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Three Things Auto Dealers Need to Know About the FTC Used Car Buyer's Guide

Though its usage rules may seem straightforward, The Federal Trade Commission's ("FTC") Used Car [Buyer's Guide](#) includes several requirements that seem to catch many auto dealers off guard. First and foremost, the FTC requires it be displayed on *all* used cars sold by a dealer. The Guide must contain details concerning the vehicle's background along with any warranties available to the buyer. Failure to do these steps can lead to private class action lawsuits and FTC enforcement penalties reaching \$41,484 per incident.

#1: Don't Forget to Display the *Entire* Guide

The FTC requires that the guide be affixed to the vehicle in such a way that both sides of the guide are easily readable by potential buyers. This rule, however, presents an initial challenge because the Guide is two pages long. Per the FTC, compliance can be accomplished by:

- Displaying the Guide on one of the vehicle's windows so that both sides may be read.
- Hanging the Guide from the vehicle's rear-view mirror.
- Placing the Guide in a plastic sleeve on the outside of the vehicle so that buyers may remove and read it.
- Another creative solution that doesn't prevent the consumer from seeing the full document for the vehicle.

What doesn't work?

- Using a double-sided print so that the reverse is only available by looking through the other side of the car window.
- Placing the Guide in the glovebox or under the seat.

#2: "As Is" Provisions Don't Prevent All Consumer Claims

Another area that is particularly sticky for the Buyer's Guide is warranties. Many dealers are under the false impression that checking the "as is – no dealer warranty" box prohibits all consumer claims. Unfortunately, that isn't the case. The reality is that a dealer selling a car "as is" only prevents claims arising from implied warranties.

Implied warranties can be disclaimed. There are two so called “implied warranties” involved whenever a car is sold – implied because they exist whether they are ever spoken aloud or written. They are the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. In laymen’s terms, this means warranties that a car is fit for sale (i.e., merchantability) and will be useable for driving (i.e., fitness for the particular purpose).

Express warranties, on the other hand, cannot be disclaimed through the use of an “as is” provision or some other expression that the car is offered without warranty. Dealers, and especially sales personnel, have to be particularly careful when selling a used car not to cross the line from sales puffery to an unintended warranty. Express warranties are created when a salesperson makes a verbal or written statement that essentially guarantees product performance or quality.

- Example of express warranty: “This car *will* last you 200,000 miles!”
- Example of sales puffery: “This car is in good condition and a great value!”

Express warranties also obligate the dealer to claims concerning those representations. Dealers need to be careful about what representations they make about a car to buyers because an “as is” provision doesn’t nullify those representations.

#3: Upcoming Enforcement

Arguably, the most important thing dealers need to be aware of concerning the Buyer’s Guide is that regulators will be cracking down beginning in late 2018. The Guide has been on the FTC’s watch list ever since rules governing the guide were revised in 2016. Earlier this year, the FTC performed a random compliance audit of more than 2,300 vehicles nationwide to see if dealers were following the rules. They weren’t. In fact, over 50% of those vehicles failed to either include the Guide or display it properly.

Seeing such a huge red flag, the FTC is surely signaling an increase in regulatory crackdowns. Savvy dealers will take steps to ensure compliance with these regulations and avoid potentially substantial fines by working with experienced automotive counsel that can advise and audit their Guide use and related consumer compliance obligations.