

FTC Reminds Finance Companies Not to Bury Their Heads in the “Assignment Sand”

On Monday, September 30, the Federal Trade Commission (FTC) published a business blog post titled, “[The FTC’s Holder Rule: still holding strong.](#)” The Holder Rule is indeed nothing new, and as the blog post points out, it has been existing in its entirety since 1976. The FTC did not issue any new guidance on the Holder Rule; instead, it offered a reminder to businesses of the Holder Rule, essentially flagging the need for continued vigilance of dealer conduct by finance companies.

The Holder Rule is an FTC regulation that serves to protect a consumer when a seller sells, assigns, or otherwise transfers a consumer’s credit contract to a third party such as a finance company – who then becomes a “holder.” Instead of splitting credit off from the goods or services and keeping each side of the transaction separate, the Holder Rule ties them together. The consumer can use the claims or defenses the consumer had against the seller and make those same claims or defenses against the holder. Whenever a holder takes or receives a consumer credit contract, the contract must include a Holder Rule Notice informing consumers of their rights.

In the post, the FTC stated that the “Holder Rule’s important protections remain crucial today,” and told sellers and finance companies to keep in mind two things: (1) “Don’t bury your head in the assignment sand;” and (2) “Don’t fail to notify with the Notice – the FTC will...notice.”

The FTC has made it clear that the Holder Rule is on their radar. Assignees (and certain lenders who provide purchase money loans) should continue to be mindful of the Holder Rule and continue to include the Holder Rule Notice in their credit contracts. Finance companies can be on the hook for dealer misconduct and unlawful practices, so continued focus by finance companies on dealer policies and procedures including vetting and onboarding, setting forth expected conduct in dealer agreements, training, and monitoring is necessary. Finance companies should also track complaints to help identify which dealers are putting their finance company at risk.

While the FTC did not provide any new guidance, it continues to signal a focus on dealer behavior and holding finance companies accountable for dealer misbehavior. For more information about the Holder Rule or other questions related to consumer finance, please contact Kristi French or another member of

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