

Compliance Complexities Lenders Should Know About E- Contracting

May 21, 2019

Auto Finance Excellence

Recently, the auto finance sector has seen traditional paper consumer sales and financing documents replaced with electronic documents. Greater familiarity with electronic transactions, accessibility of simple, secure technology, and acceptance by capital markets may have each contributed to this trend. However, these transactions are still relatively new.

What does this mean to lenders? Essentially, lenders adopt e-contracting to benefit their dealer partners and consumers for a more seamless digital application process. Being aware of the e-contracting compliance complexities that dealers face can help lenders stay ahead of the curve. Below are the practical and legal issues that lenders should consider.

Practical Considerations

First, lenders need to decide whether to support electronic contract transactions at a dealership using dealer-supplied technology, remotely on consumers' devices, or both. The use of dealer supplied equipment for transactions entered into at a dealership has been more common due to the dealer's ability to control the process, but both are possible.

Secondly, lenders will need to decide whether they adopt an electronic contracting system in-house or obtain a system from a trusted vendor.

Consumer Legal Considerations: E-Sign Consent

Lenders should be comfortable that their dealers are complying with the federal Electronic Signatures in Global and National Commerce Act (E-Sign) and similar state laws (the Uniform Electronic Transactions Act has been adopted in almost every state). These statutes authorize the creation of legally binding and enforceable agreements utilizing electronic records and signatures. Most importantly, consumer protection and disclosure laws allow consumers to receive legally required disclosures electronically if they consent prior to receiving the disclosure.

E-Sign provides that a consumer can consent to receive electronic records only if the consent is provided electronically in a manner that reasonably demonstrates that the consumer will be able to successfully access the information electronically in the future. Since consent must be obtained prior to

disclosures being received or contracts being entered into, the most practical approach is to place the E-Sign consent first in every transaction.

Commercial Legal Considerations: The Electronic Vault

A document that combines an obligation to pay money with a security interest in specific goods is “chattel paper.” An electronic motor vehicle retail installment contract that the lender will buy is therefore considered “electronic chattel paper.” Under the Uniform Commercial Code, e-chattel paper must be effectively “controlled” by designating a “single, authoritative copy” that is “unique, identifiable, and... unalterable.” These “originals” are tagged to be easily distinguished as such, and are typically maintained in an “electronic vault,” with procedures in place to provide the creditor with adequate “control.”

This piece scratches the surface of educating lenders on the complexities of electronic contracting. Suffice it to say that electronic motor vehicle financing has finally arrived as a mainstream document option.

This article originally appeared on Auto Finance Excellence, a sister service of Auto Finance News. McGlinchey Stafford is pleased to serve as the official Compliance partner of Auto Finance Excellence, providing insights and thought leadership through webinars, podcasts, and monthly columns.

Related people

Arthur J. Rotatori