

Compliance Now!

Three Modern Compliance Myths

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Three Myths

**“It ain’t what you don’t know that gets you into trouble.
It’s what you know for sure that just ain’t so.”**

- Josh Billings

Three Myths

- 1. 3-Day Right of Rescission**
- 2. 300% Rule**
- 3. Dealers Don't Have to Send Adverse Action Notices**

Right of Rescission

The Myth:

“Consumers have a unilateral right to rescind the contract within three days of purchasing a vehicle.”

Right of Rescission

Sources of the Myth:

1. **FTC Cooling Off rule**
2. **State law (for example, Texas)**

Right of Rescission

Q: What is “rescission?”

A: An equitable remedy designed to make a party whole by *unmaking a contract*.

Right of Rescission

Q: When can a customer rescind a contract?

A: When justice demands, typically in cases of fraud.

- **But that's a *remedy*, not a *right*.**

Right of Rescission

Federal Law:

FTC Cooling Off Rule allows 3-day right of rescission for home sales and certain other off-site sales

- **Think encyclopedia salesmen**

Right of Rescission

BUT:

FTC Cooling Off Rule *exempts* car sales *if* seller has a regular fixed place of business

- **So it really never applies**

Right of Rescission

State Law:

- **State laws vary – ask your Auto Dealers Association about yours**
- **Let's look at Texas as an example**

Right of Rescission

Sec. 601.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a)
This chapter applies only to a consumer transaction in which:

- (1) the merchant or the merchant's agent engages in a personal solicitation of a sale to the consumer at a place other than the merchant's place of business;**
- (2) the consumer's agreement or offer to purchase is given to the merchant or the merchant's agent at a place other than the merchant's place of business; and**
- (3) the agreement or offer is for:**
 - (A) the purchase of goods or services for consideration that exceeds \$25, payable in installments or in cash; or**
 - (B) the purchase of real property for consideration that exceeds \$100, payable in installments or in cash**

Right of Rescission

(b) Notwithstanding Subsection (a), **this chapter does not apply to:**

(1) a purchase of farm equipment;

(2) an insurance sale regulated by the Texas Department of Insurance;

(3) **a sale of goods or services made:**

(A) under a preexisting revolving charge account or retail charge agreement; or

(B) **after negotiations between the parties at a business establishment in a fixed location where goods or services are offered or exhibited for sale**

Right of Rescission

Reality:

- **There is no general 3-day right of rescission for car sales**
- **Federal law exempts car sales from Cooling Off rule**
- **Check local law: Texas may have limited right in case of off-site sales**

The 300% “Rule”

The Myth:

“You must offer 100% of the products to 100% of the people 100% of the time.”

The 300% “Rule”

Sources of the Myth:

1. Prevents discrimination claims
2. Improves sales penetrations

The 300% “Rule”

- Offer 100% of the *appropriate* Products
- To 100% of the People *who can reasonably afford them*
- 100% of the Time *that you don't shaft the sales associate*

The 300% “Rule”

Reality:

- **Never discriminate, period**
- **Be a professional**
 - Offer appropriate products to customers for whom they make sense

Adverse Action Notices

The Myth:

“Dealers don’t have to send Adverse Action Notices.”

Adverse Action Notices

Sources of the Myth:

Belief that

1. Dealers aren't "creditors"
2. Dealers don't make credit decisions
3. Banks send Adverse Action Notices anyway

Adverse Action Notices

Reality No. 1:

- Dealerships are “creditors”
- Sorry

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number _____

BUYER _____	SELLER/ CREDITOR _____
ADDRESS _____	ADDRESS _____
CITY _____ STATE _____ ZIP _____	CITY _____ STATE _____ ZIP _____
PHONE _____	PHONE _____

CO-BUYER _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

The Buyer is referred to as "you" or "your." The Seller is referred to as "we" or "us." This contract may be transferred by the Seller.
PROMISE TO PAY: The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, you choose to purchase the vehicle on credit according to the terms of this contract. You agree to pay us the Amount Financed, Finance Charge, and any other charges in this contract. You agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, you agree to keep all the promises in this agreement even if the others do not.
You have thoroughly inspected, accepted, and approved the vehicle in all respects.

VEHICLE IDENTIFICATION

YEAR	MAKE	MODEL	VEHICLE IDENTIFICATION NUMBER	<input type="checkbox"/> NEW <input type="checkbox"/> DEMONSTRATOR <input type="checkbox"/> FACTORY OFFICIAL/EXECUTIVE <input type="checkbox"/> USED	USE FOR WHICH PURCHASED
					<input type="checkbox"/> PERSONAL, FAMILY, OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL

Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____

Adverse Action Notices

Reality No. 2:

Dealerships make credit decisions when:

- **Won't accept a credit app**
- **Discourage submission of a credit app**
- **Refuse to forward a credit app**

Adverse Action Notices

Reality No. 3:

FCRA and ECOA require *dealerships* to provide adverse action notices to their customers under certain circumstances.

- May delegate duty
- If delegation fails, dealer on the hook

Adverse Action Notices

Notice is not required

An adverse action notice is not required if the finance source accepts the terms of the credit under the conditions agreed to by the customer.

Notice is required

The dealership is required to issue an adverse action notice if it can't find a funding source willing to accept the credit terms in the original deal.

Adverse Action Notices

“Counteroffer Exception”

- **If a counteroffer was made and the customer agreed to the counteroffer, no adverse action occurred**
- **No adverse action, no adverse action notice**

Questions?

Thank you for your time!

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