

# **Texas Car Dealers Face OCCC Audits**

By Michael W. Dunagan

Word has gotten out that auditors from the Office of Consumer Credit Commissioner's Office are calling on Texas car dealers (those who carry their own financing and those who originate finance contracts that are assigned to third parties) and examining their license status, and their credit procedures and forms for compliance with the myriad state and federal laws and regulations that apply to financing motor vehicles. Many audits have already taken place and new ones are being scheduled every day. The ultimate goal of OCCC is to audit every dealer who holds a vehicle finance license every year.

I am aware of the audits taking place because I have received an increasing number of calls from worried dealers who have been scheduled for audit. The typical caller first informs me that he or she is being audited the next day (sometimes later the same day) and wants me to advise the dealer what the auditor will be looking for and what the dealer should do to get ready. My response is that yes, I can advise of some of the things that the auditor will be interested in, but no, there's really not anything the dealer can do now to prepare for the audit.

Now, I'm as much a procrastinator as anyone, but it seems obvious to me that calling at the last minute is an exercise in futility. And while starting to get prepared for an audit once it has been scheduled (usually at least two weeks out) is better than waiting until the day of or the day before, there's really not much that can be done to correct prior violations and compliance deficiencies.

The time to start thinking about and taking action in anticipation of an audit is right now. One thing the audits have accomplished is drawing attention to fact that many dealers, even those who consider themselves to be doing things right, are in fact doing at least some things incorrectly. To the extent that deficiencies can be identified and corrected now, the dealer has an opportunity to establish a good track record before the being audited.

Once a dealer has recognized the wisdom of preparing for an audit before the audit has been scheduled, how does he or she acquire the information necessary to perform a compliance self-exam?

Compliance, in this age of increasing regulation, and overlapping and often contradictory laws and rules, generally comes the old-fashioned way. That is, you earn it. The primary focus of any compliance program for a Texas dealer has to be TIADA, which supplies dealers with compliance information through its magazine, informational books, seminars, and other educational sessions.

The most concise and comprehensive source of compliance information is *Dealer Financing of Used Car Sales*, a book available from TIADA at 800 442-5944. The book covers the basics of vehicle financing, such as licensing issues, maximum finance charges, federal and state credit requirements, and handling state sales and vehicle inventory taxes. The book includes a list of vendors and the text relevant Finance Code provisions. Almost all of the items checked by OCCC auditors are covered in the book.

The second must-have source of compliance information is *Texas Automobile Repossession: a Lien Holder's Legal Guide*, also available from TIADA. Many of the violations uncovered in audits involve repossession procedures. This book includes

sample repossession notice forms and a detailed explanation of when and how to use them. Many dealers use repossession forms that they copied from other dealers years ago. It's likely that the forms were not adequate then, and they certainly won't pass muster since the forms were changed back in 2001. I've also seen cases where dealers have taken what they consider the best provisions of different repossession notices and blended them into the "perfect" form. What these dealers fail to realize is that the different forms were intended for different procedures, and the use of a combination form doesn't comply with the requirements for either.

TIADA also puts on dealer education seminars, covering topics such as Surviving an OCCC Audit and The Latest on Repossession and Bankruptcy. Information about the scheduling of these seminars can be obtained from the TIADA website ([txiada.com](http://txiada.com)), *Texas Dealer*, TIADA's monthly magazine, or by calling the TIADA office. Additional education sessions are held in conjunction with TIADA leadership conferences and the annual convention.

Reading *Texas Dealer* each month is an excellent way of obtaining information. The Legal Update that I write and the Legislative Report from Amanda Balch are must reading, along with the periodic Dealer Alerts that are faxed to members when there's not enough time to include something important in the magazine. TIADA members are also eligible for a free legal consultation to answer their questions.

A secondary benefit from being fully compliant is the shield it offers in private lawsuits. I've found over the years that many disputes over the usual consumer complaints often result in litigation based on technical compliance issues. The plaintiff's attorney, in reviewing the paperwork, often finds it easier to sue for technical "gotcha"

violations that are there in black and white rather than the “he said-she said” disputes. Conversely, a plaintiff’s attorney who reviews correct and up-to-date paperwork is likely to conclude that the dealer may be a formidable opponent.

This point came home to a number of dealers involved in the recent state-wide class-action litigation. Dealers who testified in their depositions that they were members of TIADA, read the magazine, had attended compliance seminars and had read and studied *Dealer Financing of Motor Vehicles* and *Texas Automobile Repossession: a Lien Holder’s Legal Guide*, were the first ones dismissed from the suit.

Compliance issues are no longer just abstract concepts for dealers to relegate to the back burner for future consideration. They are as real as the cars sold and can have a severe impact on a dealer’s bottom line. The time to take action is now.

## **HOT COMPLIANCE ISSUES**

**Finance License.** Creating, holding, or servicing motor vehicle retail installment contracts without a finance license subjects the violator to large fines. Related finance companies must be licensed too.

**Failure to send post-repossession notice.** The UCC requires that notice be sent to debtors after repossession, and the failure to do so is a violation. The failure to use a proper form is also a violation.

**Charge of a collection fee.** The Texas Finance Code authorizes the addition of an actual, out-of-pocket repossession fee, or reasonable fees paid to an attorney for collection or foreclosure. It does not allow a “collection fee” and the charging of such a

fee is a violation. Similarly, charging a fee for in-house repossessions and charging more than paid for repossession are violations.

**Charge of excessive transfer fees.** Only the fees actually expended with regard to transfer can be added. If an estimated charge turns out to exceed what is actually paid, a violation has occurred. In such a case, an immediate refund should be made.

**Regulation B Notice.** Federal law requires that notice of reason for taking adverse action on credit applications be given to the applicant. Dealers should be using the Statement of Denial of Credit forms for this purpose. Dealers have also been cited for using credit applications that don't contain required disclosures or that ask about prohibited information.