (set forth in all of the OIADA supplied finance contracts). However, since it is possible that a third-party might acquire an interest in the vehicle securing your loan (either a competing lien or an outright purchase of the vehicle), getting your lien recorded with the Oklahoma Tax Commission is critical. Oklahoma law provides that the date of lien relates back to the date of your finance contract if you record it within 25 days. Bad things can happen under bankruptcy law if your lien is not recorded within 30 days of contracting. All things considered, it is wise to get your lien recorded within 25 days of contracting and vehicle delivery, and absolutely not later than 30 days from contracting and vehicle delivery.

Side notes (aka repair notes) are sometimes done to finance repairs to keep the vehicle running and the debtor paying. However, they can be difficult to collect and may engender disputes about what is being paid. (Is the payment you just received a payment on the repair note, the finance contract, or both, or what?). They can also unwittingly set you up for a wrongful repossession claim if you repossess and are found to have wrongfully declared a default due to misapplied payments. If you must do side notes/repair notes, do not charge interest, keep the installments to three or less (exclusive of any down payment), and make sure none of the installment payments are more than twice the amount of any other installment. If you deviate from these rules, you may run afoul of consumer credit laws.

When the purchaser is in Chapter 13 bankruptcy and wants to buy a vehicle, make him or her get a court order authorizing the sale and financing. The individual probably has bankruptcy counsel, so the order should not be difficult to obtain. You should also know that it can be more difficult to collect from someone in Chapter 13 bankruptcy. You would have to have permission from the bankruptcy court to repossess. This is true for Chapter 13 cases even though the contract is being made post-bankruptcy.

When the customer files bankruptcy, cease all debt collection and repossession activity because of the automatic stay (an injunction on debt collection activity). You need to flag the file as “bankruptcy—do not contact”. You then need to forward the entire file to a knowledgeable bankruptcy lawyer to protect your interest in the bankruptcy. The debtor has a lawyer—you need one too!

When post-default repossession is necessary, use only a respectable and qualified repossession agent who knows how to repossess the vehicle without breaking the law or breaching the peace. Starting a fight with the customer, cursing/swearing at the

customer, cutting locks, not retreating when the debtor protests the repossession in progress, and/or bringing law enforcement officers to the repossession are all examples of a breach of the peace.

Before selling repossessed vehicles at a dealer-only auto auction, be sure you have sent out a notice of private sale (available from the OIADA) giving at least 10 days advance notice of the date after which the sale will occur. A dealer-only auto auction may look like a public auction, but it is actually considered a private sale. This is because the auction is restricted to automobile dealers. A public sale is different. It is an auction at a set place and time to which the public is invited to attend and bid. If you want to use a public auction to sell a repossessed vehicle, you can do so. However, you would need to send a notice of public sale (also available from the OIADA). Make sure you use the correct notice of sale form.

“**Strict Foreclosure**” is a post-repossession remedy where the secured creditor elects to forgo notice/sale/foreclosure procedures and keep the vehicle as its own and in full satisfaction of the debt. To do this, the debtor must be notified and give his/her consent after default. There are other rules and conditions that apply. The important thing to know is that you can’t “just do it”. If you want to use strict foreclosure get help and forms from a competent lawyer.

If you have questions about these “best practices”, get help from a lawyer who understands these issues. Wise dealers do....

This article discusses general principles of law. It is not a substitute for obtaining the advice and counsel of a qualified attorney about a specific legal problem.