

AUTO NOTES

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THERE'S NO PLACE LIKE HOME

by Barbara A. Darkes

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I still vividly remember (thankfully) venturing into a new vehicle showroom to purchase my first new car. I really had no idea what I wanted to purchase or how I was going to pay for it. Of course, the sales staff and finance department were very helpful and, after many hours and several trips back to the dealership, I drove off in my new car. There have been quite a few new vehicles since then. The one thing that has changed, however, is the amount of time I have and am willing to spend at the dealership during the process.

Like many customers, I have generally built the vehicle I want to purchase, know the pricing, and am at least familiar with financing options when I arrive at the dealership. Access to technology has streamlined vehicle purchases and has cut down on the amount of time a customer spends at a dealership. As dealerships continue to strive to sell more cars, additional consumer-friendly techniques are being employed as well, meaning that dealers are completing as much of the transaction as possible by telephone or meeting customers at their place of employment or at their home.

As Dorothy feverishly repeated at the insistence of the good witch when trying to find her way back to Kansas, "There's no place like home", I suspect that is a true statement for most of your customers as well. A dealership should be aware, however, that sales resulting from contact with the customer at home can present special issues for a dealership.

Pennsylvania's Unfair Trade Practices and Consumer Protection Law may provide that customer with a three-day right to rescind the sales transaction. This is true whether the contact with the customer at home is in person or by telephone. The key is that the sale or the entry into a contract for sale must be the result of or in connection with "a contact with or call on the buyer or resident at his residence." 73 P.S. §201-7(a). So does that mean if a dealership telephones a customer on Monday to provide the customer with information

that was requested during the customer's visit to the dealership on Saturday and the customer ultimately purchases a vehicle, that customer has a three-day right to rescind? We do not believe so. What if the customer was at the dealership on Saturday and did not request any follow-up information, is called at his home on Monday by dealership personnel to follow-up on his visit to the dealership on Saturday, and that call ultimately results in the sale of a vehicle? Perhaps. And, finally, what if the sales process begins at the dealership, but the customer ultimately signs the sale documents at home and the vehicle is delivered to the customer's home? Most likely.

We could continue to discuss examples or scenarios, but I think by now you get the point that every situation needs to be looked at individually. There have been very few reported court cases to provide guidance on what facts invoke the three-day right to rescind the contract. There are two cases worth noting. In a case from 1995, the court determined that a customer who had initiated contact with the seller for the purchase of goods was entitled to the three-day right to rescind when the seller (after the customer's initial contact) repeatedly contacted the customer at his home. This court also specifically noted that the statute made no exception for circumstances when the buyer was the party who made the initial contact. In another decision issued by the United States Bankruptcy Court sitting in the Eastern District of Pennsylvania, the court determined that a single contact made by a buyer to the seller from the buyer's residence was not sufficient to afford that buyer a three-day right to rescind.

In addition to being aware that engaging in contact with a customer at their residence may afford that customer a three-day right to rescind the contract and return the vehicle, the dealer also needs to be aware of additional requirements when contacting and calling on a customer at their residence. First, the sales contract must contain a statement, which



must be in the immediate proximity of the customer signature block and also be in boldface type with a minimum ten-point size as follows:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

Additionally, the dealer must attach to the sales contract the notice of cancellation, which the customer must also sign and date. The notice of cancellation must be in duplicate and must also be in ten-point boldface type. The contents to be contained in the notice of cancellation are specifically set forth in the statute and are as follows:

NOTICE OF CANCELLATION

Date of Transaction _____

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (insert name of seller), at (insert seller's address) not later than midnight of (insert date).

I hereby cancel this transaction

Date **Buyer's Signature**

**McNees Automotive Dealership
Law Group**

Stephen A. Moore, Chair
717.237.5307/smoores@mwn.com

Bruce D. Bagley
717.237.5338/bbagley@mwn.com

Peter K. Bauer
717.237.5460/pbauer@mwn.com

Barbara A. Darkes
717.237.5381/bdarkes@mwn.com

James P. DeAngelo
717.237.5470/jdeangelo@mwn.com

Louis A. Dejoie
717.237.5387/ldejoie@mwn.com

Richard H. Friedman
717.237.5469/rfriedman@mwn.com

Amy Capobianco Marsar
717.237.5415/acapobianco@mwn.com

Jeffrey J. van Bastelaar
717.237.5306/jvanbastelaar@mwn.com

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A dealership's failure to include the required language in the sales contract and attach the notice of cancellation will constitute a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law. This, in turn, can result in the customer filing a civil action for damages against the dealer, the Pennsylvania Office of Attorney General pursuing the dealer for penalties and restitution and lenders finding a way to make dealers repurchase a loan when the dealer believed it was in a non-recourse situation with a lender (trust me; it has happened). So, while the customer will have only three days to rescind the deal and return the vehicle purchased, if the dealer fails to provide the proper notices, the customer and the Attorney General's office will have up to six years to pursue a claim and seek damages for violation of the Unfair Trade Practices and Consumer Protection Law. Clearly, the greater risk is in failing to comply with the notice requirements. ■

Barbara A. Darkes is a member of the Automotive Dealership; Litigation; Transportation, Distribution and Logistics; and Liquor License groups.
bdarkes@mwn.com / 717.237.5381



Look for our next edition of *Auto Notes* in February 2010 in which we will discuss additional considerations relating to PennDOT, Banking and the Vehicle Dealer Board, when consummating sales at customer's homes and off-site generally. Dealerships should review their policies regarding contacting and calling upon customers at their homes, and should also consult with their counsel with further questions on this issue.