

CHRYSLER - GMAC POWER GRAB?

May 5, 2009

Be aware that in the GMAC packet submitted to Chrysler dealers over the weekend there is a personal guaranty which is labeled "Guaranty and Acknowledgement Agreement for Retail Chargebacks". One would think this would mean that the dealer principal or person signing the guaranty would be personally guaranteeing any recourse or limited recourse paper. Many dealers are not personally guaranteeing these recourse transactions presently. If you are a Chrysler dealer and you are signing up for the GMAC program, be aware that if you signed this guaranty, you will now be obliged to personally guaranty recourse paper or other recourse claims for breach of a representation or warranty in the paper itself. **However, the guaranty does not stop there.** Paragraph 2 of the Guaranty also says that the guarantor "unconditionally guarantees to GMAC and GMAC's successors and assigns payment when due whether by acceleration or otherwise of all existing and future indebtedness to GMAC...and any and all obligations arising pursuant to the agreement." An argument could be made that in addition to any liability under the retail plan agreement, the dealers would have liability to GMAC for any other debt owing to GMAC. For example, should the dealer have any sort of current obligation with GMAC which might include floor plan, etc. on which they are not personally guaranteed, this guaranty could be argued to pick up the personal liability. You may not have any choice as to whether or not you are going to sign this, but at least you should be aware of this potential issue. If you signed or have to sign, you should ask for an amendment or modification when the current situation clears.

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