



Risky Business-- Buying a Car in Maryland: Auto Fraud and Policy Choices

May 2013

Marceline White
MCRC

The Maryland Consumer Rights Coalition (MCRC) advances fairness and justice for Maryland consumers through research, education, and advocacy. Founded in 2000, MCRC is Maryland's only statewide consumer advocacy organization. MCRC supporters include citizens, advocates, and organizations who fight for fairness and safety in the marketplace.

Funding for this report was provided by The Annie E. Casey Foundation, the Fund for Change, and the Zanyvl and Isabelle Krieger Fun. We thank them for their support but acknowledge that the findings and conclusions presented in this report are those of the author alone, and do not necessarily reflect the opinions of the foundations.

Acknowledgements

The author wishes to thank Phil Dacey, Melissa Robinson, Chris Kukla, Steve Sakamoto-Wengel and Karen Straughn for discussing auto fraud issues with me. Franz Schneiderman provided assistance with the quantitative analysis as well as valuable edits to the final document.

About the Author

Marceline White is Executive Director of the Maryland Consumer Rights Coalition (MCRC). She has written about debt settlement abuses and rent-to-own stores for MCRC. She has testified on a number of consumer issues before Maryland's General Assembly and served on Governor Martin O'Malley's Foreclosure Task Force as well as a state task force on insurance of the last resort. She has also written and advocated on international trade, gender and development, labor rights, environmental justice, and reproductive rights. She received her Master's in Public and International Affairs from the University of Pittsburgh and a Bachelor's of Journalism from the University of Missouri-Columbia. She is also active in the arts in Maryland as a poet, essayist, artist, and actor.

Table of Contents

| | |
|---|-----------|
| Executive Summary | 4 |
| Overview | 7 |
| Introduction | 7 |
| Yo-Yo Sales | 10 |
| Dealer Kickbacks | 19 |
| Rebuilt Wrecks | 22 |
| Loan Packing | 25 |
| Conclusion | 26 |
| Appendix A: Conditional Sales Agreement | 28 |
| Appendix B: Attorney General Letter on Yo Yo Sales | 30 |
| Appendix C: Tips to Buying a Car | 34 |
| Bibliography | 35 |

Executive Summary

Purchasing a car provides low- and moderate-income families with mobility -- both economic and physical. Maryland families need access to cars for transportation to and from work as well as to procure better goods and services than they might have available in their local communities.

Yet purchasing a car is an expensive investment, particularly for cash-strapped families. Unfortunately, car dealers often take advantage of vulnerable families by steering them into higher-cost loans, expensive add-ons they don't need, and deals with high downpayments.

Yo-Yo Sales

Yo-yo sales are a "bait-and-switch" scam. A consumer agrees to purchase a car but often unwittingly signs a conditional sales agreement rather than a final sales agreement. This agreement allows the dealer to cancel or change the terms of the financing after the consumer drives off the lot with the car. Weeks later, the consumer may get a call explaining that the financing fell through and that he or she must renegotiate the loan for a higher interest rate or larger downpayment.

Despite the fact that yo-yo sales are illegal in Maryland, 93 consumers complained to Maryland's Office of the Attorney General (OAG) about yo-yo sales abuses from Jan. 1, 2009 to Dec. 31, 2011. The OAG was able to resolve about 20% of these complaints. Yo-yo sales cost Maryland consumers more than \$240,000 from 2008 through 2012. Similarly, the Maryland Motor Vehicle Administration (MVA) received 19 yo-yo sales complaints between Jan. 1, 2011 and Dec. 31, 2012 and fined just 31% of the car dealers cited in those complaints.

Dealer Kickbacks

When a consumer pursues financing at the car dealer's shop, the dealer often acts as the initial lender but then calls two or three lenders to ask them to purchase the loan. The lenders tell the car dealer the interest rate at which they are willing to buy the loan -- this is known as the "buy rate." The lenders may also often allow the dealer to add interest to the loan deal the consumer signs to the buy rate. The extra profit is either split between the dealer and the lender or pocketed entirely by the dealer. This dealer kickback is particularly troubling because few consumers are even aware that they have been placed in a more expensive loan than they qualified for.

This problem is very costly for car buyers and for Maryland as a whole. According to a study by the Center for Responsible Lending, Maryland ranks 17th in the country for the amount of dealer kickbacks -- they cost Maryland car-buyers \$520 million for cars purchased in 2009 alone.

Rebuilt Wrecks

Repairing and selling salvage vehicles is big business. According to the National Association of Consumer Advocates, nearly one million salvaged vehicles are returned to the road each year.¹ Many of these salvage vehicles have been wrecked or flooded. Car dealers often sell these cars, knowing they have defects, without disclosing the car's true history to consumers. In Maryland, the number of salvage vehicles available for sale grew by 67% between 2003-2007.²

Loan-Packing and Add-Ons

Many car dealers also take extra money from consumers through "loan packing" – adding extra products and services to the cost of the car contract to inflate the price and the amount financed. These products include guaranteed auto protection (GAP) insurance, vehicle service contracts, life and disability insurance, and glass-etching.

While there are federal and state laws that address some of these issues, Maryland policy makers have a number of opportunities to strengthen consumer protections for car buyers in Maryland.

MCRC's policy recommendations include:

Yo-Yo Sales

- Right to rescission -- provide a cooling-off period of equal time for both car dealers and consumers.³
- No sale of trade-in -- prohibit dealers from selling any trade-in until all financing is completed.
- Return of downpayment – require that the full downpayment must be returned to the consumer should a yo-yo sales transaction take place.

Dealer Kickbacks

- Prohibit dealer interest rate mark-ups on auto loans.
- Barring prohibition, cap dealer-mark-ups at a given percentage rate or flat dollar amount per loan and require dealers to charge the same mark-up for all car purchases.

Rebuilt Wrecks

- Expand the definition of salvage vehicles and require dealers to give consumers better information about salvage vehicles.
- Extend the age and mileage limitations in Maryland's lemon law so that more used cars will qualify.

¹ "The Problem of Rebuilt Wrecks," *Consumer Reports*, April 2012. <http://www.consumerreports.org/cro/2012/12/the-problem-of-rebuilt-wrecks/index.htm>.

² "Rebuilt Wrecks for Sale! Carfax Study Reveals Emerging Threat to Used Car Buyers," Feb. 26, 2008 <http://news.carfax.com/index.php?s=25079&item=58293>

³ Van Alst, John W, "Fueling Fair Practices: A road map to improved public policy for used car sales and financing," National Consumer Law Center, 2009, p.14.

- Require warranties of six months or 6,000 miles for used cars.
- Ensure that any lemon law does not preclude consumers from seeking other forms of redress.

Loan-Packing and Add-Ons

- Require dealers to provide consumers with clear and transparent information about the cost of the vehicle, all fees, and add-ons.
- Clearly separate costs of any add-ons from the cost of financing the car in all paperwork.
- Require dealers to pre-price all add-ons and post those prices clearly at the dealership.

Risky Business-Buying a Car in Maryland: Auto Fraud and Policy Choices

Overview

Purchasing a car provides low- and moderate- income families with mobility -- both economic and physical. Families with access to vehicles are better able to seek out and retain appropriate jobs, train for higher-paying jobs, find higher-quality goods, services, and care for their children, and have more leisure time to spend together.

Yet purchasing a car is an expensive investment, particularly for cash-strapped families. Unfortunately, car dealers often take advantage of the needs of vulnerable families by steering them into higher-cost loans, expensive add-ons they don't need, and deals with high downpayments.

In this policy brief, MCRC investigates several of the most prevalent abusive auto sales schemes in Maryland, recounts the impact of these scams on Maryland consumers, reviews Maryland law on auto sales abuses, and compares it to the laws of other states. Finally, this brief will suggest some good tips to help consumers avoid being scammed and offer some policies Maryland policy leaders should consider to better protect consumers.

Introduction

There are strong links between physical mobility and economic mobility. And throughout most of Maryland both are greatly enhanced when a family has access to a car. While some urban areas have invested in large-scale, affordable public transportation, other cities have not dedicated the same resources to effective transportation systems and many people who live in ex-urban or rural areas have few or no public transportation options.

Greater mobility gives low-and moderate-income families much greater access to employment opportunities. Reliable and flexible transportation also makes it much easier to arrive at work on time and work extra shifts if needed. This makes car-ownership an important factor in asset-building for families in the Greater Baltimore and Washington areas. In rural parts of Maryland that have fewer public transportation options, a car is even more critical as an economic lifeline.

Yet even in areas with public transportation, working families without cars may not be able to get to the job opportunities they need. According to Vehicles for Change, more than 80,000 low-income families in the Baltimore area do not own a car.⁴ VFC's research shows that people from the city neighborhoods where most its clients live can get to just 54 percent of all jobs in the metro area in 90 minutes on public transportation and that the low and middle-skill jobs they can reach in 90 minutes comprise just 25 percent of the region's jobs.⁵

⁴ <http://www.vehiclesforchange.org/transportations-impact/better-jobs/>

⁵ <http://www.vehiclesforchange.org/transportations-impact/better-jobs/>

Although transit coverage is better for Maryland families living near Washington D.C., those who rely on public transit still find their job opportunities limited. While residents of Montgomery and Prince George's counties have nearly 100% access to some public transportation, that number falls to 41% for families in Frederick County.⁶ And despite the Washington area's relatively good public transit, low-skilled workers can only reach 62% of the region's low-skill jobs by public transit while high-skilled workers can reach just 72% of high-skill jobs.⁷

On the other hand, when low-income families have access to a car, the benefits can be far-reaching. A national survey of 445 recipients of loans from a low-income car-ownership program found that 82% were able to get off welfare and other public aid as a result. That led to an estimated savings to taxpayers of \$18.2 million a year, more than double the amount donated to the low-income families in the program.⁸

In addition to helping families reach jobs, access to a car also enables low- and moderate-income families to access services that may not be available (or may be more expensive) in their neighborhoods. Unless they own a car, many families cannot easily transport children to doctors or procure affordable, healthy food in communities that lack good grocery options.

Relying on public transportation often leaves families short on time as well as resources. Many low-income families that use public transportation spend up to 90 minutes commuting to and from work. The time-poverty this causes affects the entire family -- children are less likely to attend after-school programs or take part in extra-curricular activities and the family has less time for bonding.⁹

The need for families who lack a car to live near good public transit corridors also may dramatically increase the amount these low-income families spend on their housing and food budget. In the Baltimore-Towson area, for instance, recent research found that low-and-moderate income families spend 53% of their income on housing and transportation. While these costs are lower than those found in many metropolitan areas (families in Miami, Florida spend 72% of income on these costs) they are still higher than desired.

⁶ Ross, Martha and Nicole Prchal Svajlenka, "Connecting to Opportunity: Access to Jobs via Transit in the Washington, D.C. Region" Brookings Institute, Nov. 8, 2012, <http://www.brookings.edu/research/papers/2012/11/%7E/media/D3589634EEC94C09B895AB17D126DC1F.ashx>

⁷Ibid., p.1 (please note that the Brookings research includes VA and District residents in its analysis unless otherwise noted).

⁸ Bensinger, Ken, "Affordable cars are key to getting off public aid, study finds," *Los Angeles Times*, March 14, 2012.

⁹ <http://www.vehiclesforchange.org/transportations-impact/stronger-families/>

Yet purchasing a car is a large financial investment for low- and moderate-income families. Unfortunately, it is also a transaction in which low-income families, families with lower credit scores, and unsophisticated customers often get taken for a ride – and often end up spending thousands of dollars more than they should -- because of several flourishing schemes car dealers use to increase the overall price of the car.

“Yo-Yo” Sales

A “yo-yo sale” sale is a common tactic many car dealers use to increase their profits. It works like this: a car-buyer will select a vehicle to purchase. The buyer is then either convinced to accept or unknowingly placed in a conditional sales agreement rather than a final sales agreement. The conditional agreement says that a dealer can cancel or change the terms of the deal after the buyer drives off the lot with the car. Often a consumer will purchase the car and drive it home, only to receive a call weeks later from the dealership saying that the financing fell through and that the buyer must renegotiate the loan. The buyer is then told that he or she must agree to a higher interest rate or a larger downpayment to retain the vehicle. The buyer often also learns that his or her trade-in has already been sold. This increases the pressure on the consumer to accept new, more usurious terms from the car dealer.

Yo-yo scams can occur because many dealers use “spot-delivery” or conditional contracts that allow them to offer the car on the contingency that the financing comes through. In addition to being unlawful in Maryland and many other states, such conditional contracts really aren’t necessary as, in today’s technology-driven market, most dealers are able to receive a final financing decision from the loan companies they work with within 30 minutes of the consumer entering the showroom.¹⁰ And since the dealer is under no obligation to accept a loan contract that is unprofitable in the first place, those that make conditional sales usually are simply trying to leverage a higher kickback from the financing deal.

Not surprisingly, research has shown that yo-yo scams disproportionately target low- and moderate-income consumers and those with poor credit. A study by the Center for Responsible Lending found that while 4.5% of all car consumers surveyed had experienced yo-yo scams, 11% of those with fair or poor credit scores had experienced these predatory transactions.¹¹ Similarly, the likelihood of being a victim of a yo-yo scam is strongly correlated to a consumer’s level of income: CRL’s study found that 12% of car-buyers with incomes below \$40,000 had experienced a yo-yo scam while 25% of consumers with incomes below \$25,000 had been victims of a yo-yo scam.¹²

¹⁰ Delvin Davis, Frank, Joshua M., “Car Trouble: Predatory Auto Loans Burden North Carolina Consumers,” Center for Responsible Lending, April 2009, p. 6.

¹¹Ibid., p. 4.

¹²Ibid., p. 4.

In addition to causing economic harm to low- and moderate-income families, yo-yo sales hurt honest car dealers. Whether the dealers that make conditional sales deals do so because they may not like the terms for the financing contract or the conditions attached to the offer, because they haven't actually received an offer to finance the loan, or for some other reason, those dealers send the car buyer home with a spot-delivery agreement and a car. The consumer goes home believing the deal is final. This action effectively takes the consumer out of the marketplace, as that person will not consider buying a car elsewhere in the near future.

Yo-yo sales distort the car market by prompting consumers to make purchasing decisions without full or accurate information about the costs of their contract. If dealers can renege on a contract weeks after they make it, they have an incentive to lure consumers in with low teaser rates, knowing that they can change the terms later. This perversely rewards car dealers who conduct yo-yo sales while impeding a consumer's ability to compare the true price of purchasing an auto from several dealers.

Maryland Consumer Complaints of Yo-Yo Sales

Auto sales fraud is always among the top 10 topics for consumer complaints filed with Maryland's Office of the Attorney General and yo-yo sales are always one of the leading car complaints. While consumer advocates know that car-buyers who are victimized by yo-yo sales rarely file complaints, and often don't even realize they've been victimized by an illegal sales tactic, Maryland's Attorney General's office received 93 yo-yo sales complaints between Jan. 1, 2009 and Dec. 31, 2011 (See Table 1, below).¹³

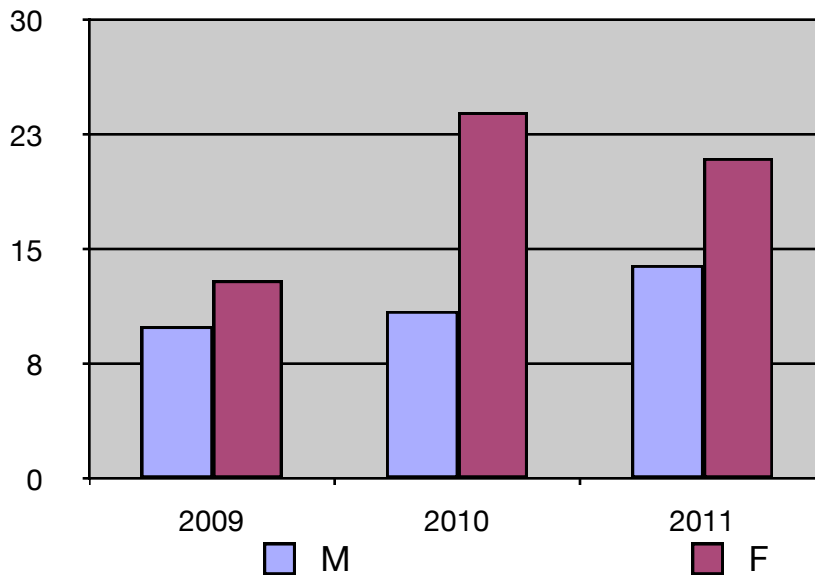
Table 1: Yo-Yo sales complaints to Maryland's Office of the Attorney General, 2009-2011

| Year | Complaints | M | F | Refunds | Advice to dealers | Other Corrective Action | No relief | Contract cancelled | Other |
|-------|------------|-------|-------|---------|-------------------|-------------------------|-----------|--------------------|-------|
| 2011 | 35 | 14 | 21 | 8 | 17 | 3 | 4 | 1 | 2 |
| 2010 | 35 | 11 | 24 | 8 | 15 | 2 | 7 | 0 | 3 |
| 2009 | 23 | 10 | 13 | 3 | 9 | 1 | 5 | 0 | 5 |
| Total | 93 | 35 | 58 | 19 | 41 | 6 | 16 | 1 | 10 |
| Pct. | | 37.6% | 62.4% | 20.4% | 44.1% | 6.5% | 17.2% | 1.1% | 10.8% |

¹³ Office of the Attorney General, Review of complaints conducted by MCRC, analysis conducted, April-June 2012.

In Maryland, women filed 62% of yo-yo sales complaints with the Attorney General’s office compared to 38% by men (see Chart 1).¹⁴ While this doesn’t necessarily mean women are more frequently victims of these scams, national research has found that women are targeted at a higher rate than men, and the number of complaints filed in Maryland supports the national findings.

Chart 1. Male and Female Complaints on Yo-Yo Sales 2009-2011



Source: Review of Complaints from Office of the Attorney General

Consumers throughout the state submitted yo-yo sales complaints but Baltimore City led the state in complaints -- with 17 of the 93 complaints to the Attorney General’s Office (or 18%) coming from Baltimore. This may reflect the fact that more than 50% of Baltimore residents commute out of the city for work (26% to Baltimore County)¹⁵ and some of these workers at times must rely on public transportation for their commute. While this could make some city residents more desperate to purchase a vehicle to avoid long public transit trips out of the city, and more easily susceptible to auto sales fraud, more research is needed to determine why there seems to be a higher incidence of yo-yo sales fraud among car-buyers in the Baltimore area.

Consumers across the state have lost a great deal of money in these transactions – with reported losses ranging from \$200 to nearly \$36,000.¹⁶ Consumers who filed yo-yo sales complaints with

¹⁴ Ibid.

¹⁵ Department of Labor, Licensing, and Regulation, <http://www.dllr.state.md.us/lmi/wiacommuting/> July 2012.

¹⁶ Ibid.

the Attorney General's Office from 2008 through 2012 lost, in total, more than \$240,000 in these deals, with the average victim with a reported loss figure losing \$4,648.¹⁷ For low- and moderate-income families, this represents a huge financial loss – and when that loss also costs families their car, it often costs them their jobs as well.

The yo-yo sales complaints submitted to the Office of the Attorney General cite a wide variety of consumer abuses. Maryland consumers have complained that car dealers have walked away from the financing they had offered and threatened to repossess the car; denied consumers new financing offers after the first offer fell through; threatened consumers at their place of work; refused to return their deposit even after financing fell through; sold the car that the consumer had traded-in or failed to make the payments due on the trade-in. In some cases, dealers refused to make a new financing offer even after the first financing plan “fell through,” and they had sold the consumer's trade-in.

Of the hundreds of stories from Maryland consumers who have been victims of yo-yo sales, some are particularly disturbing.

Ozell Carter, Temple Hills, Maryland

Ozell Carter lost his car two months after bringing it home because the dealer said his financing fell through. He went to purchase a 2004 Mercury Sable for \$10,175. His initial contract stated that his monthly payments would be \$278 per month over 54 months. A week later, he was called back by the car dealer with an offer of a better deal -- \$235 per month for five years. Carter took the offer, sold his old auto, and waited for his payment book. When he didn't receive it, he contacted the dealer – only to be told now that he hadn't gotten the financing he had been promised and would need to make payments of \$375 per month over three years to retain the car. Unable to afford those terms, he returned the car on Christmas Day. Without a car, Carter missed work at his part-time job and ended up having to rent a vehicle for a month.

Source: Ambrose, Eileen, “Auto Financing: What you don't know can hurt you” *Baltimore Sun*, July 31, 2011.

Dominga Rodriquez and Julio Benavides Lumus

On April 25, 2009, Dominga Rodriquez and Julio Benavides Lumus, a couple engaged to be married, came to DARCARS to shop for and purchase a vehicle. They picked out a new Toyota, made a downpayment, and received a copy of the contract signed by the dealer. They drove it off the lot believing that the car was theirs and that all the arrangements, including the financing, had been finalized.

About two weeks later, DARCARS contacted Ms. Rodriquez to tell her that she had not qualified for financing, and that she needed to return to sign a new sales contract with a new financing

¹⁷ Ibid.

arrangement. She returned to the dealership, which demanded an additional \$800 downpayment and asked her to sign a less favorable loan contract. She signed the new deal and gave the dealer the additional downpayment.

It later became clear that DARCARS had not reported the initial sale to the Maryland Motor Vehicle Administration (MVA) — suggesting that it knew the financing would fall through and that it would demand the less favorable terms after Ms. Rodriguez and Mr. Lumus had possession of the car -- a classic yo-yo sales scam.

A few weeks later, the dealership called yet again, asking for another \$500 downpayment and yet another signed contract. Sadly, before Ms. Rodriguez could return the car, she was involved in an accident and died. When her fiancée called to inform the dealership, DARCARS sued him for return of the vehicle. Siding with the auto dealer, the court ordered the car returned.

Source: MCRC Factsheet, Maryland Case Studies on Auto Fraud 2010, www.marylandconsumers.org

Complaints to the Maryland Motor Vehicle Administration

Maryland’s Motor Vehicle Administration received 19 complaints about yo-yo sales between Jan. 1, 2011 and Dec. 31, 2012 (see Table 2, below).

Table 2: Yo-yo Sales Complaints to the Maryland Motor Vehicle Administration, 2011-2012

| Year | Complaints | Dealers Fined | Dealers Warned | Dealers Counseled | Cases referred to AG office |
|----------------|------------|---------------|----------------|-------------------|-----------------------------|
| 2012 | 10 | 2 | 2 | 6 | 0 |
| 2011 | 9 | 4 | 2 | 1 | 2 |
| Totals 2011-12 | 19 | 6 | 4 | 7 | 2 |

Maryland Law

Yo-yo sales persist in Maryland, despite the fact that state regulations prohibit such transactions. Spot-delivery agreements are the conditional agreements consumers often sign that say the car dealer can cancel the sale if it cannot find financing from a lender at acceptable terms. Since 1980 the Maryland MVA has been telling car dealers not to use these agreements. In 2005, the MVA reiterated that policy in its March 10, 2005 Bulletin No. D 03-05-01:

“Temporary registration permits, or certificates and plates, may not be used by dealers in cases where vehicles are released to potential purchasers prior to consummation of a vehicle sales

transaction. These types of transactions are commonly referred to in the industry as “Spot Delivery,” “Fronting” “Macarthur Statement: etc.

Maryland Vehicle Law and Agency Regulations provide for issuance of types of temporary registrations only in the case of bona fide sales. As this Administration has advised in previous Bulletins, a bona fide sale exists only after all financial arrangements and any other prerequisite conditions have been met. Until such time, there has been no sale and temporary registrations may not be issued...

Complaints about spot delivery have been the result of “Supplemental Contracts” that are added to finance contracts stating financing has not been finalized contrary to agency regulations. Dealers are advised not to use these “Supplemental Contracts” which have resulted in financing at higher rates than originally contracted, and failure to return deposits, and failure to return trade-in vehicles.”

This regulation means that, according to the MVA, if a dealer gave a consumer temporary tags and the individual drove off the lot, a bona fide sale has taken place and car dealers can't say differently. The exception to the rule is if a consumer provided inaccurate information on a financing application.

However, this rule has not been strictly enforced and many Maryland dealers continue to use spot-delivery contracts. Indeed, MCRC has obtained copies of conditional sales agreements used by 19 Maryland car dealers, including some of the state's largest-volume dealers (See Appendix A for some examples of these forms.)

Legal Penalties and Consumer Relief in Maryland

Unlike some other states, Maryland has no legislation that expressly forbids yo-yo sales. However, as explained above, these conditional sales clearly violate MVA regulations.

Yo-yo sales are also considered an unfair and deceptive trade practices under Maryland's Consumer Protection Act. As such, they are subject to fines of \$1,000 for the first violation and a fine of no more than \$5,000 for each subsequent violation.

Maryland's Consumer Protection Act describes in detail the factors that the Attorney General's office should consider when determining the penalty for violations of this law. These factors include: the severity of the violation, the good faith of the violator, any history of prior violations, whether the penalty will deter such actions, and whether issuing a cease-and-desist order (another option the OAG can use) including restitution to the consumer involved will be enough to protect Maryland consumers.

Maryland's Office of Attorney General (OAG) and Motor Vehicle Administration (MVA) both assist consumers who complain about yo-yo sales and the two offices share responsibility for enforcing the rules intended to protect Maryland consumers from these scams.

Yet MCRC's research shows that both the Attorney General's Office and the MVA have in recent years issued fines to dealers or won refunds for consumers in less than one-third of the yo-yo sales complaints they receive and that very often the dealers involved face only a warning or advice letter from the state agency.

Office of the Attorney General

MCRC's review of the 93 yo-yo sales complaints submitted to the OAG between 2009 and 2011 found that the office was able to win refunds for consumers in only about 20% of cases. In more than 60% of yo-yo complaints, the Attorney General's Office either provided advice to dealers (44% of cases) or provided consumers with no relief (17%). It took other corrective actions in 6.5% of cases and canceled contracts in just 1.1% of complaints (See Table 2, above).

The advice that the Attorney General's Office provides to dealers is often a letter reminding the dealer that MacArthur statements or supplemental contracts declaring the financing to be contingent are not legal (See Appendix B) and informing consumers of their rights. Sending this letter to both the consumer who has filed the complaint and to the dealer is often enough to resolve the problem. The Attorney General's Office encourages consumers who continue to have problems to contact the office again, at which point the office will try to mediate the issue to win a resolution for the consumer. If the mediation is unsuccessful, the office will then send the complaint to the Motor Vehicle Administration.

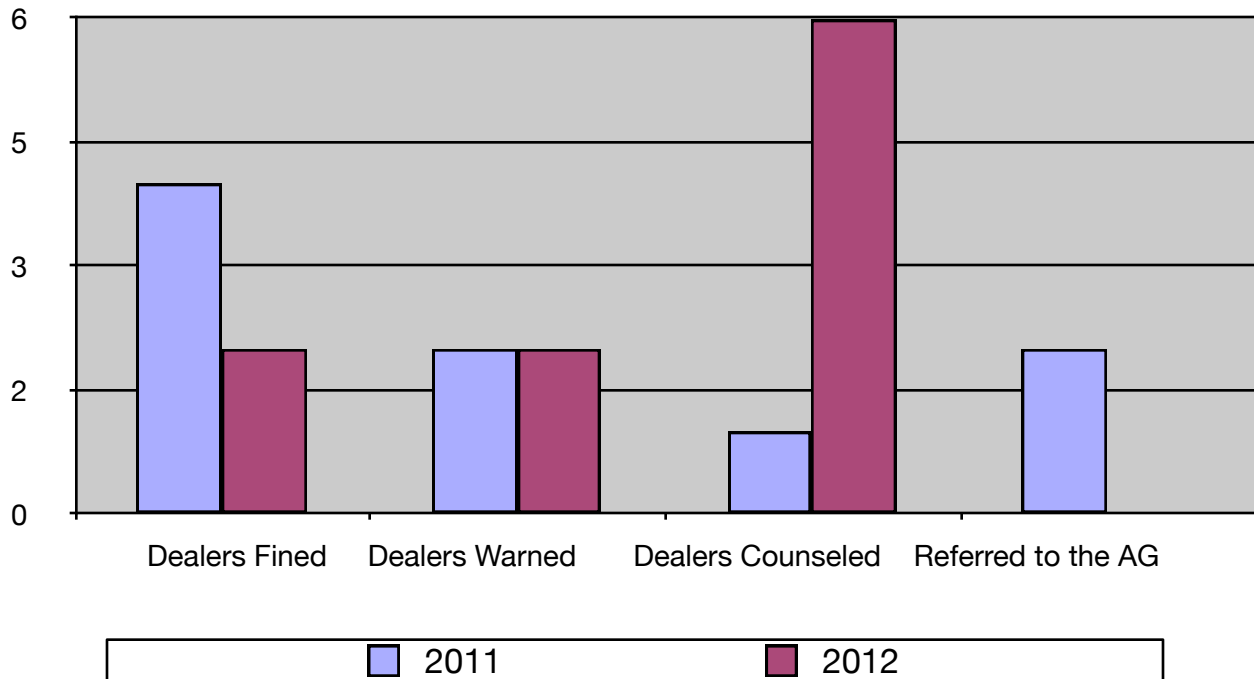
The Attorney General's Office was more successful in obtaining relief for consumers in 2011 and 2010 than in 2009. In cases in which consumers received relief, the majority were able to receive their entire deposit back from the dealer after intervention from the Attorney General's office.¹⁸ The consumer relief received ranged from \$250 to \$3,300.

Motor Vehicle Administration

MCRC was able to review 19 spot-delivery complaints submitted to the MVA between Jan. 1, 2011 and December 31, 2012. In addition to receiving complaints from the Attorney General's Office, the MVA also receives complaints that consumers file directly with that agency. In the 19 cases MCRC reviewed, 31.6% of the car dealers were fined, with fines ranging from \$500 to \$1,000, 21.1% of dealers received a warning letter from MVA, 36.8% were counseled by MVA investigators, and 10.5 % of cases were referred to the Attorney General's Office (see Chart 2, below). Overall, MVA warned or counseled almost twice as many dealers (11) as it fined (6) for yo-yo sales complaints in 2011-2012.

¹⁸ MCRC analysis of OAG complaints, analysis conducted April-June 2012.

Chart 2. MVA Responses to Yo-Yo Sales Complaints, 2011-2012



Yo-yo sales cases can be considered a violation of Maryland’s Consumer Protection Act and that law prescribes the financial penalties the Attorney General’s office may assess against car dealers. There is no legislation to guide the MVA’s determination of penalties. In conversations with MCRC, MVA officials explained that the agency determines the appropriate sanction on a case-by-case basis, using factors including the egregiousness of the violation, the prior history of the car dealer, and the level of damage to the consumer to determine the severity of the penalties it imposes for yo-yo sales violations.¹⁹ MVA fines for yo-yo sales start at \$250 and do not exceed \$1,000 per violation.

Tougher Sanctions, Better Coordination

Maryland needs stronger regulations and clearer oversight for yo-yo sales. The Attorney General’s Office and the MVA need to share information and coordinate efforts more effectively to better respond to consumer complaints on auto fraud. Recently, the Attorney General’s office has been sending more complaints to the MVA after mediation has failed to achieve relief for a consumer.

Car dealers that repeatedly violate Maryland’s guidance on yo-yo sales should face stiff penalties and meaningful consequences.

¹⁹ Phone conversation with MVA official, Jan. 18, 2013.

Federal Laws

Federal laws offer some protections against yo-yo sales but these protections are limited and large loopholes remain that unscrupulous dealers can exploit. Some of these federal laws may be effective in bringing relief to an individual consumer if an attorney litigates a yo-yo case. But because few of these cases are ever brought to court and many dealers now make car buyers sign mandatory arbitration agreements that prevent consumers from suing over such abuses, these federal rules are far less effective in preventing yo-yo sales from flourishing.

Truth in Lending Act (TILA)

TILA requires that consumers receive accurate disclosures about the true costs of credit terms so that consumers can compare terms among lenders and obtain the best deal. TILA is intended to protect consumers from unfair credit practices.

Equal Credit Opportunity Act (ECOA)

The ECOA prohibits discrimination based upon race, religion, or nationality and includes requirements for credit applications and denials. If, during a yo-yo scam, a consumer is told that his or her credit has been approved, but later told that it has been denied, the initial false statement could violate the ECOA.

Federal Motor Vehicle Cost Savings and Information Act

The Federal Motor Vehicle Cost Savings and Information Act and its regulations require certain disclosures to be made in writing and on the certificate of title. In many yo-yo cases, the purchaser never sees the title at the time the rest of the transaction is completed and all other documents are executed. Such deals often violate the Federal Motor Vehicle Cost Savings and Information Act.²⁰

Other States' Laws

While Maryland regulates yo-yo sales chiefly through MVA regulatory guidance to car dealers, many other states have laws that curtail or directly prohibit this practice.

Arizona Revised Statute 44-1371

Requires a car dealer to retain any trade-in until financing is finally approved or the traded car is returned to the customer. Any remedy for violation of this may not be waived, modified, or limited by the agreement or contract.

²⁰ Taub, Adam G., "Yo-Yo Sales: The Predatory Practice of Unscrupulous Car Dealers," <http://www.michbar.org/consumer/pdfs/SpotDeliveryArticle.pdf>

Utah Statute 41-3-401

Requires disclosure and provides language for disclosure for situations in which finding financing is the purchaser's responsibility and ones in which it is the car dealer's responsibility. When the financing is the car dealer's responsibility, the dealer has to notify the car-buyer within seven days if it cannot find financing. The car buyer then has 14 days to rescind the contract and must pay for the mileage and any normal wear and tear he or she has put on the car. The dealer must return the downpayment as well as any trade-in.

Virginia Code 46-2-1530

Requires the dealer to return the downpayment as well as any trade-in should the financing fall through. If the dealer fails to return the trade-in or down payment, the dealer may be liable under the Virginia Consumer Protection Act.

Washington Code 46.70.180 (4)

Prohibits the practice of yo-yo sales within the state.

Michigan Code 566.301

The Michigan Motor Vehicle Installment Sales Contract Act ("MVISCA") requires car dealers to properly complete all the necessary terms of the installment contract. Yo-yo sales violate this law because in these deals the most basic and necessary term of the contract -- whether the contract is binding or conditional -- is intentionally misrepresented: The MVISCA provides for statutory damages in the amount of the finance charge.

Administrative Actions

Arizona, Maine, and Michigan have issued administrative interpretations of state regulations to dealers instructing them not to use conditional-sales agreements -- much as Maryland has done. More research is needed to determine whether administrative guidance or legislation is a more effective deterrent to yo-yo sales.

Policy Recommendations

To curb yo-yo sales in Maryland, MCRC recommends these reforms:

- **Right to rescission** -- provide a cooling-off period of equal time for both car dealers and consumers before a car deal is final.²¹ Currently, when a dealer conducts a yo-yo sales scam,

²¹ Van Alst, John W., "Fueling Fair Practices: A road map to improved public policy for used car sales and financing," National Consumer Law Center, 2009, p.14.

the consumer cannot alter the contract once it is signed but the dealer can unilaterally rescind the contract or demand a change in its terms. Dealers and consumers should be allotted the same time period to rescind a contract, subject to the same set of fees or costs. Maryland's Door-to-Door Sales Act (Title 14, Subtitle 3) allows consumers to rescind a contract in many situations with no penalty or obligations within three days. Maryland policymakers should consider instituting a three-day right of rescission for auto sales as well.

- No sale of trade-in** -- prohibit dealers from selling any trade-in until all financing is completed. If the deal falls through, any trade-in should be returned in the same condition it was when turned over to the dealer.

- Return of downpayment** – require that the full downpayment must be returned to the consumer should a yo-yo sales transaction take place.

Dealer Kickbacks

Many predatory auto dealers work with lenders to mark-up the interest rates on car loans – adding a hidden cost to the deal that can dramatically increase the price of a car loan. These mark-ups are also called “dealer reserves,” and they are essentially a kickback from the financing company that purchases the auto loan from the dealer to the dealer.

When a car dealer agrees to arrange a loan for a car buyer, it acts as the initial lender but will then usually reach out to two or three lenders to ask them to purchase the loan. The lenders tell the car dealer the interest rate at which they are willing to buy the loan -- this is known as the “buy rate.” The lenders will also often allow the dealer to add interest to the loan deal the consumer signs to the buy rate. The extra profit is either split between the dealer and the lender or pocketed entirely by the dealer, and is often called the “dealer reserve.”

One of the most pernicious aspects about the dealer reserve is that consumers rarely see it. Consumers are told that the marked-up interest rate is what they qualify for but are not told of the original buy rate. Just as yield-spread premiums in the mortgage market provided incentives to steer unsuspecting consumers into higher-cost home loans, these dealer kickbacks encourage car dealers to place buyers into high-cost, unsustainable car loans.

These loan mark-ups also open the door to racial and economic discrimination in auto lending. A number of lawsuits in auto fraud cases have shown that dealers impose higher mark-ups on minority borrowers than on non-minorities with identical credit scores.²² And in its 2011 study of auto loan mark-ups, the Center for Responsible Lending (CRL) found that buyers with weaker

²² Ibid., p. 14.

credit scores may be targeted for mark-ups because they have fewer alternative financing options.²³

The problem is very costly for car buyers and for Maryland as a whole. Maryland ranks 17th in the country for the amount of dealer kickbacks – they cost Maryland car buyers \$520 million for cars purchased in 2009 alone. The CRL estimates that consumers across the country will pay \$25.8 billion in interest rate mark-ups for cars purchased in 2009 alone, an average of \$714 per car. That not only takes money out of the pockets of individual consumers but represents money that will not be spent in other parts of our economy.

Table 3: Regional Rate Mark-up Volume By State, 2009

| Rank | State | Dealership Sales (in millions \$) | US Market Share | Rate Mark-up Volume (in millions) |
|------|---------------|-----------------------------------|-----------------|-----------------------------------|
| 17 | Maryland | \$9,817 | 2.02% | \$520 |
| 47 | Delaware | \$1,358 | 0.28% | \$72 |
| 12 | Virginia | \$13,253 | 2.72% | \$702 |
| 39 | West Virginia | \$2,618 | 0.54% | \$139 |
| | | | | |

Source: Figures from NADA 2010 report, table drawn from Center for Responsible Lending’s Report

Despite these high costs, a survey Gonzales Research and Marketing conducted for MCRC in September 2012 confirms that these mark-ups are largely unknown to consumers. The survey found that 78% of the 813 Maryland consumers polled were unaware of the practice of auto-dealer mark-ups.²⁴ Women in Maryland were much less likely to be aware (13%) of this practice than men (31.6%), a finding that suggests that women may be more easily steered into these costly loans than men.

Federal Law and Policy

Although there is no federal legislation prohibiting this practice, the Consumer Financial Protection Bureau (CFPB) recently issued guidance to car dealers about indirect lending and

²³ Davis, Delvin and Joshua M. Frank, “Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses,” Center for Responsible Lending, April 2011.

²⁴ Gonzales Research and Marketing Strategies, Inc. Survey for Maryland Consumer Rights Coalition, Sept. 2012.

compliance with the Equal Credit Opportunity Act (ECOA). The bulletin notes that there is “a significant risk that (these policies) will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases.”²⁵

The bulletin explains that firms that finance car loans (even indirectly) may be liable for damages if pricing differences on auto loans are found to be discriminatory. The CFPB recommends several policies to address this problem including the imposition of a flat loan fee for each transaction.²⁶

Maryland Law

Maryland law does not prohibit nor restrict the practice of auto dealer mark-ups.

Other States' Laws

At least three states have passed legislation to address the disparate impact of dealer-mark-ups.²⁷ Michigan and Ohio have instituted a 2% cap on dealer mark-ups. Research has shown that in these two states dealers' profits from loan arrangements and the racial disparity in auto loan interest rates are half those of the states where auto loan mark-up remain unregulated.²⁸

California has adopted a different approach -- passing a law that requires auto dealers to keep sales records on file for seven years or the life of a loan, whichever is longer, and to retain information on how a person's creditworthiness was determined. Fines for noncompliance are \$5,000 a violation.²⁹

Policy Recommendations:

- Prohibit dealer mark-ups in auto loans.
- Barring prohibition, cap dealer-mark-ups at a certain percentage or flat dollar amount per loan and require the dealer to charge the same mark-up for all car purchases in which the dealer arranges financing. This reform would remove the arbitrary and possibly discriminatory element to the mark-ups.

²⁵ CFPB Bulletin 2013-02 “Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act,” March 21, 2013, p. 2.

²⁶ Ibid., p. 3.

²⁷ Hernandez, Jason, “Loan Discrimination at the Auto Dealership: Current Cases, Strategies, and the Case for Intervention by Attorneys General,” p. 15. <http://www.law.columbia.edu/>

²⁸ Ibid.

²⁹ Ibid.

Public Opinion

Marylanders strongly support a law eliminating the practice of dealer mark-ups. According to the Gonzales survey results, 72% of those polled would support a law that eliminates this practice, while only 21% would oppose it.

Sixty six percent of Maryland consumers also said that knowing a candidate supported legislation to prohibit mark-ups would make them more likely to support that candidate.

Rebuilt Wrecks

Another common problem for consumers purchasing a used car is that they often end up buying a “rebuilt wreck” when they think they’re getting a quality used vehicle.

Repairing and selling salvage vehicles is a big business. According to the National Association of Consumer Advocates, nearly one million salvaged vehicles are returned to the road each year.³⁰ Many of these salvage vehicles have been wrecked or flooded. Car dealers often sell these cars, knowing they have defects, without disclosing the car’s true history to consumers.

The process begins with a car that is so damaged that the insurance company decides it is not worth rebuilding. The vehicle is then sold at auction, and the buyer often rebuilds and re-sells it – usually focusing on making cosmetic improvements that make the car look roadworthy rather than safety.³¹ While many salvage cars have been damaged in crashes, many others have been waterlogged in floods and storms. These water-damaged cars are often sold as ordinary cars rather than salvage vehicles – in part because flood damage is harder to detect than damage caused by an accident. Water can ruin a car’s electrical and mechanical systems but, because it can take years for the corrosion it causes to reach the car’s vital electronics, the damage can pass unnoticed for some time.³²

Once a car is totaled, it is supposed to be clearly marked with a new title called a “salvage title” that labels the car as “salvage” or, if water-damaged, “flood.”³³ Under federal law, it is legal to sell salvaged or water-damaged cars as long as they are clearly labeled. State laws differ on how they define “salvage vehicles” and on how buyers need to be informed about the car’s history prior to a sale. However, unscrupulous dealers often do not let consumers know that they’re

³⁰ “The Problem of Rebuilt Wrecks,” *Consumer Reports*, April 2012. <http://www.consumerreports.org/cro/2012/12/the-problem-of-rebuilt-wrecks/index.htm>

³¹ Jensen, Christopher, “Citing 15-Year Delay, Suit Seeks Action on Rebuilt Wrecks” *New York Times*, Feb. 10, 2008.

³² “Sandy Aftermath: How to avoid buying a flooded used car,” *Consumer Reports*, Nov. 2, 2012 <http://autos.yahoo.com/news/sandy-aftermath-avoid-buying-flooded-used-car-13000936.html>

³³ Ibid.

buying salvage vehicles and, as *Consumer Reports* has reported, these cars regularly turn up with clean titles.³³

Savvy consumers may rely on a car's vehicle-history report to inform them about its past. But these reports often omit vital information. A national database, the National Motor Title Information Systems (NMVITS) has been established to allow consumers to find more complete information about a car's history and curtail "title-washing" – a practice in which cars that have been totaled get clean titles in states with less regulation. But many consumer are unaware this database exists and few consult it.

In Maryland, the number of salvage vehicles available for sale grew by 67% between 2003 and 2007.³⁴ The growth in the industry, combined with the need for consumers to purchase more affordable cars, has cost some Marylanders far more than they bargained for.

Mary Kay Frain

Mary Kay Frain needs a car to do her work. As she explains, "I live in my car. ... I have to go from account to account so I'm on the road 90% of the time." Frain had an old 1999 Mercury with 150,000 miles on it and decided to purchase another car. After driving the used car she had purchased for two weeks, Frain found out that the car had been in an accident – that it was a "rebuilt wreck." She discovered this after trying to get an extended warranty at another car dealer who could tell her car's hood had been replaced simply by looking at it. A Carfax report showed one accident but Frain later discovered the car had been in three accidents and had sustained almost \$12,000 in total damages.

Frain took the car to an auto mechanic who warned her that he wouldn't drive his family around the block in the car it was so unsafe. She never drove the car again. Frain hired an attorney and, after three years of wrangling, was finally able to recoup the money she spent on the car as well as additional funds.

Maryland Law

In Maryland, salvage cars must be clearly identified to potential buyers and inspected to prove they are safe to drive. The vehicle then receives a salvage certificate identifying it as a salvage car. The categories that require cars to be treated as salvage vehicles under Maryland law include "damage to the vehicle is greater than the fair market value" as well as abandoned vehicles.³⁵

Maryland does have a "lemon law" that protects buyers who have purchased faulty vehicles by mandating that they receive a refund or replacement vehicle if repair attempts don't correct the

³⁴ "Rebuilt Wrecks for Sale! Carfax Study Reveals Emerging Threat to Used Car Buyers," Feb. 26, 2008 <http://news.carfax.com/index.php?s=25079&item=58293>

³⁵ Maryland Motor Vehicle Administration, <http://www.mva.maryland.gov/Vehicle-Services/REG/buyvehicle.htm>

car's problem and the problem impairs the use and market value of the vehicle.³⁶ The law applies to new and used cars that are less than 24 months old and have been driven less than 18,000 miles. Unfortunately, many used cars are excluded as a result of the age and mileage restrictions in the law.

Like Massachusetts, West Virginia, and Washington D.C., Maryland also prohibits dealers from disclaiming implied warranties in certain categories of used car sales.³⁷ This means that a dealer is responsible for repairs even if the vehicle is sold "As Is."

Other States' Laws

State salvage title laws vary in terms of how salvaged is defined, what information dealers are required to share with consumers, and what remedies and penalties are available if the law is violated.

California's salvage title law brands cars with labels including: "original taxi" or "prior taxi;" "original police" or "prior police" "non-USA" "warranty return," "lemon law buyback," and "remanufactured." This detailed labeling provides consumers with important information to help decide what vehicle to purchase.

Six states -- Hawaii, Massachusetts, Minnesota, New Jersey, New York, and Rhode Island -- have lemon law protections specifically for used car buyers.³⁸ These laws generally provide a warranty for a used car based upon its age or mileage. If the car has problems during the warranty period, the dealer has the opportunity to fix the problem, replace the car, or refund the consumer's money.

Other states including Arizona, Connecticut, Illinois, Maine, Nevada, New Mexico, and Pennsylvania do not require a dealer to replace or refund a consumer's money but do establish minimum warranties for used cars. However, most of these warranties are limited to no more than 90 days while other states limit used car warranties to 15 days or 500 miles.

Policy Recommendations

- Expand Maryland's categories of salvage vehicles and require dealers to provide more detailed information about those cars.

³⁶ <http://www.oag.state.md.us/consumer/lemon.htm>

³⁷ Van Alst, John W., "Fueling Fair Practices: A road map to improved public policy for used car sales and financing," National Consumer Law Center, 2009, pp. 21-22.

³⁸ Van Alst, John W "Fueling Fair Practices: A road map to improved public policy for used car sales and financing," National Consumer Law Center, 2009 p. 20.

- Extend the scope of Maryland’s lemon law by expanding the age and mileage ceilings for cars covered so that more used cars would fall under the law.
- Require warranties of six months or 6,000 miles for used cars.
- Ensure that any lemon law does not preclude consumers from seeking other forms of redress.

Loan Packing

Many car dealers also take extra money from consumers through “loan packing” – adding extra products and services to the cost of the car contract to inflate the price and the amount financed. Often these products are overpriced and duplicative of services the buyer may already receive through the manufacturer, or through his or her car insurance, or simply add little or nothing to the value of the car.

Worse still, these products are often bundled -- presented to consumers as a group package that makes it unclear that they can opt-out of buying any or all of the add-ons. Purchasing multiple add-ons may add thousands of dollars to the cost of the vehicle and to the amount financed.

Some of the most common add-ons include:

Guaranteed Auto Protection (GAP) Insurance:

If a consumer owes more than a vehicle’s fair-market value and has a total loss on the vehicle through an accident or theft, GAP insurance covers the difference between the insurance compensation and the outstanding loan balance. GAP insurance is paid for through a single up-front premium but the benefits of the insurance diminish over the life of the loan (as the consumer pays off the loan balance, the gap” disappears). At that point, the consumer is continuing to pay principal and interest on a product that is no longer useful.

Vehicle Service Contracts (VSCs) and Extended Warranties

VSCs are supposed to protect against mechanical breakdowns not covered by the manufacturer’s original warranty. Some VSCs duplicate the original warranty and others exclude services to large parts of the car.³⁹ The Center for Responsible Lending’s research found that in 2007, VSCs represented 14% of dealership profits and cost \$795 per vehicle on average.⁴⁰

³⁹ Delvin Davis, Frank, Joshua M., “Car Trouble: Predatory Auto Loans Burden North Carolina Consumers,” Center for Responsible Lending, April 2009, p. 6.

⁴⁰Ibid., p. 6.

Credit, Life, and Disability Insurance

This coverage promises to pay the balance of the loan or make payments on the car loan upon the owner's death or disability. This may duplicate coverage a consumer already has through life or health insurance plans and costs close to \$400 on a new car.⁴¹

Glass Etching & Rust-Proofing

These services cost little to provide, and the large fees charged for them are almost pure profit for the car dealership.

Maryland Law

Maryland now has no laws that specifically address these products.

Policy Recommendations

- Provide clear and transparent means of presenting the cost of the vehicle, all fees, and add-ons.
- Clearly separate the cost of add-ons from the cost of financing the car in all paperwork.
- Require dealers to pre-price all add-ons and post those prices clearly at the dealership.

Conclusion

In Maryland, cars are a vital component of the lives of working families. Cars provide transportation and economic mobility -- helping working families gain access to better jobs, services, and goods than may be available in their local communities. Cars also save families time by reducing commutes so that the family has more time to spend together and family members have more time to train for new opportunities.

Cars are also one of the most expensive items a family will ever purchase (outside of a home). While many honest car dealers deal fairly with consumers, other car dealers deploy deceptive tricks and traps to drive up the price of the car for consumers.

These unscrupulous car dealers not only harm individual consumers, they also distort the marketplace. By using yo-yo sales, dealer kickbacks, salvaged cars, and pointless add-ons to disguise the high prices they are charging consumers, these dealers make it more difficult for honest dealers to compete based on price. These distortions are bad for the marketplace, bad for honest car dealers, and bad for consumers.

⁴¹Ibid, p. 7.

Stronger federal and state legislation, monitoring, and enforcement is needed to help make sure that car dealers are following the rules of the road rather than steering consumers into bad deals.

Appendix A: Conditional-Sales Agreements Used by Maryland Car Dealers

SPECIAL DELIVERY AGREEMENT

NOTE: DEALER'S NAME REDACTED

PURCHASER(S): _____

DATE: _____ YEAR: _____ MAKE: TOYOTA

MODEL: _____ VIN #: _____

The Special Delivery Agreement is incorporated into the Retail Installment Sale Contract or Lease (the Contract) dated this date between _____ as Seller, and the undersigned Purchaser(s) as Buyer, with respect to the vehicle listed below under the following conditions:


1. Buyer acknowledges and represents that he/she possesses a valid driver's license, current motor vehicle liability insurance and assumes risk of loss of the vehicle while in his/her possession. Buyer understands that all financing/lease decisions are made by a financial source not affiliated with _____ and said source is the credit reporting agency in accordance with the Equal Credit Opportunity and the Fair Credit Reporting Act. Seller will attempt to assign the contract on terms satisfactory to the Seller. If the Seller is successful in so doing, the contract (and all other documents executed by Buyer) shall be deemed delivered and fully binding.
2. If Seller does not receive approval from a financial source for assignment of the Contract on terms acceptable to Seller, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle and upon Buyer's failure to return the vehicle, Seller shall be entitled to all statutory and common law remedies including, but not limited to, the right of self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.
3. Upon return of the vehicle, both Buyer and Seller shall be relieved of any further obligation or liability to the other, except that Seller shall return any trade vehicle and shall refund any cash deposit less the expense of any repairs or reconditioning seller incurred on the trade vehicle.
4. Buyer agrees that if a financing source other than the one originally contemplated agrees to accept assignment of the Contract on the same terms and conditions as the original lending source, Buyer will execute a replacement Contract and related documents on the same terms and conditions as the original Contract.

Purchaser

Purchaser

AGREEMENT TO RETURN VEHICLE

NOTE: DEALER'S NAME REDACTED

 _____, hereinafter referred to as "Seller", and _____, hereinafter referred to as "Buyer", does/do hereby enter into this Agreement for return of the vehicle sold to Buyers as follows.

Seller has sold to Buyer TOYOTA TRUCK HIGHLANDER vehicle subject to the finance company issuing final approval for the financing contract and funding said contract. Buyer has/have furnished to Seller and the lending institution financial information upon which his/her/their credit has been tentatively accepted and approved. Buyer confirms that all the information pertaining to his/her/their credit and finances which he/she/they has/have furnished Seller and the lending institution is correct and accurate and acknowledges that the vehicle has been delivered to his/her/them predicated upon the financial information provided and the final approval of the lending institution which may not occur until weeks after delivery of the vehicle.

In the event that the lending institution subsequently disapproves the loan based on misinformation provided by Buyer, or for any reason refuses to fund the contract, Buyer does/do hereby agrees as follows:

- a. Upon oral or written notification, Buyer will immediately return the vehicle to Seller.
- b. Pay unto the Seller the sum of Forty Dollars (\$40.00) per day for the use of the vehicle from the date of delivery.
- c. To reimburse Seller for all costs incurred in the sale including all costs for titling and reconditioning for resale.

Buyer agrees that he/she/they has/have read and fully understand the terms of this Agreement and bind himself/herself/themselves to the terms herein and further acknowledge having received a true copy of this Agreement.

Notwithstanding any language in any other document relating to the sale of the vehicle, including, but not limited to, the Buyer's order, this Agreement shall and does supersede and replace any agreement, promise or understanding, whether oral or written, which is contrary to the terms herein.

SELLER:

By: _____ BUYER

BUYER

Appendix B: Letter the Attorney General Sends to Consumers Who File Yo-Yo Complaints

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

WILLIAM D. GRUHN
Chief
Consumer Protection Division

WRITER'S DIRECT DIAL NO.

(410) 576-6582
Fax: (410) 576-7040

DATE

FIELD(addressee_first_name) FIELD(addressee_last_name)
FIELD(addressee_fulladdress)
IFNOTBLANK(addressee_fax)Fax: FIELD(addressee_fax)ENDIF

Case No: FIELD(case_number)

Dear FIELD(addressee_prefix) FIELD(addressee_last_name):

Thank you for contacting our office regarding the problem you are experiencing with your recent motor vehicle purchase. Attached is a fact sheet that you can use if your dealer is attempting to change the terms of your agreement. This fact sheet will help you evaluate your situation and determine your best course of action. You may have a limited time period in which to resolve this matter. We are, therefore, providing you with these materials for your immediate use in talking with the dealer.

We will also be letting your dealer know of your concerns and the information we've given you. If you are unable to resolve the dispute with your dealer or if you have any questions about the attached materials, please feel free to call us at 410-576-6582 and provide the case number listed above.

We hope this information is helpful to you.

Sincerely,

Consumer Protection Division

200 Saint Paul Place ❖ Baltimore, Maryland 21202-2021
Main Office (410) 576-6300 ❖ Main Office Toll Free (888) 743-0023
Consumer Complaints and Inquiries (410) 528-8662 ❖ Health Advocacy Unit/Billing Complaints (410) 528-1840
Health Advocacy Unit Toll Free (877) 261-8807 ❖ Homebuilders Division Toll Free (877) 259-4525 ❖ Telephone for Deaf (410) 576-6372

Motor Vehicle Sales Agreements

What to do when your Dealer Wants to Change the Terms of Your Agreement

Occasionally, the Consumer Protection Division hears from consumers like you who have driven home their newly-purchased cars only to be told later by the dealer that, in fact, the financing for the vehicle has “fallen through” and that they must enter into a new agreement with different finance terms. The following questions and answers will help you evaluate your situation and determine your best course of action.

- I. **Is there a binding agreement for you to purchase the vehicle at agreed upon terms?**
Review your paperwork. Do you have a written agreement regarding the finance terms that is signed by both you and the dealership?

- A. **No, I signed the agreement but the dealer did not.**

If the agreement is not signed by a representative of the dealer, it is not a binding agreement that you can force the dealer to honor.

Without a signed agreement containing the finance terms, you can:

1. Cancel the sale and return the new vehicle to the dealer. If you cancel the sale, your down payment and/or trade-in must be returned to you immediately.

OR

2. Renegotiate the terms of the agreement with the dealer. During the negotiation, make sure that all of the finance terms are acceptable to you. You may also wish to shop for better financing terms from your credit union, bank or other lender. If you are able to agree on the terms, make sure they are all included in the new written agreement and that the agreement is signed by both you and the dealer’s representative.

- B. **Yes, I have a written agreement with the finance terms that is signed by both the dealer and me.**

Under most circumstances, if you have a written agreement signed by both you and the dealership, that agreement is binding on the dealer and can be enforced in court. Some dealers have occasionally improperly refused to honor their agreements. See Section II below. There are also some limited circumstances when the dealer may be justified in refusing to honor a signed agreement. See Section III below.

II. **If you have a signed agreement on the finance terms, what should you do?**

Ask the Dealer for its legal basis for refusing to honor the terms of the agreement. It is important to understand the dealer's basis for wanting to alter the terms of the agreement. Discussed below are some reasons that dealers have provided to consumers for not honoring their agreements or refusing to allow consumers to walk away from the deal. None of these reasons are valid under the law:

A. **The dealer says that it doesn't have to honor the agreement's finance terms because I signed a document agreeing to accept revised financing terms.**

The dealer may point to a supplemental agreement (possibly referred to as a "MacArthur Statement") that says that the dealer or lender can increase the interest rate, change other finance terms, keep the consumer's down payment or trade-in vehicle, or charge the consumer for his/her use of the vehicle if the original financing terms are not approved by the lender. Such supplemental agreements are not permitted under the Motor Vehicle Administration's regulations. In such situations, you can insist that the dealer honor the original finance terms. If the dealer refuses to do so, contact our office.

B. **The dealer says that the vehicle has already been registered to me so I can't cancel the sale and must agree to new financing terms.**

The dealer may allow a prospective buyer to drive a vehicle bearing "dealer tags" for up to 10 days, but the dealer cannot register the vehicle to the consumer with the Motor Vehicle Administration, put temporary tags on the car or give the consumer a temporary registration certificate, unless all the terms of the vehicle sales agreement are final. If the dealer submitted the registration of the vehicle before all the terms of your agreement were finalized, the dealer violated the Motor Vehicle Administration's regulations. If the dealer continues to insist that the car is now registered in your name, you should report the dealer's actions to the Motor Vehicle Administration by calling 410-768-7536.

C. **The dealer says that I can cancel the agreement but my trade-in has already been sold, so I'll only get the "value" of my trade that was listed in the agreement.**

Motor vehicle dealers are prohibited by the Motor Vehicle Administration from selling or otherwise disposing of consumers' trade-in vehicles until all the terms of the agreement are finalized. Therefore, the dealer cannot force you to take the value of the trade-in listed on the agreement instead of the actual vehicle. Often, when consumers confront the dealer on this, the dealer is able to figure out how to return the consumer's trade-in after all. If the dealer still refuses to return your trade-in, contact our office.

III. **What if the dealer claims that your credit application was inaccurate?**

1. If you provided inaccurate information in your credit application regarding income, job status, other debts, etc., and as a result of those inaccuracies the lender refused to finance the agreement at the agreed upon terms, the dealer would not have to honor the finance terms in the agreement.
2. If the sale is canceled due to inaccurate information in your credit application, the dealership may claim that it has the right to retain some or all of the down payment you paid to cover its loss on the sale. Such a claim may or may not be accurate depending on the facts of the situation. In negotiating for the return of your down payment, ask the dealer to provide you with: (1) its legal basis for keeping your down payment, and (2) an itemization of the damages the dealer believes it sustained.
3. If you provided accurate information on your credit application that was changed by the dealership's salesperson, credit manager or other dealership employee, or if a dealership employee told you to report inaccurate information, report the situation to the manager of the dealership and attempt to negotiate with the manager for the finance terms that were promised or for the cancellation of the agreement without the loss of your down payment. If you are unable to resolve this issue with the manager, contact our office.

IV. **What should you do if you can't resolve your dispute with the dealer?**

- A. If you have not already done so, talk with your bank or credit union to see if it can offer you more attractive financing.
- B. If you can't find better financing think long and hard before agreeing to alternative finance terms offered by the dealer that you may have trouble paying. While it may be inconvenient to return the car now, having the car repossessed later will be a much bigger problem that could greatly damage your credit standing.
- C. Contact our office by calling the telephone number listed on your cover letter and provide our staff with the case number that is also listed. After you update our staff on your situation and provide us with relevant documents, we will contact the dealer and try to mediate an agreement.

Appendix C: Tips to Get a Good deal on Your Next Car

1. Make a plan

Decide what kind of car you want before you leave the house. Take into account the cost of gas, insurance, and future repairs.

2. Shop for a loan first

Find out from your bank or credit union how much you can borrow for a car loan and at what rates before you walk into a showroom.

3. Don't tell the dealer what you're willing to spend

Do not let the dealer or salesperson know what you've budgeted to spend on a car each month. If you disclose that information, you'll lose control of price negotiations before they begin.

4. Never buy a car on the spot

Never buy a car the first time you see it.

5. Get the car checked out

If you're buying a used car, find a knowledgeable, trustworthy mechanic or body shop to inspect the car, evaluate its condition, and let you know if it has been in an accident or been rebuilt.

6. Carefully evaluate the price of any add-ons

Insist that the dealer break down the price of each additional service or warranty added to the price of the car. Think carefully about whether those services are worth the cost before you agree to pay for them.

7. Do not sign a conditional sales agreement

Never sign an agreement that says that the dealer can cancel your contract if the financing is not approved. Don't take a car home until you have a final sales agreement.

8. Avoid mandatory arbitration clauses

Remember that if you sign an arbitration agreement you may be forever giving up your right to go to court to make the dealer address any problem you may have with the car or the deal. Try to find a dealer that will sell you a car without asking you to give up your legal rights.

Bibliography

Bensinger, Ken “Affordable cars are key to getting off public aid, study finds,” *Los Angeles Times*, March 14, 2012.

“CarFax Rebuilt Wrecks for Sale! Carfax Study Reveals Emerging Threat to Used Car Buyers,” Feb. 26, 2008, <http://news.carfax.com/index.php?s=25079&item=58293>

CFPB Bulletin 2013-02 “Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act,” March 21, 2013 www.consumerfinance.gov

Consumer Reports, “The Problem of Rebuilt Wrecks” April 2012 <http://www.consumerreports.org/cro/2012/12/the-problem-of-rebuilt-wrecks/index.htm>

Consumer Reports, “Sandy Aftermath: How to avoid buying a flooded used car” *Consumer Reports*, Nov. 2, 2012 <http://autos.yahoo.com/news/sandy-aftermath-avoid-buying-flooded-used-car-130000936.html>

Davis, Delvin and Frank, Joshua M., “Car Trouble: Predatory Auto Loans Burden North Carolina Consumers,” Center for Responsible Lending, April 2009.

Davis, Delvin and Frank, Joshua M. “Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses,” Center for Responsible Lending, April 2011.

Gonzales Research and Marketing Strategies, Inc. Survey for Maryland Consumer Rights Coalition, September 2012

Hernandez, Jason, “Loan Discrimination at the Auto Dealership: Current Cases, Strategies, and the Case for Intervention by Attorneys General” <http://www.law.columbia.edu/>

Jensen, Christopher, “Citing 15-Year Delay, Suit Seeks Action on Rebuilt Wrecks,” *New York Times*, Feb. 10, 2008.

Maryland Motor Vehicle Administration <http://www.mva.maryland.gov/Vehicle-Services/REG/buyvehicle.htm>

Office of the Attorney General, “Your Rights Under Maryland’s Lemon Law” <http://www.oag.state.md.us/consumer/lemon.htm>

Ross, Martha and Nicole Prchal Svajlenka, “Connecting to Opportunity: Access to Jobs via Transit in the Washington, D.C. Region” Brookings Institute, Nov. 8, 2012.

Taub, Adam G., “Yo-Yo Sales: The Predatory Practice of Unscrupulous Car Dealers,”
<http://www.michbar.org/consumer/pdfs/SpotDeliveryArticle.pdf>

Van Alst, John W., “Fueling Fair Practices: A road map to improved public policy for used car sales and financing” National Consumer Law Center, 2009.