

Be Careful with Sales Made at a Customer's Home

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Let's say you want to drive the vehicle a customer is interested in buying to that person's home, let the customer see and test-drive the car, negotiate the price of the car, present and offer F&I products, and then have the customer sign the purchase and financing documents.

Does it matter that the negotiation and sale is being done at the customer's home rather than at your dealership? Yes! Besides possibly violating state dealer licensing statutes that may restrict your sales to your dealership location and possibly violating your agreement with your financing source, you might be violating a federal law permitting a "cooling-off period" for sales made at a customer's home. In addition, you may be violating a comparable state law on home solicitation sales.

The Federal Trade Commission's Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations regulates a person's ability to engage in sales in places other than the person's permanent place of business. The rule requires written and oral disclosures, gives a buyer a 3-day right to cancel, prohibits misrepresentations regarding that right, and restricts a seller's ability to assign the note or contract for a period of time.

The rule applies to a "door-to-door sale," defined as follows:

A sale, lease, or rental of consumer goods [such as a car] or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges), and which has a purchase price of \$25 or more if the sale is made at the buyer's residence or a purchase price of \$130 or more if the sale is made at locations other than the buyer's residence, whether under single or multiple contracts.

The term "personally solicits" is not defined. The term "place of business" is defined as the "main or permanent branch office or local address of a seller," such as at your dealership.

The term "door-to-door sale" does not include certain transactions, including a transaction:

- made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

- in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
- conducted and consummated entirely by mail or telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

The rule requires sellers to provide buyers with a copy of any contract pertaining to a door-to-door sale at the time of its execution. The contract must be in the same language as that principally used in the oral sales presentation, show the date of the transaction, and contain the name and address of the seller. In addition, the contract must contain, in immediate proximity to the space reserved for the buyer's signature, a statement in bold 10-point font informing the buyer that he or she has the right, prior to midnight of the third business day after the date of the transaction, to cancel it. The rule also requires sellers to furnish each buyer with a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION."

The rule also requires sellers to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

The rule prohibits sellers from negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

The FTC Act gives the FTC authority to seek civil penalties of up to \$43,280 per violation. The FTC may also seek a cease-and-desist order in response to an alleged violation.

Also note that various states impose their own laws that do not necessarily mirror the federal law, so you'll need to check your state's law, too. When conducting sales at a place other than your dealership, proceed with caution!

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