



Compliance

Jeremy Kespohl

Lack of Documentation Can Lead to Liability

Proper documentation has been a frequent theme of my articles. Dealerships face potential pitfalls if they fail to document all customer visits accurately.

I have tried to offer readers explanations as to why every visit by a consumer should be clearly and accurately recorded both for the benefit of the dealer and the manufacturer. However, an incident I experienced recently provided yet another example of one of the potential issues that can arise when a dealer fails to properly document visits by a consumer.

A few weeks ago I appeared at a Florida Lemon Law hearing on behalf of a manufacturer with a dealership representative also in attendance. In preparation for the arbitration, I reviewed the manufacturer's records for any entry where a dealership indicated that it had performed repairs or otherwise had seen the vehicle. The manufacturer then requested all repair orders and other documents from all of the dealerships that had performed any repairs or service on the vehicle.

Upon reviewing the documents produced by the dealerships, it appeared as if the vehicle had been in for repairs on three occasions plus a final repair attempt to the same alleged non-conformity. So imagine my surprise when, at the Lemon Law hearing, the consumer testified and produced records that the vehicle had been in for repairs seven times.

Apparently a dealership had performed repairs on the vehicle, but had not sought warranty reimbursement from the manufacturer. Since the dealership did not submit the repairs to the manufacturer, the dealer did not enter any information regarding these visits into the manufacturer's system. Therefore, neither the manufacturer nor I as its legal counsel had any way of knowing before the hearing that the consumer visited the dealer for repairs.

Additionally the dealership representative, from another area dealership, also had no knowledge of these repair visits. Fortunately, I was able to argue to the arbitration board that the condition complained of by the owner was not substantial and, therefore, the number of visits became irrelevant.

Ultimately, the manufacturer prevailed on that day. However, a surprise like unknown repair visits discovered on the day of arbitration or late in the litigation process can end in a disaster.

At the risk of sounding repetitive, when a consumer visits your dealership you must always document it both internally and in the manufacturer's system. A dealer should

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indicate that the vehicle was brought in, why it was brought in and what you did. This should be done even if no repairs are performed or if the vehicle arrives only for routine maintenance.

Dealers should keep a clear and accurate record of every customer visit. Failure to do so could not only cause issues for you if you are engaged in litigation, but could also lead to a phone call or visit from an upset representative of another dealership or a manufacturer. Even worse, such lack of due diligence can potentially result in a lawsuit.

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