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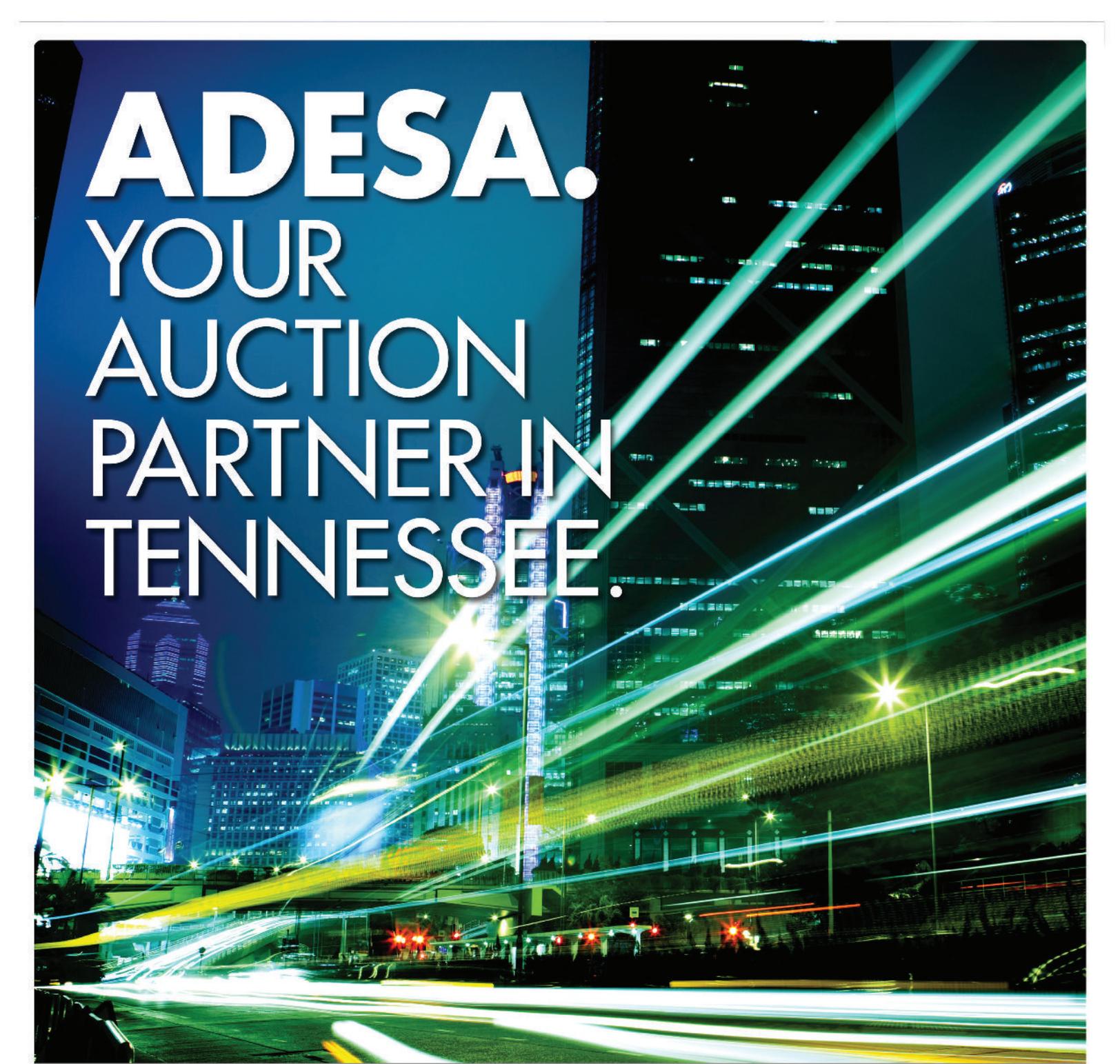
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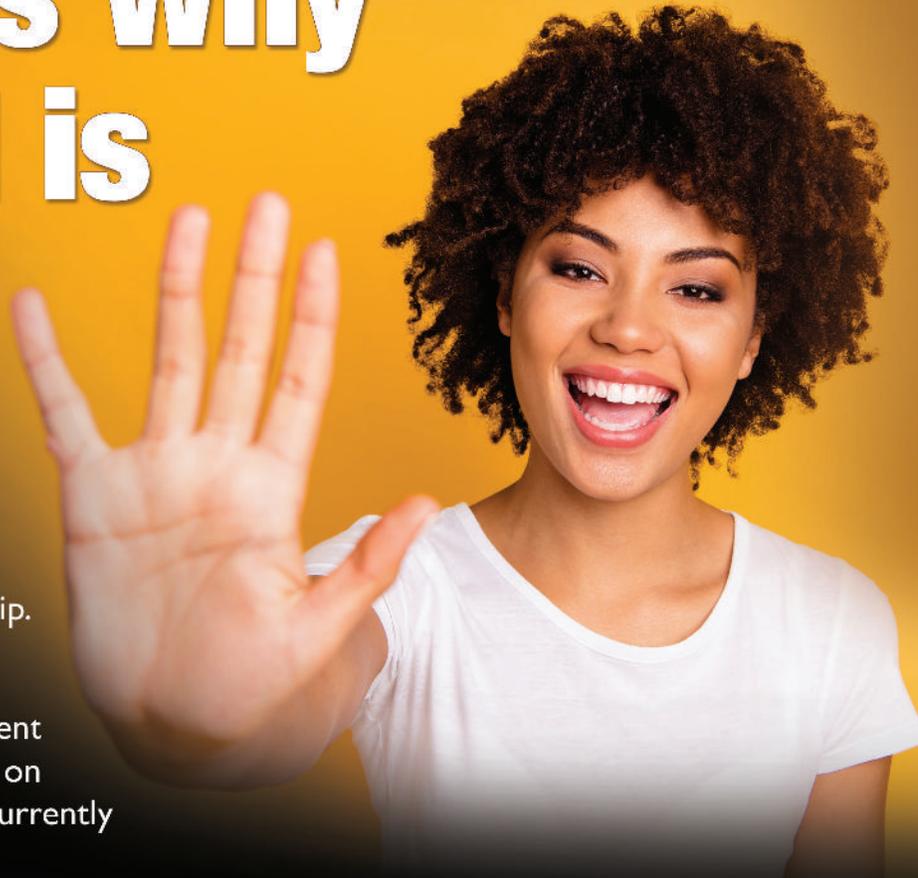
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Chief Editor Phyllis Sartin

Greetings everyone,

The Auto Dealer Business Model has proven once again it's resilience after living with the effects of chip shortages, rising car prices & factory shutdowns. The sales side is strong and dealers must continue to be creative in their wholesale departments.

All our Auction Partners have systems in place for the Online and In Person buyer. Everyone has made adjustments that allow for each buyer's comfort level.

We hope for a huge opportunity as tax season is upon us and it seems that the consumers are content buying pre-owned vehicles.

A big shout out to all our auction, advertising, dealer partners & our newest advertiser Western Funding. We appreciate all your support. I encourage all our members to reach out with any questions or comments. Hope to visit with you soon!

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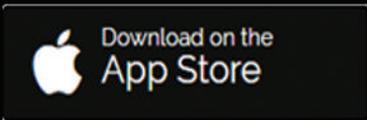
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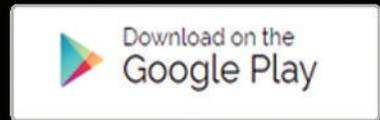
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It's the Perfect Time to Start Leading Again

In the last issue, I wrote about how the inventory shortages presented a perfect time to restart your sales processes. Because, of course, once inventories begin to normalize, you'll want solid sales processes in place if you plan to grow market share and hold more gross than your neighboring dealers.

Assuming you've begun to tackle those, the next step to dominating your market for the foreseeable future is to help your sales managers become sales leaders. Let me briefly explain the major differences in those two titles. While automotive sales managers tend to have a team of average sellers and are constantly recruiting and hiring, sales leaders quickly build and maintain a team of superstars who stick around.

The great news is that it's ridiculously simple to go from sales manager to sales leader, especially once you understand the twelve traits of great sales leadership. I'll use the rest of this post to introduce these, as this will help you and your team assess where each sales manager could improve:

They're Authentic. Great sales leaders are honest and authentic. They show their true self – warts and all – to their teams. Their salespeople appreciate this and, as a result, are more likely to trust them at every turn.

They're Optimistic. Simply put, optimists see challenges as opportunities; pessimists see them as overwhelming obstacles. Optimistic sales leaders know their work will pay off; pessimistic sales managers think "Why even try?"

They're Fair. Because they're fair, their teams are willing to do more and try more. Unfair sales managers instill fear in their teams – even in their top performers – because no one knows the consequences of any good or bad actions. When you're seen as fair, your team trusts you, and when employees trust their boss, they're less likely to leave, take sick days, or shirk important responsibilities.

They're Learners. Great sales leaders know they don't have all the answers, so they're always open to new ideas from everyone and from everywhere.

They're Curious. Being open to new ideas is important, but great sales leaders are also curious. This means they're actively seeking new ideas to improve their own team's results.

They're Decisive. Great sales leaders know that making no decision is worse than making a bad decision. So, while they'd prefer to always make good decisions, they're willing to risk a bad decision made for good reasons. Indecision can quickly destroy an otherwise productive sales team; and top sellers don't want to work for those suffering from analysis paralysis.

They're Focused. Because they know each day can be different, great sales leaders never allow today's distractions to remove their focus on those activities that can drive the greatest results in both the short and long term.

They're Dissatisfied. You may not always see it, but great sales leaders believe in the power of continuous process improvement. This means that even after a record month, they're quick to look for better, more efficient, and/or more effective ways, methods, and/or marketing to drive even stronger results next time.

They're Fearless. Being fearless allows great sales leaders to be open to new ideas, try new methods, take risks, and reap the praise for their success on others.

They're Thinkers. They know every action has consequences, so they're thoughtful in how and when they make changes or how they introduce anything new to the team. This doesn't mean they're afraid to share with their team or that they would lie to keep their team motivated. To the contrary, they just know nothing happens in a vacuum, so they consider the outcomes of their actions before acting.

They're Principled. Driven to always do what's right, great sales leaders are guided by their unwavering principles. This sometimes brings them the respect of their peers, and more importantly, always earns them the respect of their team.

They're Servants. Above all else, great sales leaders "work" for their salespeople, not the other way around. They are often more committed to a seller's individual success than the sellers are themselves.

What About Talent?

Some readers may have noticed what's not included in this list: Talent. Talent is overrated in sales leadership. When it comes to talent in salespeople, it's often just an excuse used by weak sales managers to explain the difference between the salesperson on the top and those near the bottom. You see, by blaming someone's lack of sales success on a lack of talent, a sales manager doesn't have to take responsibility for that salesperson's failure.

Neither leadership nor sales is some sport where God-given abilities (aka talent) will elevate the lazy over the hardworking. In other words, talent is meaningless when it comes to sales leadership; as hard work beats talent on any day ending in a "Y."

Good selling!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of *Ridiculously Simple Sales Management* and *Assumptive Selling*; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm – and the free sales video training website SteveStauning.com. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties.

You may contact Steve directly by calling him at 888-318-6598 or via email at Steve@SteveStauning.com

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The FTC's Sweeping Changes to the Safeguards Rule – Time to Reexamine Your Information Security Program

By: Dailey Wilson

On October 27th, the Federal Trade Commission (“FTC”) finalized its long-awaited updates to the Safeguards Rule. The Safeguards Rule implements provisions of the Gramm-Leach-Bliley Act requiring the safeguarding of customer information, requiring a financial institution to develop, implement, and maintain a comprehensive written information security program appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of its customer information. Auto dealers and finance companies have always been subject to the requirements of the Safeguards Rule by virtue of offering credit transactions.

While the changes are not effective for one year, dealers and finance companies should familiarize themselves with the new requirements sooner rather than later. The 2021 changes to the Rule will require financial institutions to dust off their existing information security program and likely make some significant changes. This article addresses five key changes to the Safeguards Rule – qualified individuals, the requirement to conduct written risk assessments, required elements of an effective safeguards program, the requirement to establish a written incident response plan, and the requirement submit an annual report to the financial institution’s governing body regarding the safeguards program.

Qualified Individual

The Safeguards Rule will require financial institutions to designate a single “qualified individual” to be responsible for overseeing, implementing, and enforcing its information security program. The previous version of the Rule allowed financial institutions to designate multiple employees to coordinate its information security program. The Rule now requires appointment of a single individual to oversee the information security program, thereby clarifying the lines of reporting in enforcing the program, avoiding gaps in responsibility in managing data security, and improving communication.

The qualified individual may be an employee, affiliate, or service provider. The Rule does not define the term “qualified” and in fact, no particular level of education, experience, or certification is required by the Rule. Instead, what qualifications are necessary will depend upon the size and complexity of the financial institution’s

information system and the volume and sensitivity of the customer information that the financial institution possesses or otherwise processes.

Written Risk Assessment

The Rule now requires a financial institution to base its information security program on a written risk assessment. The written risk assessment must include: (1) the criteria for evaluating and categorizing identified security risks or threats; (2) the criteria for assessing the confidentiality, integrity, and availability of information systems and customer information, including the adequacy of existing controls in the context of the identified risks or threats the financial institution faces; and (3) a description of how identified risks will be mitigated or accepted based on the risk assessment and how the information security program will address the risks. Based on these criteria, financial institution would then assess reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information and design and based on its risk mitigation guidelines, implement appropriate safeguards.

Changes to Program Requirements

The Rule previously contained very little detail regarding what was specifically required for an effective safeguards program, instead leaving it to the financial institution to determine what is appropriate based on the financial institution’s size and complexity. The Rule now requires financial institutions to implement specific elements within its safeguarding program. For example, financial institutions must encrypt all customer information held or transmitted by the financial institution both in transit over external networks and at rest. Financial Institutions must also implement an authentication process requiring verification of at least two of the following authentication factors: (1) knowledge factors, such as a password; (2) possession factors, such as a token; or (3) inherence factors, such as biometric characteristics (also known as multifactor authentication).

Continued on page 18



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Federal Developments

On November 30, the **Consumer Financial Protection Bureau and the Federal Reserve Board announced that they are increasing the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) for exempt consumer credit and lease transactions.** The Dodd-Frank Act provides that the dollar amount thresholds for TILA and the CLA must be adjusted annually by any annual percentage increase in the consumer price index. Based on the annual percentage increase in the consumer price index as of June 1, 2021, the protections of TILA and the CLA generally will apply to consumer credit transactions and consumer leases of \$61,000 or less in 2022. However, private education loans and loans secured by real property (such as mortgages) are subject to TILA regardless of the loan amount.

On December 7, the **Consumer Financial Protection Bureau issued a final rule, effective April 1, 2022, amending open-end and closed-end provisions of Regulation Z to facilitate the transition away from the LIBOR interest rate index for consumer financial products.** The final rule establishes requirements for how creditors must select replacement indices for existing LIBOR-linked consumer loans after April 1, 2022, establishes disclosure requirements for certain loan products replacing LIBOR references with a comparable replacement index, and provides that no new consumer loan contract may reference LIBOR as the relevant index after the end of 2021. The Bureau is also issuing an updated set of FAQs to help creditors address other LIBOR transition topics, regulatory questions, and general implementation considerations.

On December 8, the **Consumer Financial Protection Bureau issued its Fall 2021 Supervisory Highlights report, which describes violations identified by the Bureau during its examinations of supervised institutions between January 2021 and June 2021.** The violations occurred in the areas of mortgage servicing, credit card account management, debt collection, deposits, fair lending, payday lending, prepaid accounts, and remittance transfers. The report also summarizes recent developments in the Bureau's supervision program and remedial actions.

On December 14, the **Office of the Comptroller of the Currency issued a final rule rescinding its Community Reinvestment Act rule published on June 5, 2020, and replacing it with a rule largely based on those adopted by the OCC, Federal Deposit Insurance Corporation, and Federal Reserve Board in May 1995, as amended.** The final rule is intended to facilitate ongoing interagency work to modernize the CRA rules and promote consistency for all insured depository institutions. The final rule applies to national banks and federal and state savings associations and takes effect on January 1, 2022, with a separate compliance date of April 1, 2022, for the rule's public file and public notice requirements. In a related development, the **Federal Reserve Board and the Federal Deposit Insurance Corporation announced the 2022 asset-size thresholds used to define "small bank" and "intermediate small bank" under their CRA regulations.**

Continued on page 20

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Written Incident Response Plan

The changes to the Safeguards Rule also require a financial institution to establish a written incident response plan, designed to promptly respond to and recover from a security event. The written incident response plan must include certain elements, including: (1) goals of incident response plan; (2) internal processes for responding to security event; (3) definition of clear roles, responsibilities, and levels of decision-making authority; (4) external and internal communications and information sharing; (5) identification of requirements for remediation of any identified weaknesses in information systems and associated controls; (6) documentation and reporting regarding security events and related incident response activities; and (7) evaluation and revision as necessary following a security event.

** K. Dailey Wilson is an associate in the Tennessee office of Hudson Cook, LLP. She can be reached at 423.490.7567 or by email at dwilson@hudco.com.*



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Case of the Month

Car Buyers and Lessees Stated Claims Against Dealerships for Charging Document Preparation Fees in Violation of Indiana Law: Car buyers and lessees alleged Indiana Deceptive Consumer Sales Act violations, fraudulent concealment, and unjust enrichment in connection with car dealerships' document fee practices. The dealerships moved to dismiss the complaints, and the trial court denied the motions. The **Court of Appeals of Indiana** affirmed. From July 2013 to May 2019, Indiana's Motor Vehicle Dealers Services Act provided that it was an unfair practice for a dealer to require a purchaser, as a condition of the sale, to pay a document preparation fee unless the fee reflected expenses actually incurred for the preparation of documents, was affirmatively disclosed by the dealer, was negotiated by the dealer and the purchaser, was not for the preparation, handling, or service of documents that are incidental to the extension of credit, and was set forth on a buyer's order or similar agreement by means other than preprinting.

In May 2019, the Indiana legislature amended the MVDSA's doc fee provision to provide that it is an unfair practice for a dealer to charge a doc prep fee in excess of \$200 (subject to annual adjustment) and that a doc fee must be included in the advertised price of a vehicle and affirmatively disclosed in writing during negotiations and as a separate line item on the bill of sale or other purchase contract. The effective date was made retroactive to July 1, 2013.

The dealerships' primary arguments on appeal were that because they charged doc fees of less than \$200, and the 2019 amendment permits dealers to charge a doc fee of \$200 or less, the plaintiffs' claims were barred by the amendment; some of the plaintiffs' claims were barred by the statute of limitations; and the MVDSA doc fee amendment abrogated the plaintiffs' constructive fraud and unjust enrichment claims. With regard to the first argument, the appellate court agreed with the trial court that the doc fee amendment does not expressly permit dealers to charge doc fees of \$200 or less. Instead, it merely provides that doc fees in excess of \$200 are presumed to be unfair while doc fees of \$200 or less are fair if they are included in the advertised price and affirmatively disclosed as provided in the statute. With regard to the statute of limitations defense, the appellate court agreed with the trial court that the 2-year limitations period may be tolled in the case of fraudulent concealment and that the plaintiffs sufficiently alleged fraudulent concealment of doc fees by the dealers. Finally, the appellate court agreed with the trial court that when the legislature amended the doc fee statute in 2019, it did not expressly imply that the amendment was meant to abrogate common law. The appellate court went on to determine that the plaintiffs had sufficiently alleged claims for constructive fraud and unjust enrichment at the motion to dismiss stage. See **Butler Motors, Inc. v. Benosky**, 2021 Ind. App. LEXIS 362 (Ind. App. November 24, 2021).

Eric (ejohnson@hudco.com) is a Partner in the law firm of Hudson Cook, LLP, Editor in Chief of CounselorLibrary.com's Spot Delivery®, a monthly legal newsletter for auto dealers and a contributing author to the F&I Legal Desk Book. For information, visit www.counselorlibrary.com. ©CounselorLibrary.com 2021, all rights reserved. Single publication rights only to the Association. HC# 4872-4651-0600



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Is There A Short Cut To This?

For almost 25 years I have traveled the East Coast visiting clients and I have found we all have varying degrees of computer and Internet experience and knowledge. From time to time I get asked, "How did you do that?" when a client witnesses me perform a shortcut while working in their computer. I dedicate this article to sharing with all of you some of those shortcuts I find myself explaining from time to time.

It is important to remember that if you graduated from high school before the mid-eighties, then chances are you never had any formal computer education, much less any typing classes. Even today's high school graduates are not guaranteed to have adequate computer skills. The only way to learn this kind of stuff is through hands on experience. So, sit in front of your computer and try some of these short cuts.

The one thing I did not realize is that many do not know what the deal is with the Shift and Caps Lock buttons. I have seen some people type things in all caps because they think to have one capital letter they need to hit the Caps Lock, then the letter, then the Caps Lock button again to turn off caps and that is understandably too much work. If, you want to capitalize the letter a in Apple, just hold down the shift button (there is one on either side of the keyboard on the bottom row) while at the same time clicking the A. Then let go of the shift button and type the rest of the word and you have Apple.

Many times we find ourselves typing the same thing over and over. For instance, when you enter a car into your F&I software you might type the

VIN number. Then later you are typing the same VIN into your website. Next time, after typing the VIN in the first spot, hi-light the entire VIN by either dragging your mouse over it or holding down the shift button and clicking the arrow button until the entire VIN is hi-lighted in blue. Then hold down the Ctrl button (usually in the bottom left corner of your keyboard) and click the C. This action is referred to as typing Ctrl+C and it copies all hi-lighted text to a clipboard. Open the program you need to re-enter the VIN into and place the cursor where the VIN would go. Now hold down the Ctrl button and type V (Ctrl+V). This pastes a copy of what you have on the clipboard to where the mouse is located.

A similar shortcut is Ctrl+X. This is Cut and works the same as Copy except that it deletes the original entry and moves it to the clipboard allowing you to paste it in another location. This is handy if you are typing a letter for instance and find that you want to move a paragraph to another part of the document.

This works in most programs and allows you to move text and images between programs.

Have you ever been in a web browser and wanted to open another window BUT keep the original window open so you can come back to it or compare the two? If so you can do this one of two ways. Ctrl+T will open a new tab in that same browser and Ctrl+N will open a new browser application, separate from the one you were in. In the latter instance you will see two icons for your browser in the system tray because you have two instances of that browser open at the same time.

We have all been in the computer working with several open programs at once. When you need to go from one program to the next, you might be using the mouse to click on the icon of the open program you want to switch to. Did you know you could rotate through all open programs by holding down the Alt key (usually to the left of the spacebar) and then tap the Tab key (usually above the Cap Lock key). The first time you tap the Tab key you will see tiles pop up, one for each open program. If you tap the Tab key again the focus will move from one tile image to the next. Once you have the focus on the program you want to switch to simply let go of the Alt key and voila! You are in another program without touching the mouse!

That is all the time I have for now, except to say the Ctrl key has different functions when used with all letters, A to Z. Familiarize yourself with them by googling, "Ctrl A to Z". Once you get comfortable with the shortcuts, hopefully working in the computer will get a little easier and a lot faster!



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Auctioneer Spotlight



Adam Johnson

I first got my taste of the Auction business attending livestock and real estate auctions with my grandfather when I was a young child. My grandfather loved Auctions and I loved going with him. He always pushed me to be an Auctioneer and I'm glad that he was able to see me become one. I grew up on a farm in Bedford County, Tn and was very active in the day-to-day operations. I was very dedicated in raising and showing livestock of all species. My main activity during my high school years was showing and selling show cattle. After graduating high school, I attended Missouri Auction School in 2003. My passion at that time was to become a livestock auctioneer. In 2006 I went to work for Tennessee Livestock Producers selling their weekly cattle sale. I later went on to fill in working the ring at Auto Auctions in Tennessee, Georgia & Alabama. After working the car auctions for a brief period, I knew that this is what I really wanted to do. I currently work three Auto Auctions per week including Manheim Nashville, Manheim Georgia & Manheim Atlanta. There are a lot of people that I owe credit to that gave me a chance to be able to what I love to do.

I still live on my family farm in Shelbyville, Tn with my wife Krystle and our son Weston. I also work with Parks Auction in Murfreesboro where I specialize in Real Estate and Personal Property auctions. I am very passionate about my profession, and I truly believe that the Auction method is the best method to find true value in whatever you are selling. I am blessed to have had the opportunities that I have had in my life. I have also been blessed to meet and make many new friends along the way. Hope to see you around in the lanes!!!!

Adam Johnson
AUCTIONEER / REALTOR 



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